

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

**FORM S-3
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

Affirm Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

84-2224323

(I.R.S. Employer Identification Number)

**Affirm Holdings, Inc.
650 California Street
San Francisco, California 94108
Telephone: (415) 984-0490**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Max Levchin
Chief Executive Officer
Affirm Holdings, Inc.
650 California Street
San Francisco, California 94108
Telephone: (415) 984-0490**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Katherine Adkins
Chief Legal Officer
Affirm Holdings, Inc.
650 California Street
San Francisco, California 94108**

**Brian Lane, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036**

Approximate date of commencement of proposed sale to the public:
From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.



AFFIRM HOLDINGS, INC.

**Debt Securities
Class A Common Stock
Preferred Stock
Warrants
Depositary Shares
Purchase Contracts
Guarantees
Units**

This prospectus relates to debt securities, shares of our Class A common stock, par value \$0.00001 per share (“Class A common stock”), shares of our preferred stock, par value \$0.00001 per share (“preferred stock”), warrants, depositary shares, purchase contracts, guarantees and units which we may offer and sell from time to time in one or more offerings. In addition, one or more selling securityholders named in any supplement to this prospectus may offer and sell such securities from time to time. We will not receive any of the proceeds from the sale of securities by any selling securityholder.

If required, we will provide the specific prices and terms of these securities in one or more supplements to this prospectus at the time of offering. You should read this prospectus, any applicable prospectus supplement and any applicable free writing prospectus carefully before you make your investment decision.

Investing in our securities involves a number of risks. See “Risk Factors” on page 8, as well as the other information contained or incorporated by reference in this prospectus, any applicable prospectus supplement and any applicable free writing prospectus, before you make your investment decision.

We or any selling securityholder may offer securities through underwriting syndicates managed or co-managed by one or more underwriters or dealers, through agents or directly to purchasers. If required, the prospectus supplement for each offering of securities will describe the plan of distribution for that offering. For general information about the distribution of securities offered, please see “Plan of Distribution” in this prospectus.

Our Class A common stock is listed on The Nasdaq Global Select Market (“Nasdaq”) under the trading symbol “AFRM.” Each prospectus supplement will indicate whether the securities offered thereby will be listed on any securities exchange.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus or any applicable prospectus supplement is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is March 3, 2022

TABLE OF CONTENTS

	Page
<u>ABOUT THIS PROSPECTUS</u>	<u>3</u>
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	<u>4</u>
<u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	<u>5</u>
<u>THE COMPANY</u>	<u>7</u>
<u>RISK FACTORS</u>	<u>8</u>
<u>USE OF PROCEEDS</u>	<u>9</u>
<u>DESCRIPTION OF DEBT SECURITIES</u>	<u>10</u>
<u>DESCRIPTION OF CAPITAL STOCK</u>	<u>11</u>
<u>DESCRIPTION OF OTHER SECURITIES</u>	<u>18</u>
<u>SELLING SECURITYHOLDERS</u>	<u>19</u>
<u>PLAN OF DISTRIBUTION</u>	<u>20</u>
<u>LEGAL MATTERS</u>	<u>23</u>
<u>EXPERTS</u>	<u>23</u>

ABOUT THIS PROSPECTUS

This prospectus is part of an “automatic shelf” registration statement on Form S-3 that we filed with the Securities and Exchange Commission (the “SEC”) as a “well-known seasoned issuer” (“WKSI”) as defined in Rule 405 under the Securities Act of 1933, as amended (the “Securities Act”). Under this shelf registration process, we may sell from time to time any combination of the securities described in this prospectus. In addition, one or more selling securityholders may sell from time to time any combination of the securities described in this prospectus in one or more offerings. This prospectus only provides you with a general description of the securities that we or any selling securityholder may offer. Each time we or any selling securityholder offers, issues or sells securities, we will provide a supplement to this prospectus that contains specific information about the terms of that offering, including the specific amounts, prices and terms of the securities offered. The prospectus supplement may also add, update or change information contained in this prospectus. You should carefully read both this prospectus and any applicable prospectus supplement and/or free writing prospectus prepared by or on behalf of us, together with the additional information described under the heading “Where You Can Find More Information.”

Neither we nor any selling securityholder has authorized anyone to provide you with any information other than that contained in or incorporated by reference into this prospectus and any applicable prospectus supplement and/or free writing prospectus prepared by or on behalf of us. Neither we nor any selling securityholder takes responsibility for, and neither we nor any selling securityholder provides assurance as to the reliability of, any other information that others may give you. Neither we nor any selling securityholder is making offers to sell the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

The information in this prospectus is accurate as of the date on the front cover. You should not assume that the information contained in this prospectus is accurate as of any other date.

When used in this prospectus, the terms “Affirm,” “we,” “our” and “us” refer to Affirm Holdings, Inc. and its consolidated subsidiaries, unless otherwise specified or the context otherwise requires.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Our SEC filings are available to the public at the SEC’s website at www.sec.gov.

The SEC allows us to “incorporate by reference” information into this prospectus and any accompanying prospectus supplement, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus and any accompanying prospectus supplement, except for any information superseded by information contained directly in this prospectus, any accompanying prospectus supplement, any subsequently filed document deemed incorporated by reference or any free writing prospectus prepared by or on behalf of us. This prospectus and any accompanying prospectus supplement incorporate by reference the documents set forth below that we have previously filed with the SEC (other than information deemed furnished and not filed in accordance with SEC rules, including Items 2.02 and 7.01 of Form 8-K):

- our Annual Report on Form 10-K for the fiscal year ended June 30, 2021, filed with the SEC on September 17, 2021;
- our Quarterly Reports on Form 10-Q for the fiscal quarters ended September 30, 2021 and December 31, 2021, filed with the SEC on November 15, 2021 and February 14, 2022, respectively;
- our Current Reports on Form 8-K, filed with the SEC on October 20, 2021, November 10, 2021 (solely with respect to Items 1.01 and 3.02 and Exhibits 4.1, 4.2, 10.1 and 10.2 of Item 9.01), November 18, 2021, November 19, 2021, November 23, 2021, December 7, 2021, December 13, 2021 and February 10, 2022;
- our Registration Statement on Form 8-A for registration of Class A common stock pursuant to Section 12(b) of the Exchange Act, filed on January 13, 2021 (SEC File No. 001-39888), as updated by Exhibit 4.1 to our Annual Report on Form 10-K for the fiscal year ended June 30, 2021, filed with the SEC on September 17, 2021, together with any amendment or report filed for the purpose of updating such description; and
- the portions of our Definitive Proxy Statement on Schedule 14A for our 2021 Annual Meeting of Shareholders, filed with the SEC on October 20, 2021, that are incorporated by reference into our Annual Report on Form 10-K for the fiscal year ended June 30, 2021.

All documents filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (i) after the date of the initial filing of the registration statement of which this prospectus is a part and prior to effectiveness of the registration statement and (ii) after the date of this prospectus and before the termination of the offering also shall be deemed to be incorporated herein by reference. We are not, however, incorporating by reference any documents or portions thereof that are not deemed “filed” with the SEC, including any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K.

If requested, we will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference into such documents. To obtain a copy of these filings at no cost, you may write or telephone us at the following address:

Affirm Holdings, Inc.
Investor Relations
650 California Street
San Francisco, California 94108
Telephone: (415) 984-0490

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, any prospectus supplement, any applicable free writing prospectus and the documents incorporated by reference herein or therein contain statements that are “forward-looking” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include information regarding our future results of operations and financial condition, business strategy, and plans and objectives of management for future operations. In some cases, forward-looking statements may be identified by words such as “anticipate,” “believe,” “continue,” “could,” “design,” “estimate,” “expect,” “intend,” “may,” “plan,” “potentially,” “predict,” “project,” “should,” “will,” “would,” or the negative of these terms or other similar expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- our expectations regarding our future revenue, expenses, and other operating results and key operating metrics;
- our ability to attract additional merchants and retain and grow our relationships with our existing merchant partners;
- our ability to compete successfully in a highly competitive industry;
- our ability to attract new consumers and retain and grow our relationships with our existing consumers;
- our expectations regarding product launches;
- our ability to successfully engage new originating bank partners;
- the availability of funding sources to support our business model;
- our ability to effectively price and score credit risk using our proprietary risk model;
- the performance of loans facilitated through our platform;
- the future growth rate of our revenue and related key operating metrics;
- our ability to achieve or sustain profitability in the future;
- our ability to remain in compliance with laws and regulations that currently apply or become applicable to our business;
- our ability to protect our confidential, proprietary, or sensitive information;
- past and future acquisitions, investments, and other strategic investments;
- our ability to maintain, protect, and enhance our brand and intellectual property;
- litigation, investigations, regulatory inquiries, and proceedings;
- the impact of macroeconomic conditions on our business, including the impact of the COVID-19 pandemic; and
- the size and growth rates of the markets in which we compete.

Forward-looking statements are based on our management’s beliefs and assumptions and on information currently available. These forward-looking statements are subject to a number of known and unknown risks, uncertainties and assumptions, including risks described under “Risk Factors.” Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for our management to predict all risk factors nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ from those contained in, or implied by, any forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. Except as required by law, we undertake no obligation to update any of these forward-looking statements for any reason after the date of this prospectus or to conform these statements to actual results or to changes in our expectations. You should read this prospectus with the understanding that our actual

future results, levels of activity, performance, and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

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

THE COMPANY

Overview

Affirm, headquartered in San Francisco, California, provides consumers with a simpler, more transparent, and flexible alternative to traditional payment options. Our mission is to deliver honest financial products that improve lives. Through our next-generation commerce platform and partnerships with originating banks, we enable consumers to confidently pay for a purchase over time, with terms ranging from one to sixty months. When a consumer applies for a loan through our platform, the loan is underwritten using our proprietary risk model, and once approved, the consumer selects their preferred repayment option. The majority of loans are funded and issued by our originating bank partners.

Merchants partner with us to transform the consumer shopping experience and to acquire and convert customers more effectively through our frictionless point-of-sale payment solution. Consumers get the flexibility to buy now and make simple monthly or biweekly payments for their purchases and merchants see increased average order value, repeat purchase rate, and an overall more satisfied customer base. Unlike legacy payment options and our competitors' product offerings, which charge deferred or compounding interest and unexpected costs, we disclose up-front to consumers exactly what they will owe — no hidden fees, no penalties.

Corporate and Other Information

We were incorporated in Delaware on June 12, 2019. Prior to our incorporation, we operated under the name Affirm, Inc., our wholly owned subsidiary, which was formed in 2012. Our principal executive offices are located at 650 California Street, San Francisco, CA 94108. Our telephone number is (415) 984-0490. Our website address is www.affirm.com. We do not incorporate the information contained on, or accessible through, our corporate website into this prospectus, and you should not consider it part of this prospectus. We have included our website address as an inactive textual reference and for convenience only, and do not intend it to be an active link to our website.

The Affirm name, our logo, and other trademarks mentioned in this prospectus are the property of Affirm. Trade names, trademarks, and service marks of other companies appearing in this prospectus are the property of their respective holders.

RISK FACTORS

Investing in our securities involves various risks. You are urged to carefully read and consider the risk factors set forth or incorporated by reference in any applicable prospectus supplement and any applicable free writing prospectus and in our filings with the SEC, including our Annual Report on Form 10-K for the fiscal year ended June 30, 2021 and our Quarterly Reports on Form 10-Q for the fiscal quarters ended September 30, 2021 and December 31, 2021, which are incorporated by reference into this prospectus. Before making an investment decision, you should carefully consider these risks as well as other information contained or incorporated by reference in this prospectus, any applicable prospectus supplement and any applicable free writing prospectus. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of or that we deem immaterial may also become important factors that adversely affect our business.

USE OF PROCEEDS

We intend to use the net proceeds we receive from the sale of securities by us as set forth in the applicable prospectus supplement. Unless otherwise specified in the applicable prospectus supplement, we will not receive any proceeds from the sale of securities by any selling securityholder.

DESCRIPTION OF DEBT SECURITIES

We may issue from time to time, in one or more offerings, debt securities, which may be senior or subordinated, and which may be convertible into our common stock or be non-convertible.

We will set forth in the applicable prospectus supplement and/or free writing prospectus a description of the debt securities that may be offered under this prospectus. The terms of the offering of securities, the initial offering price and the net proceeds to us will be contained in the prospectus supplement, and other offering material, relating to such offer.

DESCRIPTION OF CAPITAL STOCK

The following description summarizes certain important terms of our capital stock. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of the matters set forth herein, you should refer to our amended and restated certificate of incorporation, to our amended and restated bylaws, as each may be amended from time to time and filed as exhibits to our Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, and to the applicable provisions of Delaware law. As used in this section, unless otherwise expressly stated or the context otherwise requires, the terms “Company,” “we,” “our” and “us” refer to Affirm Holdings, Inc. and not to any of its subsidiaries.

General

Our authorized capital stock consists of 3,200,000,000 shares of capital stock, \$0.00001 par value per share, of which:

- 3,030,000,000 shares are designated as Class A common stock; and
- 140,000,000 shares are designated as Class B common stock;
- 30,000,000 shares are designated as preferred stock.

Pursuant to our amended and restated certificate of incorporation, our board of directors have the authority, without stockholder approval except as required by the listing standards of Nasdaq, to issue additional shares of our Class A common stock.

Common Stock

We have two classes of authorized common stock: Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting, conversion and transfer rights.

Voting Rights

Holders of Class A common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. Holders of Class B common stock are entitled to 15 votes for each share held on all matters submitted to a vote of stockholders. The holders of our Class A common stock and the holders of our Class B common stock generally vote together as a single class on all matters submitted to a vote of our stockholders, unless otherwise required by Delaware law or our amended and restated certificate of incorporation. Delaware law could require either holders of our Class A common stock or holders of our Class B common stock to vote separately in the following circumstances:

- if we were to seek to amend our amended and restated certificate of incorporation to increase or decrease the par value of a class of our capital stock, then that class would be required to vote separately to approve the proposed amendment; and
- if we were to seek to amend our amended and restated certificate of incorporation in a manner that alters or changes the powers, preferences, or special rights of a class of our capital stock in a manner that affected its holders adversely, then that class would be required to vote separately to approve the proposed amendment.

Our amended and restated articles of incorporation provides that stockholders are not entitled to cumulative voting for the election of directors. As a result, the holders of a majority of our voting shares can elect all of the directors then standing for election. Our amended and restated articles of incorporation provides for a classified board of directors, which is divided into three classes with staggered three-year terms. Only one class of directors is elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

Conversion

Each outstanding share of Class B common stock is convertible at any time at the option of the holder into one share of Class A common stock. All shares of Class B common stock will automatically convert into shares of Class A common stock upon the earliest to occur of (i) the seven-year anniversary of the closing our initial public offering (“IPO”), (ii) the date immediately following an annual meeting of our stockholders if neither Max Levchin, our Founder, Chairman and Chief Executive Officer, nor Nellie Levchin, Mr. Levchin’s spouse, is then serving as one of our officers, employees, directors or consultants, and neither Mr. Levchin or Mrs. Levchin has served in such

capacities in the six months prior to such date, (iii) the date on which Mr. Levchin and Mrs. Levchin, together with their permitted transferees, cease to beneficially own in the aggregate at least 50% of the number of shares of capital stock beneficially owned by such holders in the aggregate on the closing date of our IPO, or (iv) the death or incapacity of the last to die or become incapacitated of Mr. Levchin or Mrs. Levchin, subject to extension for a total period of no longer than nine months from such incapacitation or death if approved by a majority of the independent directors then in office.

In addition, each share of Class B common stock will convert automatically into one share of Class A common stock upon (i) any transfer, whether or not for value, except for certain permitted transfers, described in the paragraph that immediately follows this paragraph and further described in our amended and restated certificate of incorporation, or (ii) in the case of a stockholder who is a natural person (other than Mr. Levchin and Mrs. Levchin), the death or incapacity of such stockholder. Once converted into Class A common stock, the Class B common stock will not be reissued.

A transfer by a holder of Class B common stock to any of the persons or entities listed in clauses (A) through (F) below (each, a “Permitted Transferee”) and from any such Permitted Transferee back to such holder of Class B common stock and/or any other Permitted Transferee established by or for such holder of Class B common stock will not trigger an automatic conversion of such stock to Class A common stock: (A) to a trust for the benefit of the holder of Class B common stock or persons other than such holder of Class B common stock, so long as such holder of Class B common stock (or in the case of Mr. Levchin and Mrs. Levchin, one or both of such holders) retains sole dispositive power and voting control, provided the holder of Class B common stock does not receive consideration in exchange for the transfer (other than as a settlor or beneficiary of such trust); (B) to a trust under the terms of which such holder of Class B common stock has retained a “qualified interest” within the meaning of §2702(b)(1) of the Internal Revenue Code (or successor provision) and/or a reversionary interest so long as the holder of Class B common stock (or in the case of Mr. Levchin and Mrs. Levchin, one or both of such holders) retains sole dispositive power and exclusive voting control with respect to the shares of Class B common stock held by such trust; (C) to an Individual Retirement Account, as defined in Section 408(a) of the Internal Revenue Code (or successor provision), or a pension, profit sharing, stock bonus or other type of plan or trust of which such holder of Class B common stock (or in the case of Mr. Levchin and Mrs. Levchin, one or both of such holders) is a participant or beneficiary and which satisfies the requirements for qualification under Section 401 of the Internal Revenue Code (or successor provision), so long as such holder of Class B common stock (or in the case of Mr. Levchin and Mrs. Levchin, one or both of such holders) retains sole dispositive power and exclusive voting control with respect to the shares of Class B common stock held in such account, plan or trust; (D) to a corporation, partnership or limited liability company in which such holder of Class B common stock directly, or indirectly through one or more Permitted Transferees, owns shares, partnership interests or membership interests, as applicable, with sufficient voting control or otherwise has legally enforceable rights, such that such holder of Class B common stock (or in the case of Mr. Levchin and Mrs. Levchin, one or both of such holders) retains sole dispositive power and exclusive voting control with respect to the shares of Class B common stock held by such corporation, partnership or limited liability company; (E) to an affiliate of a holder of Class B common stock, so long as the person or entity holding sole dispositive power and exclusive voting control with respect to the shares of Class B common stock being transferred retains, directly or indirectly, sole dispositive power and exclusive voting control with respect to such shares following such transfer; and (F) in the case of Mr. Levchin or Mrs. Levchin, to Mrs. Levchin or Mr. Levchin, as applicable, or to such other holder’s Permitted Transferees, or any other entity in which the other holder has, directly or indirectly, sole dispositive power and exclusive voting control with respect to the shares of Class B common stock held by such entity.

Dividends

Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of our common stock are entitled to receive ratably those dividends, if any, as may be declared by the board of directors out of legally available funds.

Liquidation, Dissolution and Winding Up

In the event of our liquidation, dissolution, or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of our preferred stock.

Rights and Preferences

Except for the conversion provisions with respect to our Class B common stock described above, holders of our common stock have no preemptive, conversion, or subscription rights and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences, and privileges of the holders of common stock

are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may issue in the future.

Preferred Stock

Our board of directors may, without further action by our stockholders, fix the rights, preferences, privileges, and restrictions of up to an aggregate of 30,000,000 shares of preferred stock in one or more series and authorize their issuance. These rights, preferences, and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms, and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of our common stock. The issuance of our preferred stock could adversely affect the voting power of holders of our common stock and the likelihood that such holders will receive dividend payments and payments upon liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deterring or preventing a change of control or other corporate action.

Stockholder Registration Rights

Certain holders of shares of our common stock, including substantially all of our former redeemable convertible preferred stockholders, including certain holders of greater than five percent of our capital stock and entities affiliated with certain of our directors, are parties to an amended and restated investors' rights agreement, dated as of September 11, 2020 (the "Investors' Rights Agreement"), pursuant to which they are entitled to certain rights with respect to registration of the Class A common stock held by or issued upon conversion of such shares under the Securities Act (such shares, the "IRA Shares").

In addition, under the terms of the Transaction Agreement, dated as of November 10, 2021 (the "Transaction Agreement"), by and among the Company, Amazon Payments, Inc. and the selling securityholder (together with Amazon Payments, Inc., "Amazon"), we granted Amazon Services certain registration rights with respect to the Warrant Shares (as defined below) (together with the IRA Shares, the "registrable shares"). The holders of these registrable securities possess registration rights described in additional detail below.

The registration of shares of our Class A common stock pursuant to the exercise of the registration rights described below would enable the holders to resell these shares without restriction under the Securities Act when the applicable registration statement is declared effective. We will pay the registration expenses, other than underwriting discounts and selling commissions in a demand or piggyback registration, of the shares registered pursuant to the demand, piggyback, and Form S-3 registrations described below.

Generally, in an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions, to limit the number of shares the holders may include. With respect to the IRA Shares, the demand, piggyback, and Form S-3 registration rights described below will expire (i) five years after the consummation of the initial public offering of our Class A common stock, (ii) with respect to any particular holder, at such time that such holder can sell all its shares under Rule 144 of the Securities Act without limitation during any three-month period without registration, or (iii) upon consummation of certain liquidation transactions. With respect to the Warrant Shares, the piggyback and Form S-3 registration rights described below will expire, with respect to any particular holder, on the date on which all Warrant Shares held by such holder have been disposed, including all shares issued or issuable upon exercise of the Warrants.

Demand Registration Rights

Pursuant to the Investors' Rights Agreement, the holders of the IRA Shares are entitled to certain demand registration rights. The holders of more than a majority of the IRA Shares then outstanding (or a lesser percent if the anticipated aggregate offering price, net of underwriting discounts and commissions, would exceed \$5 million), may make a written request that we register all or a portion of their shares, subject to certain specified exceptions. In addition, we must notify all of the other holders of IRA shares of such registration and allow them to include all or a portion of their shares on the applicable registration statement, subject to customary cutbacks.

Piggyback Registration Rights

If we propose to register for offer and sale any of our securities under the Securities Act, either for our own account or for the account of other security holders that are not party to the Investors' Rights Agreement (other than pursuant to specified exceptions) or the Transaction Agreement, as applicable, certain major holders for which Rule 144 of the Securities Act is not available, in the case of the Investors' Rights Agreement, or Amazon, in the case of the Transaction Agreement, will be entitled to certain "piggyback" registration rights allowing them to include their registrable securities in such registration, subject to customary cutbacks and other limitations.

Form S-3 Registration Rights

Pursuant to the Investors' Rights Agreement, the holders of the IRA Shares are entitled to certain Form S-3 registration rights. Any holder of IRA Shares can make a request that we register for offer and sale their shares on Form S-3 if we are qualified to file a registration statement on Form S-3, subject to certain specified exceptions. In addition, we must notify all of the other holders of IRA Shares of such registration and allow them to include all or a portion of their shares on the applicable registration statement. Such request for registration on Form S-3 with respect to IRA Shares must cover securities the aggregate offering price of which, after payment of the underwriting discounts and commissions, equals or exceeds \$1,000,000. We will not be required to effect more than two registrations on Form S-3 with respect to IRA Shares within the 12-month period preceding the date of such request.

Pursuant to the Transaction Agreement, as a well-known seasoned issuer, we are required to file a registration statement with respect to all of the Warrant Shares in the form of an automatic shelf registration statement. This registration statement of which this prospectus is a part was filed pursuant to our obligations under the Transaction Agreement.

Anti-Takeover Provisions

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 $\frac{2}{3}$ % of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a "business combination" to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge, or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

A Delaware corporation may "opt out" of these provisions with an express provision in its original certificate of incorporation or an express provision in its amended and restated certificate of incorporation or amended and restated bylaws resulting from a stockholders' amendment approved by at least a majority of the outstanding voting shares. We have not opted out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

Certificate of Incorporation and Bylaws

Our amended and restated certificate of incorporation and our amended and restated bylaws include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our management team, including the following:

Dual Class Stock

As described above in “— *Common Stock — Voting Rights*,” our amended and restated certificate of incorporation provides for a dual class common stock structure, which provides our current stockholders, executives, employees, directors and their affiliates with significant influence over all matters requiring stockholder approval, including the election of directors and significant corporate transactions, such as a merger or other sale of the Company or our assets.

Board of Directors Vacancies

Our amended and restated certificate of incorporation and amended and restated bylaws authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors is permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors but promotes continuity of management.

Classified Board

Our amended and restated certificate of incorporation provides that our board of directors be classified into three classes of directors. The existence of a classified board of directors could discourage a third-party from making a tender offer or otherwise attempting to obtain control of us, as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors.

Stockholder Action; Special Meeting of Stockholders

Our amended and restated certificate of incorporation provides that any action required or permitted to be taken by our stockholders must be effected at a duly called annual or special meeting of our stockholders and may not be effected by any consent in writing by our stockholders. Our amended and restated certificate of incorporation further provides that special meetings of our stockholders may be called only by a majority of our board of directors, the chairperson of our board of directors, our lead independent director, or, our chief executive officer, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders to take any action, including the removal of directors.

Advance Notice Requirements for Stockholder Proposals and Director Nominations

Our amended and restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our amended and restated bylaws also specify certain requirements regarding the form and content of a stockholder’s notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions might also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer’s own slate of directors or otherwise attempting to obtain control of the Company.

Directors Removed Only for Cause

Our amended and restated certificate of incorporation provides that stockholders may remove directors only for cause.

Supermajority Requirements for Amendments of Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Our amended and restated certificate of incorporation further provides that the affirmative vote of holders of at least 66 $\frac{2}{3}$ % of the voting power of all the then outstanding shares of capital stock is required to amend certain provisions of our amended and restated certificate of incorporation, including provisions relating to the classified board, the size of the board, removal of directors, filling vacancies on the board, special meetings of the stockholders, actions by written consent of the stockholders, and cumulative voting. The affirmative vote of holders

of at least 66 $\frac{2}{3}$ of the voting power of all of the then outstanding shares of capital stock is required to amend or repeal our amended and restated bylaws, although our amended and restated bylaws may be amended by a simple majority vote of our board of directors.

No Cumulative Voting

The DGCL provides that stockholders are not entitled to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation does not provide for cumulative voting.

Amendment of Charter and Bylaws Provisions

Certain amendments to our amended and restated certificate of incorporation require the approval of 66 $\frac{2}{3}$ % of the outstanding voting power of our capital stock. Our amended and restated bylaws provide that approval of stockholders holding 66 $\frac{2}{3}$ % of our outstanding capital stock is required for stockholders to amend or adopt any provision of our bylaws.

Issuance of Undesignated Preferred Stock

Our board of directors has the authority, without further action by our stockholders, to issue up to 30,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest, or other means.

Choice of Forum

Our amended and restated bylaws provide that the Court of Chancery of the State of Delaware is the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of us; (ii) any action asserting a claim of breach of a duty (including any fiduciary duty) owed by any of our current or former directors, officers, stockholders, employees or agents to us or our stockholders; (iii) any action asserting a claim against us or any of our current or former directors, officers, stockholders, employees or agents arising out of or relating to any provision of the DGCL or our amended and restated certificate of incorporation or our amended and restated bylaws; or (iv) any action asserting a claim against us or any of our current or former directors, officers, stockholders, employees or agents governed by the internal affairs doctrine of the State of Delaware. This provision does not apply to suits brought to enforce any duty or liability created by the Securities Act or the Exchange Act, or the rules and regulations thereunder.

Our amended and restated bylaws also provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and to have consented to the foregoing provision; *provided, however*, that stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. We recognize that the forum selection clause in our amended and restated bylaws may impose additional litigation costs on stockholders in pursuing any such claims, particularly if the stockholders do not reside in or near the State of Delaware. Additionally, the forum selection clause in our amended and restated bylaws may limit our stockholders' ability to bring a claim in a forum that they find favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and our directors, officers, employees and agents even though an action, if successful, might benefit our stockholders. The Court of Chancery of the State of Delaware may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments may be more or less favorable to us than our stockholders.

Moreover, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all claims brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder and our amended and restated bylaws provide that the federal district courts of the United States of America will, to the fullest extent permitted by law, be the sole and exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act.

Limitations on Liability and Indemnification of Officers and Directors

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties, subject to certain exceptions. Our amended and restated certificate of incorporation includes a provision that eliminates the personal liability of directors for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL. The effect of such provision is to eliminate the

rights of us and our stockholders, through stockholders' derivative suits on our behalf, to recover monetary damages from a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior.

However, exculpation does not apply to any director if the director has breached the duty of loyalty to the corporation and its stockholders, acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends, or redemptions or derived an improper benefit from his or her actions as a director.

Our amended and restated bylaws provide that we must generally indemnify, and advance expenses to, our directors and officers appointed by our board of directors to the fullest extent authorized by the DGCL. We also are expressly authorized to carry directors' and officers' liability insurance providing indemnification for our directors, officers, employees and agents for some liabilities. We believe that these limitations of liability, indemnification, and advancement provisions and insurance are useful to attract and retain qualified directors and executive officers.

The limitation of liability, indemnification, and advancement provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment in us may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

We have entered into indemnification agreements with each of our directors and executive officers pursuant to which we agreed to indemnify them to the fullest extent permitted by Delaware law.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or controlling persons pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Transfer Agent and Registrar

The transfer agent and registrar for our Class A common stock is Computershare Trust Company, N.A. The transfer agent and registrar's address is 150 Royall Street, Canton, MA 02021.

Listing

Our Class A common stock is listed on Nasdaq under the symbol "AFRM".

DESCRIPTION OF OTHER SECURITIES

We will set forth in the applicable prospectus supplement a description of any warrants, depositary shares, purchase contracts, guarantees or units that may be offered pursuant to this prospectus.

SELLING SECURITYHOLDERS

Information about selling securityholders, where applicable, will be set forth in a prospectus supplement, in a post-effective amendment, or in filings we make with the SEC under the Exchange Act that are incorporated by reference.

PLAN OF DISTRIBUTION

We or any selling securityholder may sell the securities being offered hereby in one or more of the following ways from time to time:

- through agents;
- to or through underwriters;
- in “at-the market” offerings (as defined in Rule 415 under the Securities Act of 1933);
- through broker-dealers (acting as agent or principal);
- directly by us or by selling securityholders to purchasers, through a specific bidding or auction process or otherwise;
- through a combination of any such methods of sale; or
- through any other method permitted by applicable law and described in a prospectus supplement.

In addition, we or any selling securityholder may enter into derivative or hedging transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. In connection with such a transaction, the third parties may sell securities covered by and pursuant to this prospectus and any accompanying prospectus supplement. If so, the third party may use securities borrowed from us or others to settle such sales and may use securities received from us or any selling securityholder to close out any related short positions. We may also loan or pledge securities covered by this prospectus and any accompanying prospectus supplement to third parties, who may sell the loaned securities or, in an event of default in the case of a pledge, sell the pledged securities pursuant to this prospectus and any accompanying prospectus supplement.

If required, we will identify the specific plan of distribution in a prospectus supplement, including:

- the terms of the offering;
- the names of the underwriters, dealers, agents or direct purchasers and their compensation;
- the purchase price of the securities and the net proceeds we will receive from the sale;
- any delayed delivery obligations to take the securities;
- the nature of the underwriters’ obligations to take the securities;
- any securities exchange or market on which the securities may be listed;
- the name of any selling securityholder, if applicable; and
- other facts material to the transaction.

Underwriters, dealers and agents

If we or any selling securityholder use underwriters in an offering, we or any selling securityholder will execute an underwriting agreement with such underwriters and will specify the name of each underwriter and the terms of the transaction (including any underwriting discounts and other terms constituting compensation of the underwriters and any dealers) in a prospectus supplement. If we or any selling securityholder use an underwriting syndicate, the managing underwriter(s) will be specified on the cover of the prospectus supplement. If we or any selling securityholder use underwriters for a sale of securities, the underwriters will acquire the securities for their own accounts. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Any public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time. Unless otherwise set forth in the prospectus supplement, the obligations of the underwriters to purchase the offered securities will be subject to conditions precedent and the underwriters will be obligated to purchase all of the offered securities if any are purchased.

If dealers are used in an offering, we or any selling securityholder may sell the securities to the dealers as principals. The dealers then may resell the securities to the public at varying prices which they determine at the time of resale. The names of the dealers and the terms of the transaction will be specified in a prospectus supplement.

If agents are used in an offering, the names of the agents and the terms of the agency will be specified in a prospectus supplement. Unless otherwise indicated in a prospectus supplement, the agents will act on a best-efforts basis for the period of their appointment.

Dealers and agents named in a prospectus supplement may be underwriters as defined in the Securities Act of 1933 and any discounts or commissions they receive from us and any profit on their resale of the securities may be treated as underwriting discounts and commissions under the Securities Act of 1933. We or any selling securityholder will identify in the applicable prospectus supplement any underwriters, dealers or agents and will describe their compensation. We or any selling securityholder may have agreements with the underwriters, dealers and agents to indemnify them against specified civil liabilities, including liabilities under the Securities Act of 1933.

Underwriters, dealers or agents and their associates may engage in other transactions with and perform other services for us or any selling securityholder in the ordinary course of business.

If so indicated in a prospectus supplement, we or any selling securityholder will authorize underwriters or other persons acting as our or their agents to solicit offers by institutional investors to purchase securities pursuant to contracts providing for payment and delivery on a future date. We or any selling securityholder may enter contracts with commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and other institutional investors. The obligations of any institutional investor will be subject to the condition that its purchase of the offered securities will not be illegal at the time of delivery. The underwriters and other agents will not be responsible for the validity or performance of contracts.

At-the-market offerings

We or any selling securityholder may also sell the securities offered by any applicable prospectus supplement in “at-the-market offerings” within the meaning of Rule 415 of the Securities Act of 1933, to or through a market maker or into an existing trading market, on an exchange or otherwise.

Direct sales

We or any selling securityholder may sell securities directly to one or more purchasers without using underwriters or agents.

Trading markets and listing of securities

Unless otherwise specified in the applicable prospectus supplement, each class or series of securities will be a new issue with no established trading market, other than our Class A common stock, which is listed on Nasdaq. We may elect to list any other class or series of securities on any exchange, but we are not obligated to do so. It is possible that one or more underwriters may make a market in a class or series of securities, but the underwriters will not be obligated to do so and may discontinue any market making at any time without notice. We cannot give any assurance as to the liquidity of the trading market for any of the securities.

Stabilization activities

In connection with an offering, an underwriter may purchase and sell securities in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of securities than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional securities, if any, from us in the offering. If the underwriters have an over-allotment option to purchase additional securities from us, the underwriters may close out any covered short position by either exercising their over-allotment option or purchasing securities in the open market. In determining the source of securities to close out the covered short position, the underwriters may consider, among other things, the price of securities available for purchase in the open market as compared to the price at which they may purchase securities through the over-allotment option. “Naked” short sales are any sales in excess of such option or where the underwriters do not have an over-allotment option. The underwriters must close out any naked short position by purchasing securities in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the securities in the open market after pricing that could adversely affect investors who purchase in the offering.

Accordingly, to cover these short sales positions or to otherwise stabilize or maintain the price of the securities, the underwriters may bid for or purchase securities in the open market and may impose penalty bids. If penalty bids are imposed, selling concessions allowed to syndicate members or other broker-dealers participating in the offering are reclaimed if securities previously distributed in the offering are repurchased, whether in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. The impositions of a penalty bid may also affect the price of the securities to the extent that it discourages resale of the securities. The magnitude or effect of any stabilization or other transactions is uncertain. These transactions may be effected on Nasdaq or otherwise and, if commenced, may be discontinued at any time.

LEGAL MATTERS

Unless otherwise indicated in any accompanying prospectus supplement, Gibson, Dunn & Crutcher LLP will provide opinions regarding the validity of the securities. Any underwriters will be advised about legal matters by their own counsel, which will be named in an accompanying prospectus supplement.

EXPERTS

The consolidated financial statements of Affirm Holdings, Inc. as of and for the years then ended June 30, 2021 and 2020, incorporated by reference in this prospectus by reference to Affirm Holdings, Inc.'s annual report on Form 10-K for the year ended June 30, 2021, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report. Such financial statements are incorporated by reference in reliance upon the report of such firm given their authority as experts in accounting and auditing.

The consolidated financial statements of Affirm Holdings, Inc. as of and for the fiscal year ended June 30, 2019, incorporated in this prospectus by reference to our Annual Report on Form 10-K for the fiscal year ended June 30, 2021, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated expenses payable by us in connection with the sale and distribution of the securities registered hereby, other than underwriting discounts or commissions.

Securities and Exchange Commission Registration Fee	\$	*
FINRA Filing Fee	\$	**
Accounting Fees and Expenses	\$	**
Legal Fees and Expenses	\$	**
Printing Fees	\$	**
Rating Agency Fees	\$	**
Transfer Agents and Trustees' Fees and Expenses	\$	**
Miscellaneous	\$	**
Total	\$	**

* In accordance with Rules 456(b) and 457(r), applicable SEC registration fees have been deferred and will be paid at the time of any particular offering of the securities under this registration statement.

** These fees are calculated based on the number of issuances and amount of securities offered and, accordingly, cannot be estimated at this time. An estimate of the aggregate amount of these expenses will be included in the applicable prospectus supplement.

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with specified actions, suits and proceedings whether civil, criminal, administrative, or investigative, other than a derivative action by or in the right of the corporation, if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification extends only to expenses, including attorneys' fees, incurred in connection with the defense or settlement of such action and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The statute provides that it is not exclusive of other indemnification that may be granted by a corporation's certificate of incorporation, bylaws, disinterested director vote, stockholder vote, agreement or otherwise.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases, redemptions, or other distributions, or (iv) for any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation and amended and restated bylaws provide for indemnification of directors and officers to the fullest extent permitted by law, including payment of expenses in advance of resolution of any such matter. Our amended and restated certificate of incorporation eliminates the potential personal monetary liability of our directors to us or our stockholders for breaches of their duties as directors except as otherwise required under the DGCL. Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission, or claim that occurred or arose prior to that amendment or repeal. If the DGCL is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the DGCL.

We have entered into separate indemnification agreements with our directors and officers that may be broader than the specific indemnification provisions contained in the DGCL. Each indemnification agreement

provides, among other things, for indemnification to the fullest extent permitted by law and our amended and restated certificate of incorporation and amended and restated bylaws against any and all expenses, judgments, fines, penalties and amounts paid in settlement of any claim. The indemnification agreements provide for the advancement or payment of all expenses to the indemnitee and for reimbursement to us if it is found that such indemnitee is not entitled to such indemnification under applicable law and our amended and restated certificate of incorporation and amended and restated bylaws. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and officers.

The limitation of liability and indemnification provisions that are included in our amended and restated certificate of incorporation, amended and restated bylaws, and the indemnification agreements that we have entered into with our directors and officers may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees, or other agents or is or was serving at our request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We maintain standard policies of insurance under which, subject to the limitations of the policies, coverage is provided (a) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful acts as a director or officer, including claims relating to public securities matters, and (b) to us with respect to payments which we may make to such officers and directors pursuant to our indemnification obligations or otherwise as a matter of law.

Certain of our non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

Item 16. List of Exhibits.

A list of exhibits filed herewith or incorporated by reference is contained in the Exhibit Index immediately following the signature page hereto, which is incorporated herein by reference as if fully set forth herein.

Exhibit Number	Description	Incorporated by Reference				
		Form	File No.	Exhibit	Filing Date	Filed Herewith
4.1	Amended and Restated Certificate of Incorporation	8-K	001-39888	3.1	January 15, 2021	
4.2	Amended and Restated Bylaws	8-K	001-39888	3.2	September 8, 2021	
4.3	Form of Indenture					X
5.1	Opinion of Gibson, Dunn & Crutcher LLP					X
23.1	Consent of Ernst & Young LLP, independent registered public accountants					X
23.2	Consent of Deloitte & Touche LLP, independent registered public accountants					X
23.3	Consent of Gibson, Dunn & Crutcher LLP (included as part of Exhibit 5.1)					X
24.1	Power of Attorney (included on signature pages to this Registration Statement)					X
107	Filing Fee Table					X

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i), (ii) and (iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement;

- (4) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (5) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (6) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
 - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of this registration statement as of the date the filed prospectus was deemed part of and included in this registration statement; and
 - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in this registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of this registration statement or made in a document incorporated or deemed incorporated by reference into this registration statement or prospectus that is part of this registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in this registration statement or prospectus that was part of this registration statement or made in any such document immediately prior to such effective date.
- (3) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act ("Act") in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Act.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California on March 3, 2022.

Affirm Holdings, Inc.

By: /s/ Max Levchin

Name: Max Levchin
Title: Chief Executive Officer

In accordance with the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates stated. Each person whose signature appears below constitutes and appoints Max Levchin, Michael Linford and Katherine Adkins and each of them severally, as his or her true and lawful attorney-in-fact and agent, each acting along with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) and exhibits to the Registration Statement on Form S-3, and to any registration statement filed under SEC Rule 462, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the SEC, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Capacity	Date
<u>/s/ Max Levchin</u> Max Levchin	Chairman of the Board of Directors and Chief Executive Officer (principal executive officer)	March 3, 2022
<u>/s/ Michael Linford</u> Michael Linford	Chief Financial Officer (principal financial officer)	March 3, 2022
<u>/s/ Siphhelele Jiyane</u> Siphhelele Jiyane	VP, Controller (principal accounting officer)	March 3, 2022
<u>/s/ Jeremy Liew</u> Jeremy Liew	Director	March 3, 2022
<u>/s/ Libor Michalek</u> Libor Michalek	Director	March 3, 2022
<u>/s/ Jenny J. Ming</u> Jenny J. Ming	Director	March 3, 2022
<u>/s/ Christa S. Quarles</u>		

Christa S. Quarles

Director

March 3, 2022

/s/ Keith Rabois
Keith Rabois

Director

March 3, 2022

/s/ Jacqueline D. Reses
Jacqueline D. Reses

Director

March 3, 2022

/s/ James D. White
James D. White

Director

March 3, 2022

Calculation of Filing Fee Tables

Form S-3
(Form Type)

AFFIRM HOLDINGS, INC.

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial effective date	Filing Fee Previously Paid In Connection with Unsold Securities to be Carried Forward
Newly Registered Securities												
Fees to Be Paid	Debt	Debt Securities(1)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
	Equity	Class A Common Stock, par value \$0.00001 per share(1)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
	Equity	Preferred Stock, \$0.00001 par value per share(1)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
	Other	Warrants(1)(4)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
	Other	Depositary Shares (1)(5)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
	Other	Purchase Contracts(1)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
	Other	Guarantees(1)(4)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
	Other	Units(1)(6)	Rule 456(b) and Rule 457(r)(2)	(3)	(3)	(3)	(2)	(2)				
Fees Previously Paid	N/A	N/A	N/A	N/A	N/A	N/A		N/A				
Carry Forward Securities												
Carry Forward Securities	N/A	N/A	N/A	N/A		N/A		N/A	N/A	N/A	N/A	N/A
	Total Offering Amounts					N/A		N/A				
	Total Fees Previously Paid							N/A				
	Total Fee Offsets							N/A				
	Net Fee Due							N/A				

(1) Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities.

(2) The registrant is relying on Rule 456(b) and Rule 457(r) under the Securities Act of 1933, as amended, to defer payment of all of the registration fee. In connection with the securities offered hereby, the registrant will pay "pay-as-you-go registration fees" in accordance with Rule 456(b). The registrant will calculate the registration fee applicable to an offer of securities pursuant to this Registration Statement based on the fee payment rate in effect on the date of such fee payment.

(3) An unspecified aggregate initial offering price and number of securities of each identified class is being registered and may from time to time be offered at unspecified prices.

- (4) Representing rights or obligations to purchase debt securities, Class A Common Stock Preferred Stock, or other securities, property or assets.
 - (5) Each depositary share will be issued under a deposit agreement and will be evidenced by a depositary receipt.
 - (6) Any securities registered hereunder may be sold separately or as units with other securities registered hereunder.
-

Affirm Holdings, Inc.

Debt Securities

Form of Indenture

Dated as of

,

as Trustee

CROSS-REFERENCE TABLE
This Cross-Reference Table is not a part of the Indenture

TIA Section Indenture Section

310(a)(1).....	7.10
(a)(2).....	7.10
(a)(3).....	N.A.
(a)(4).....	N.A.
(b).....	7.08; 7.10; 11.02
311(a).....	7.11
(b).....	7.11
(c).....	N.A.
312(a).....	2.05
(b).....	11.03
(c).....	11.03
313(a).....	7.06
(b)(1).....	N.A.
(b)(2).....	7.06
(c).....	11.02
(d).....	7.06
314(a).....	4.03; 11.02
(b).....	N.A.
(c)(1).....	11.04
(c)(2).....	11.04
(c)(3).....	N.A.
(d).....	N.A.
(e).....	11.05
315(a).....	7.01(b)
(b).....	7.05; 11.02
(c).....	7.01(a)
(d).....	7.01(c)
(e).....	6.11
316(a)(last sentence).....	11.06
(a)(1)(A).....	6.05
(a)(1)(B).....	6.04
(a)(2).....	N.A.
(b).....	6.07
317(a)(1).....	6.08
(a)(2).....	6.09
(b)d.....	2.04
318(a).....	11.01

N.A. means Not Applicable.

TABLE OF CONTENTS

This Table of Contents is not a part of the Indenture

ARTICLE ONE

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01	Definitions.	- 1 -
Section 1.02	Other Definitions.	- 3 -
Section 1.03	Incorporation by Reference of Trust Indenture Act.	- 3 -
Section 1.04	Rules of Construction.	- 4 -

ARTICLE TWO

THE SECURITIES

Section 2.01	Form and Dating.	- 4 -
Section 2.02	Execution and Authentication.	- 6 -
Section 2.03	Registrar and Paying Agent.	- 7 -
Section 2.04	Paying Agent to Hold Money in Trust.	- 7 -
Section 2.05	Securityholder Lists.	- 7 -
Section 2.06	Transfer and Exchange.	- 7 -
Section 2.07	Replacement Securities.	- 8 -
Section 2.08	Outstanding Securities.	- 8 -
Section 2.09	Temporary Securities.	- 8 -
Section 2.10	Cancellation.	- 8 -
Section 2.11	Defaulted Interest.	- 9 -
Section 2.12	Treasury Securities.	- 9 -
Section 2.13	CUSIP/ISIN Numbers.	- 9 -
Section 2.14	Deposit of Moneys.	- 9 -
Section 2.15	Book-Entry Provisions for Global Security.	- 9 -
Section 2.16	No Duty to Monitor.	- 11 -

ARTICLE THREE

REDEMPTION; REPURCHASE

Section 3.01	Notices to Trustee.	- 11 -
Section 3.02	Selection of Securities to be Redeemed.	- 11 -
Section 3.03	Notice of Redemption.	- 12 -
Section 3.04	Effect of Notice of Redemption.	- 12 -
Section 3.05	Deposit of Redemption Price.	- 13 -
Section 3.06	Securities Redeemed in Part.	- 13 -
Section 3.07	Repurchases in the Open Market.	- 13 -

ARTICLE FOUR

COVENANTS

Section 4.01	Payment of Securities.	- 13 -
Section 4.02	Maintenance of Office or Agency.	- 13 -
Section 4.03	Compliance Certificate.	- 13 -
Section 4.04	Waiver of Stay, Extension or Usury Laws.	- 13 -
Section 4.05	SEC Reports.	- 14 -

**ARTICLE FIVE
SUCCESSOR CORPORATION**

Section 5.01	When Company May Merge, etc.	- 14 -
--------------	------------------------------	--------

**ARTICLE SIX
DEFAULTS AND REMEDIES**

Section 6.01	Events of Default.	- 14 -
Section 6.02	Acceleration.	- 15 -
Section 6.03	Other Remedies.	- 16 -
Section 6.04	Waiver of Existing Defaults.	- 16 -
Section 6.05	Control by Majority.	- 16 -
Section 6.06	Limitation on Suits.	- 17 -
Section 6.07	Rights of Holders to Receive Payment.	- 17 -
Section 6.08	Collection Suit by Trustee.	- 17 -
Section 6.09	Trustee May File Proofs of Claim.	- 17 -
Section 6.10	Priorities.	- 18 -
Section 6.11	Undertaking for Costs.	- 18 -

**ARTICLE SEVEN
TRUSTEE**

Section 7.01	Duties of Trustee.	- 18 -
Section 7.02	Rights of Trustee.	- 19 -
Section 7.03	Individual Rights of Trustee.	- 20 -
Section 7.04	Trustee's Disclaimer.	- 20 -
Section 7.05	Notice of Defaults.	- 21 -
Section 7.06	Reports by Trustee to Holders.	- 21 -
Section 7.07	Compensation and Indemnity.	- 21 -
Section 7.08	Replacement of Trustee.	- 21 -
Section 7.09	Successor Trustee by Merger, etc.	- 22 -
Section 7.10	Eligibility; Disqualification.	- 22 -
Section 7.11	Preferential Collection of Claims Against Company.	- 22 -

**ARTICLE EIGHT
DISCHARGE OF INDENTURE**

Section 8.01	Defeasance upon Deposit of Moneys or Government Obligations; Satisfaction and Discharge.	- 22 -
Section 8.02	Survival of the Company's Obligations.	- 24 -
Section 8.03	Application of Trust Money.	- 25 -
Section 8.04	Repayment to the Company.	- 25 -
Section 8.05	Reinstatement.	- 25 -

**ARTICLE NINE
AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Section 9.01	Without Consent of Holders.	- 25 -
Section 9.02	With Consent of Holders.	- 26 -

Section 9.03	Compliance with Trust Indenture Act.	- 27 -
Section 9.04	Revocation and Effect of Consents.	- 27 -
Section 9.05	Notation on or Exchange of Securities.	- 27 -
Section 9.06	Trustee to Sign Amendments, etc.	- 28 -

ARTICLE TEN

SECURITIES IN FOREIGN CURRENCIES

Section 10.01	Applicability of Article.	- 28 -
---------------	---------------------------	--------

ARTICLE ELEVEN

MISCELLANEOUS

Section 11.01	Trust Indenture Act Controls.	- 28 -
Section 11.02	Notices.	- 28 -
Section 11.03	Communications by Holders with Other Holders.	- 29 -
Section 11.04	Certificate and Opinion as to Conditions Precedent.	- 29 -
Section 11.05	Statements Required in Certificate or Opinion.	- 29 -
Section 11.06	Rules by Trustee and Agents.	- 30 -
Section 11.07	Legal Holidays.	- 30 -
Section 11.08	Governing Law.	- 30 -
Section 11.09	No Adverse Interpretation of Other Agreements.	- 30 -
Section 11.10	No Recourse Against Others.	- 30 -
Section 11.11	Successors and Assigns.	- 30 -
Section 11.12	Duplicate Originals.	- 30 -
Section 11.13	Severability.	- 31 -
Section 11.14	PATRIOT ACT.	- 31 -
Section 11.15	Waiver of Jury Trial.	- 31 -

SIGNATURES

EXHIBIT A – Form of Security

INDENTURE dated as of , (the “**Base Indenture**”), by and between **Affirm Holdings, Inc.**, a Delaware corporation (the “**Company**”), and , as trustee (the “**Trustee**”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s debt securities issued under this Base Indenture:

ARTICLE ONE
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 **Definitions.**

“**Affiliate**” means, when used with reference to a specified person, any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Person specified.

“**Agent**” means any Registrar, Paying Agent or co-Registrar or agent for service of notices and demands.

“**Authorizing Resolution**” means a resolution adopted by the Board of Directors or by an Officer or committee of Officers pursuant to delegation by the Board of Directors authorizing a Series of Securities.

“**Bankruptcy Law**” means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

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

“**Business Day**” means any calendar day that is not a Saturday or Sunday and that is not a day on which banking institutions in the City of New York (or any other place of payment) are authorized or required by law or executive order to close.

“**capital stock**” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of or in such Person’s capital stock or other equity interests.

“**Company**” means the party named as such in this Indenture until a successor replaces it pursuant to the Indenture and thereafter means the successor.

“**control**” means, when used with respect to any Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

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

“**Definitive Security**” means a certificated Security registered in the name of the Securityholder thereof.

“**Depository**” means, with respect to Securities of any Series which the Company shall determine will be issued in whole or in part as a Global Security, DTC, another clearing agency, or any successor registered as a clearing agency under the Exchange Act, and any other applicable U.S. or foreign statute or regulation, which, in each case, shall be designated by the Company pursuant to Section 2.01.

“**Dollars**” and “**\$**” means United States Dollars.

“**DTC**” means The Depository Trust Company.

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

“Foreign Currency” means any currency, currency unit or composite currency, including, without limitation, the euro, issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time.

“Global Security” means, with respect to any Series of Securities, a Security executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

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

“Holder” or **“Securityholder”** means the Person in whose name a Security is registered on the Registrar’s books.

“Indenture” means this Base Indenture as amended or supplemented from time to time, including pursuant to any Authorizing Resolution or supplemental indenture pertaining to any Series, and including, for all purposes of this instrument and any such Authorizing Resolution or supplemental indenture, the provisions of the TIA that are deemed to be a part of and govern this Base Indenture and any such Authorizing Resolution or supplemental indenture, respectively.

“Issue Date” means, with respect to any Series of Securities, the date on which the Securities of such Series are originally issued under this Indenture.

“NYUCC” means the New York Uniform Commercial Code, as in effect from time to time.

“Officer” means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company.

“Officer’s Certificate” means a certificate signed by an Officer of the Company.

“Opinion of Counsel” means a written opinion of counsel, which may be may be an employee of or counsel to the Company, any Subsidiary of the Company or any Person of which the Company is a Subsidiary.

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

“principal” of a debt security means the principal of the security *plus*, when appropriate, the premium, if any, on the security.

“**Property**” of any Person means all types of real, personal, tangible, intangible or mixed property owned by such Person, whether or not included in the most recent consolidated balance sheet of such Person and its Subsidiaries under GAAP.

“**SEC**” means the Securities and Exchange Commission or any successor agency performing the duties now assigned to it under the TIA.

“**Securities**” means any securities that are issued under this Base Indenture.

“**Series**” means a series of Securities established under this Base Indenture.

“**Subsidiary**” of any Person means any corporation or other entity of which at least majority of the outstanding capital stock or other equity interests having by the terms thereof ordinary voting power to elect a majority of the directors, managers or trustees of such corporation or other entity, irrespective of whether or not at the time capital stock or other equity securities of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency, is at the time, directly or indirectly, owned, or controlled by such Person or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

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

“**Trust Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, senior associate, associate, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

“**Trustee**” means the party named as such in this Base Indenture until a successor replaces it pursuant to this Base Indenture and thereafter means the successor serving hereunder; *provided, however*, that if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean only the Trustee with respect to Securities of that Series.

“**United States**” means the United States of America.

Section 1.02 **Other Definitions.**

<u>Term</u>	<u>Defined in Section</u>
Agent Members	2.15
Base Indenture	Preamble
Covenant Defeasance	8.01
Custodian	6.01
Event of Default	6.01
Legal Defeasance	8.01
Legal Holiday	11.07
Paying Agent	2.03
Registrar	2.03
Security Register	2.03
Successor	5.01

Section 1.03 Incorporation by Reference of Trust Indenture Act.

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

“Commission” means the SEC.

“indenture securities” means the Securities of a particular Series.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

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

“obligor” on the indenture securities means the Company or any other obligor on the Securities of a Series.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings so assigned to them.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP and all accounting determinations shall be made in accordance with GAAP;
- (3) “or” is not exclusive and “including” means “including without limitation”;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Indenture as a whole (including any Authorizing Resolution or supplemental indenture relating to the relevant Series) and not to any particular Article, Section or other subdivision;
- (6) all exhibits are incorporated by reference herein and expressly made a part of this Indenture; and
- (7) any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” this Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by this Indenture or such provision, as the case may be.

**ARTICLE TWO
THE SECURITIES**

Section 2.01 Form and Dating.

The aggregate principal amount of Securities that may be issued under this Base Indenture is unlimited. The Securities may be issued from time to time in one or more Series. Each Series shall be created by an Authorizing Resolution, an Officer’s Certificate or a supplemental indenture that establishes the terms of the Series, which may include the following:

- (1) the title of the Series;

- (2) the aggregate principal amount (or any limit on the aggregate principal amount) of the Series and, if any Securities of a Series are to be issued at a discount from their face amount, or with a premium, the method of computing the accretion of such discount or computing such premium;
- (3) the interest rate or method of calculation of the interest rate;
- (4) the date from which interest will accrue;
- (5) the record dates for interest payable on Securities of the Series;
- (6) the dates when, places where and manner in which principal and interest are payable;
- (7) if there is more than one Trustee or a Trustee other than , the identity of the Trustee and, if not the Trustee, the identity of each Registrar, Paying Agent or authenticating agent with respect to such Securities
- (8) the terms of any mandatory (including any sinking fund requirements) or optional redemption by the Company;
- (9) the terms of any redemption at the option of Holders;
- (10) the permissible denominations in which Securities of such Series are issuable, if different from \$2,000 and multiples of \$1,000 in excess thereof;
- (11) whether Securities of such Series will be issued in registered or bearer form and the terms of any such forms of Securities;
- (12) whether the Securities of the Series shall be issued in whole or in part in the form of a Global Security or Securities, the terms and conditions, if different from those contained in this Base Indenture, upon which such Global Security or Securities may be exchanged in whole or in part for Definitive Securities; the Depositary for such Global Security or Securities; the form of any legend or legends, if any, to be borne by any such Global Security or Securities in addition to or in lieu of the legends referred to in Section 2.15;
- (13) the currency or currencies (including any composite currency) in which principal or interest or both may be paid and the agency or organization, if any, responsible for overseeing any composite currency;
- (14) if payments of principal or interest may be made in a currency other than that in which Securities of such Series are denominated, the manner for determining such payments, including the time and manner of determining the exchange rate between the currency in which such Securities are denominated and the currency in which such Securities or any of them may be paid, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of Securities denominated or payable, at the election of the Company or a Holder thereof or otherwise, in a Foreign Currency;
- (15) whether the amount of payments of principal of or any interest on, such Securities may be determined with reference to an index, formula, financial or economic measure or other method or methods (which index, formula, measure or method or methods may be based, without limitation, on one or more currencies, commodities, equity indices or other indices) and if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or be payable;

- (16) provisions for electronic issuance of Securities or issuance of Securities of such Series in uncertificated form;
- (17) any Events of Default, covenants, defined terms and/or other terms in addition to or in lieu of those set forth in this Base Indenture;
- (18) whether and upon what terms Securities of such Series may be defeased or discharged if different from the provisions set forth in this Base Indenture;
- (19) the form of the Securities of such Series, which, unless the Authorizing Resolution, Officer's Certificate or supplemental indenture otherwise provides, shall be in the form of Exhibit A;
- (20) any terms that may be required by or advisable under applicable law;
- (21) the percentage of the principal amount of the Securities of such Series which is payable if the maturity of the Securities of such Series is accelerated in the case of Securities issued at a discount from their face amount;
- (22) whether Securities of such Series will or will not have the benefit of guarantees and, if applicable, the terms and conditions upon which such guarantees may be subordinated to other indebtedness of the respective guarantors;
- (23) whether the Securities of such Series are senior or subordinated debt securities, and if subordinated debt securities, the terms of such subordination;
- (24) whether the Securities of the Series will be convertible into or exchangeable for other Securities, shares of common stock, other securities, cash or other Property of any kind of the Company or another Person or Persons, and, if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, including the initial conversion or exchange price or rate or the method of calculation, how and when the conversion price or exchange ratio may be adjusted, whether conversion or exchange is mandatory, at the option of the holder or at the Company's option, the conversion or exchange period, and any other provision in relation thereto; and
- (25) any other terms in addition to or different from those contained in this Base Indenture applicable to such Series (including, without limitation, whether and which terms of the TIA shall be applicable to such Series).

All Securities of one Series need not be issued at the same time and, unless otherwise provided, a Series may be reopened for issuances of additional Securities of such Series pursuant to an Authorizing Resolution, an Officer's Certificate or in any indenture supplemental hereto.

The creation and issuance of a Series and the authentication and delivery thereof are not subject to any conditions precedent.

Section 2.02 Execution and Authentication.

One Officer shall sign the Securities for the Company by manual, electronic or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall nevertheless be valid.

A Security shall not be valid until the Trustee signs the certificate of authentication on the Security by manual, electronic or facsimile signature. The signature shall be conclusive evidence that the Security has been authenticated under this Base Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication. Each Security shall be dated the date of its authentication. The Trustee shall authenticate Securities for original issue upon receipt of, and shall be fully protected in relying upon:

- (a) an order to the Trustee signed by an Officer of the Company directing the Trustee to authenticate the Securities;
- (b) an Officer's Certificate of the Company delivered in accordance with Section 11.04; and
- (c) an Opinion of Counsel delivered in accordance with Section 11.04.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

Section 2.03 Registrar and Paying Agent.

The Company shall maintain an office or agency where Securities may be presented for registration of transfer or where Securities of a Series that are convertible or exchangeable may be surrendered for conversion or exchange ("**Registrar**"), an office or agency where Securities may be presented for payment ("**Paying Agent**") and an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Registrar shall keep a register of the Securities and of their transfer and exchange (the "**Security Register**"). The Company may have one or more co-Registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent. The Company may at any time rescind the designation of any Registrar or Paying Agent or approve a change in the office through which the Registrar or Paying Agent acts.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Base Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall promptly notify the Trustee in writing of the name and address of any such Agent and the Trustee shall have the right to inspect the Securities Register at all reasonable times to obtain copies thereof, and the Trustee shall have the right to rely upon such register as to the names and addresses of the Holders and the principal amounts and certificate numbers thereof. If the Company fails to maintain a Registrar or Paying Agent or fails to give the foregoing notice, the Trustee shall act as such.

The Company initially appoints the Trustee as Registrar and Paying Agent.

Section 2.04 Paying Agent to Hold Money in Trust.

Each Paying Agent shall hold in trust for the benefit of Securityholders and the Trustee all money held by the Paying Agent for the payment of principal of or interest on the Securities, and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon doing so the Paying Agent shall have no further liability for the money. Upon an Event of Default under Section 6.01(4) or (5) the Trustee shall automatically be the Paying Agent.

Section 2.05 Securityholder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least five Business Days before each semiannual interest payment date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

Section 2.06 Transfer and Exchange.

Where a Security is presented to the Registrar or a co-Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of Section 8-401(a) of the NYUCC are met and the other provisions of this Section 2.06 and, to the extent applicable, Section 2.15, are satisfied. Where Securities are presented to the Registrar or a co-Registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit transfers and exchanges, the Trustee shall authenticate Securities at the Registrar's request. The Registrar need not transfer or exchange any Security selected for redemption or repurchase, or transfer or exchange any Security for a period of 15 days before a selection of Securities to be redeemed or repurchased. Any exchange or transfer shall be without charge, except that the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto except in the case of exchanges pursuant to Section 2.09, Section 3.06, or Section 9.05 not involving any transfer. In connection with the foregoing, the Registrar may require a Holder to furnish appropriate endorsements and transfer documents.

Any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book entry system maintained by the Holder of such Global Security (or its agent), and that ownership of a beneficial interest in the Security shall be required to be reflected in a book entry.

Section 2.07 Replacement Securities.

If the Holder of a Security claims that the Security has been lost, destroyed, mutilated or wrongfully taken, the Company shall issue and execute a replacement security and, upon written request of any Officer of the Company, the Trustee shall authenticate such replacement Security, *provided*, in the case of a lost, destroyed or wrongfully taken Security, that the requirements of Section 8-405 of the NYUCC are met. If any such lost, destroyed, mutilated or wrongfully taken Security shall have matured or shall be about to mature, the Company may, instead of issuing a substitute Security therefor, pay such Security without requiring (except in the case of a mutilated Security) the surrender thereof. An indemnity bond must be sufficient in the judgment of the Trustee to protect the Trustee and in the judgment of the Company to protect the Company, the Trustee and any Agent from any loss which any of them may suffer if a Security is replaced, including the acquisition of such Security by a bona fide purchaser. The Company and the Trustee may charge for their expenses in replacing a Security.

Section 2.08 Outstanding Securities.

Securities outstanding at any time are all Securities authenticated by the Trustee except for those cancelled by it and those described in this Section. A Security does not cease to be outstanding because the Company or one of its Affiliates holds the Security.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a "protected purchaser" (as such term is defined in the NYUCC).

If the Paying Agent holds on a redemption date, purchase date or maturity date money sufficient to pay Securities payable on that date, then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 2.09 Temporary Securities.

Until Definitive Securities are ready for delivery, the Company may execute and the Trustee shall (upon receipt of an order from the Company) authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and, upon surrender for cancellation of the temporary Security, the Company shall execute and the Trustee shall authenticate Definitive Securities in exchange for temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as Definitive Securities authenticated and delivered hereunder.

Section 2.10 Cancellation.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, redemption, purchase or payment. The Trustee and no one else shall cancel and dispose of such cancelled or tendered Securities, or retain in accordance with its standard retention policy, all Securities surrendered for registration of transfer, exchange, redemption, purchase, payment or cancellation. Unless the Authorizing Resolution, Officer's Certificate or supplemental indenture so provides, the Company may not issue new Securities to replace Securities that it has previously paid or delivered to the Trustee for cancellation.

Section 2.11 Defaulted Interest.

If the Company defaults in a payment of interest on the Securities of any Series, it shall pay the defaulted interest *plus* any interest payable on the defaulted interest to the persons who are Securityholders of such Series on a subsequent special record date. The Company shall fix such special record date and a payment date. At least 15 days before such special record date, the Company shall send to each Securityholder of the relevant Series (with a copy to the Trustee) a notice that states the record date, the payment date and the amount of defaulted interest to be paid. On or before the date such notice is sent, the Company shall deposit with the Paying Agent money sufficient to pay the amount of defaulted interest to be so paid. The Company may pay defaulted interest in any other lawful manner if, after notice given by the Company to the Trustee of the proposed payment, such manner of payment shall be deemed practicable by the Trustee.

Section 2.12 Treasury Securities.

In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any direction, waiver, consent or notice, Securities owned by the Company or any of its Affiliates shall be considered as though they are not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so considered.

Section 2.13 CUSIP/ISIN Numbers.

The Company in issuing the Securities of any Series may use a "CUSIP" and/or "ISIN" or other similar number, and if so, the Trustee shall use the CUSIP and/or ISIN or other similar number in notices of redemption or exchange as a convenience to Holders of such Securities; *provided* that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of any such CUSIP and/or ISIN or other similar number printed in the notice or on such Securities, and that reliance may be placed only on the other identification numbers printed on such Securities. The Company shall promptly notify the Trustee of any change in any CUSIP and/or ISIN or other similar number.

Section 2.14 Deposit of Moneys.

Prior to 1:00 p.m. New York City time on each interest payment date and maturity date with respect to each Series of Securities, the Company shall have deposited with the Paying Agent in immediately available funds money

in the applicable currency sufficient to make cash payments due on such interest payment date or maturity date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders of such Series on such interest payment date or maturity date, as the case may be.

Section 2.15 Book-Entry Provisions for Global Security.

(a) Any Global Security of a Series initially shall (i) be registered in the name of the Depositary or the nominee of such Depositary, (ii) be delivered to the Trustee as custodian for such Depositary and (iii) bear any required legends.

Members of, or participants in, the Depositary (“**Agent Members**”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, or under the Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(b) Transfers of any Global Security shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. Global Securities of a Series will be exchangeable for Definitive Securities of such Series without interest coupons only in the following limited circumstances: (i) the Depositary (1) notifies the Company that it is unwilling or unable to continue as depositary for such Global Securities of such Series or (2) has ceased to be a clearing agency registered under the Exchange Act, and in either case, the Company fails to appoint a successor Depositary within 90 days; (ii) the Company notifies the Trustee in writing that the Company has elected to cause the issuance of such Definitive Securities of such Series under the Indenture or (iii) an Event of Default has occurred and is continuing with respect to Securities of such Series and the Registrar has received a request from the Depositary to issue Definitive Securities of such Series. In all such cases, Definitive Securities delivered in exchange for any Global Securities or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depositary (in accordance with its customary procedures).

(c) In connection with any transfer or exchange of a portion of the beneficial interest in any Global Security to beneficial owners pursuant to paragraph (b), the Registrar shall (if one or more Definitive Securities are to be issued) reflect on its books and records the date and a decrease in the principal amount of the Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Securities of like Series and amount.

(d) In connection with the transfer of an entire Global Security to beneficial owners pursuant to paragraph (b), the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in the Global Security, an equal aggregate principal amount of Definitive Securities of the same Series in authorized denominations.

(e) The Holder of any Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities of such Series.

(f) Unless otherwise provided in the Authorizing Resolution or supplemental indenture for a particular Series of Securities, each Global Security of such Series shall bear legends in substantially the following forms:

“THIS GLOBAL SECURITY IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS SECURITY) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE HOLDERS OF BENEFICIAL INTERESTS HEREIN, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE ANY SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO THE INDENTURE, (II) THIS GLOBAL SECURITY MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06 OF THE BASE INDENTURE, (III) THIS GLOBAL SECURITY MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO THE INDENTURE AND (IV) THIS GLOBAL SECURITY MAY BE TRANSFERRED AS A WHOLE, BUT NOT IN PART, TO THE DEPOSITARY, ITS SUCCESSORS OR THEIR RESPECTIVE NOMINEES.”

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

Section 2.16 No Duty to Monitor.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Agent Members or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depositary.

**ARTICLE THREE
REDEMPTION; REPURCHASE**

Section 3.01 Notices to Trustee.

Securities of a Series that are redeemable prior to maturity shall be redeemable in accordance with their terms and, unless the Authorizing Resolution or supplemental indenture provides otherwise, in accordance with this Article Three.

If the Company wants to redeem Securities pursuant to any provisions of such Securities permitting the Company to redeem such Securities at its option, it shall notify the Trustee in writing of the redemption date and the principal amount of Securities to be redeemed. Any such notice may be cancelled at any time prior to notice of such redemption being sent to Holders. Any such cancelled notice shall be void and of no effect.

If the Company wants to credit any Securities previously redeemed, retired or acquired against any redemption pursuant to any provisions of such Securities, it shall notify the Trustee of the amount of the credit and it shall deliver any Securities not previously delivered to the Trustee for cancellation with such notice.

The Company shall give each notice provided for in this Section 3.01 at least two days before the notice of any such redemption is to be delivered to Holders (unless a shorter notice shall be satisfactory to the Trustee).

Section 3.02 Selection of Securities to be Redeemed.

If fewer than all of the Securities of a Series are to be redeemed, the Trustee (or Depositary, as applicable) shall select the Securities to be redeemed pro rata, by lot, or such other method the Trustee (or Depositary, as applicable) considers fair and appropriate and in a manner that complies with applicable requirements of the Depositary. The Trustee (or Depositary, as applicable) shall make the selection from Securities outstanding not previously called for redemption and shall promptly notify the Company of the serial numbers or other identifying attributes of the Securities so selected. The Trustee (or Depositary, as applicable) may select for redemption portions of the principal of Securities that have denominations larger than the minimum denomination for the Series. Securities and portions of them it selects shall be in amounts equal to a permissible denomination for the Series. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

Unless otherwise provided in the Authorizing Resolution, Officer's Certificate or supplemental indenture relating to a Series, if any Security selected for partial redemption is converted into or exchanged for common stock or other securities, cash or other Property in part before termination of the conversion or exchange right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted or exchanged during a selection of Securities to be redeemed shall be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.03 Notice of Redemption.

At least 10 days but not more than 60 days before a redemption date, the Company shall send a notice of redemption by first-class mail, postage prepaid (or in the case of Global Securities, deliver electronically in accordance with the applicable procedures of the Depositary), to each Holder of Securities to be redeemed (with a copy to the Trustee).

The notice shall identify the Securities to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price or the formula pursuant to which such price will be calculated;
- (3) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date, upon surrender of such Security, a new Security or Securities in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Security;
- (4) in the case of Securities of a Series that are convertible or exchangeable into shares of the Company's common stock or other securities, cash or other Property, the conversion or exchange price or rate, the date or dates on which the right to convert or exchange the principal of the Securities of such Series to be redeemed will commence or terminate and the place or places where such Securities may be surrendered for conversion or exchange;
- (5) the name and address of the Paying Agent;
- (6) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (7) that, unless the Company defaults in payment of the redemption price, interest on Securities called for redemption ceases to accrue on and after the redemption date;

- (8) that the Securities are being redeemed pursuant to the mandatory redemption or the optional redemption provisions, as applicable; and
- (9) the CUSIP number and that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of any such CUSIP and/or ISIN or other similar number printed in the notice or on such Securities, and that reliance may be placed only on the other identification numbers printed on such Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company shall deliver to the Trustee at least five days prior to the date on which notice of redemption is to be sent or such shorter period as may be satisfactory to the Trustee, an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph and the form of such notice.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is sent, Securities called for redemption become due and payable on the redemption date and at the redemption price as set forth in the notice of redemption. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price, *plus* accrued and unpaid interest to the redemption date. Notices of redemption may be subject to one or more conditions. In the event that any such conditions are not satisfied the Company may amend or revoke such notice of redemption by sending notice to Securityholders (with a copy to the Trustee) in accordance with the applicable procedures of the Depository.

Section 3.05 Deposit of Redemption Price.

On or before the redemption date, the Company shall deposit with the Paying Agent immediately available funds in the applicable currency sufficient to pay the redemption price of and accrued interest on all Securities to be redeemed on that date.

Section 3.06 Securities Redeemed in Part.

Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for each Holder a new Security of the same Series equal in principal amount to the unredeemed portion of the Security surrendered.

Section 3.07 Repurchases in the Open Market.

The Company or any Affiliate of the Company may at any time or from time to time repurchase any of the Securities in the open market or otherwise, whether from one Noteholder or several Noteholders, or whether in one repurchase or a series of repurchases. Such Securities may, at the option of the Company or the relevant Affiliate of the Company, be held, resold or surrendered to the Trustee for cancellation.

**ARTICLE FOUR
COVENANTS**

Section 4.01 Payment of Securities.

The Company shall pay the principal of and interest on a Series on the dates, in the currency and in the manner provided in the Securities of the Series. An installment of principal or interest shall be considered paid on the date it is due if the Paying Agent holds on that date money in the applicable currency designated for and sufficient to pay the installment.

The Company shall pay interest on overdue principal at the rate borne by the Series; it shall pay interest on overdue installments of interest at the same rate.

Section 4.02 Maintenance of Office or Agency.

The Company shall maintain the office or agency required under Section 2.03. The Company shall give prior written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee, provided that the Trustee shall not be the agent for service of legal process on the Company.

Section 4.03 Compliance Certificate.

The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officer's Certificate stating whether or not the signer knows of any continuing Event of Default by the Company in performing any of its obligations under this Indenture. If the signer does know of such an Event of Default, the certificate shall describe such Event of Default.

Section 4.04 Waiver of Stay, Extension or Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Securities of any Series as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.05 SEC Reports.

The Company covenants to comply with Section 314 of the TIA. Delivery of such information and documents to the Trustee under this Section 4.05 is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

**ARTICLE FIVE
SUCCESSOR CORPORATION**

Section 5.01 When Company May Merge, etc.

The Company will not consolidate or merge with or into, or sell, lease, convey or otherwise dispose of all or substantially all of its assets (including by way of liquidation or dissolution) to, any Person (in each case other than in a transaction in which the Company is the survivor of a consolidation or merger, or the transferee in a sale, lease, conveyance or other disposition) unless:

- (1) the Person formed by or surviving such consolidation or merger (if other than the Company), or to which such sale, lease, conveyance or other disposition will be made (collectively, the "**Successor**"), is a corporation or other legal entity organized and existing under the laws of the United States or any state thereof or the District of Columbia, and the Successor assumes by supplemental indenture all of the obligations of the Company under any outstanding Securities and the Indenture as it relates to such outstanding Securities, and
- (2) immediately after giving effect to such transaction, no Event of Default has occurred and is continuing.

The foregoing provisions shall not apply to a transaction the purpose of which is to change the state of incorporation of the Company.

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

Upon any such consolidation, merger, sale, lease, conveyance or other disposition, the Successor will be substituted for the Company under the Indenture. The Successor may then exercise every power and right of the Company under this Indenture, and except in the case of a lease, the Company will be released from all of its liabilities and obligations in respect of the Securities and the Indenture. If the Company leases all or substantially all of its assets the Company will not be released from its obligations to pay the principal of and interest, if any, on the Securities.

ARTICLE SIX DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

An "**Event of Default**" on a Series occurs if, voluntarily or involuntarily, whether by operation of law or otherwise, any of the following occurs:

- (1) the failure by the Company to pay interest on any Security of such Series when the same becomes due and payable and the continuance of any such failure for a period of 30 days;
- (2) the failure by the Company to pay the principal of any Security of such Series when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise;
- (3) the failure by the Company to comply with any of its agreements or covenants in, or provisions of, the Securities of such Series or this Indenture (as they relate thereto) and such failure continues for the period and after the notice specified below;
- (4) the Company pursuant to or within the meaning of any Bankruptcy Law:
 - (A) commences a voluntary case,
 - (B) consents to the entry of an order for relief against it in an involuntary case,
 - (C) consents to the appointment of a Custodian of it or for all or substantially all of its Property, or
 - (D) makes a general assignment for the benefit of its creditors;
- (5) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
 - (A) is for relief against the Company as debtor in an involuntary case,
 - (B) appoints a Custodian of the Company or a Custodian for all or substantially all of the Property of the Company, or
 - (C) orders the liquidation of the Company, and the order or decree remains unstayed and in effect for 60 days.

A Default described in subclause (3) above will not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25 percent in principal amount of the then outstanding Securities of the applicable Series notify the Company and the Trustee, of the Default and the Company does not cure the Default within 90 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, such Default ceases to exist, without any action by the Trustee or any other Person.

The term "Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Section 6.02 Acceleration.

If an Event of Default (other than an Event of Default with respect to the Company resulting from subclause (4) or (5) of Section 6.01), shall have occurred and be continuing under the Indenture, the Trustee by notice to the Company, or the Holders of at least 25 percent in principal amount of the Securities of the applicable Series then outstanding by notice to the Company and the Trustee, may declare all Securities of such Series to be due and payable immediately. Upon such declaration of acceleration, the amounts due and payable on the Securities of such Series will be due and payable immediately. If an Event of Default with respect to the Company specified in subclause (4) or (5) of Section 6.01 occurs, all unpaid principal and accrued interest of the Securities of such Series will become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee and the Company or any Holder.

At any time after such a declaration of acceleration with respect to any Series has been made, the Holders of a majority in principal amount of the outstanding Securities of that Series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences, if the rescission would not conflict with any judgment or decree and if:

- (1) the Company has paid or deposited with the Trustee a sum sufficient to pay:
 - (A) all overdue interest on all Securities of that Series,
 - (B) the principal of (and premium, if any, on) any Securities of that Series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities,
 - (C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and
 - (D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and
- (2) all Events of Default with respect to the Securities of that Series, other than the non-payment of the principal and interest, if any, of the Securities of that Series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.04.

No such rescission shall extend to or shall affect any subsequent Event of Default, or shall impair any right or power consequent thereon.

Section 6.03 Other Remedies.

If an Event of Default on a Series occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Series or to enforce the performance of any provision in the Securities or this Indenture applicable to the Series.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 Waiver of Existing Defaults.

Subject to the last sentence of the first paragraph of Section 9.02, the Holders of a majority in aggregate principal amount of the outstanding Securities of all Series affected by a waiver, on behalf of all the Holders of all such Series by notice to the Trustee have the waive an existing Default on all such Series and its consequences (other than a Default in respect of a covenant or a provision of the Indenture that cannot be modified or amended without the consent of all Holders of the applicable Series). When a Default is waived, it is cured and stops continuing, and any Event of Default arising therefrom shall be deemed to have been cured; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

The Holders of a majority in principal amount of the outstanding Securities of a Series may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it with respect to such Series. The Trustee, however, may refuse to follow any direction (i) that conflicts with law or this Indenture, (ii) that, subject to Section 7.01, the Trustee determines is unduly prejudicial to the rights of other Securityholders, (iii) that would involve the Trustee in personal liability, if there shall be reasonable grounds for believing that adequate indemnity against such liability is not reasonably assured to it, or (iv) if the Trustee shall not have been provided with indemnity satisfactory to it.

Section 6.06 Limitation on Suits.

A Securityholder of a Series may not pursue any proceeding, judicial or otherwise, with respect to the Indenture, such Series, or Securities in respect of any such Series, or for the appointment of a receiver or trustee, or for any remedy with respect to this Indenture or the Series unless:

- (1) the Holder has previously given to the Trustee written notice of a continuing Event of Default on the Series;
- (2) the Holders of at least 25% in aggregate principal amount of the outstanding Securities of the Series have made a written request to the Trustee to institute such proceeding as Trustee;
- (3) such Holder or Holders offer to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) no written request inconsistent with such written request shall have been given to the Trustee by the Holders of a majority in aggregate principal amount of the outstanding Securities of such Series.

A Securityholder may not use this Indenture to prejudice the rights of another Holder of Securities of the same Series or to obtain a preference or priority over another Holder of Securities of the same Series (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances by such Holder are unduly prejudicial to another Holder).

Section 6.07 Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, if applicable by the terms of any such Security, the right of any Holder to receive payment of principal of and interest on any Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default in payment of interest or principal specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal and interest remaining unpaid.

Section 6.09 Trustee May File Proofs of Claim.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company or its creditors or Property, and unless prohibited by applicable law or regulation, may vote on behalf of the Holders in any election of a Custodian, and shall be entitled and empowered to collect and receive any moneys or other Property payable or deliverable on any such claims and to distribute the same and any Custodian in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder or to authorize the Trustee to vote in respect of the claim of any Securityholder except as aforesaid for the election of the Custodian.

Section 6.10 Priorities.

If the Trustee collects any money or Property pursuant to this Article with respect to Securities of any Series, it shall pay out the money in the following order:

First: to the Trustee for amounts due under Section 7.07;

Second: to Securityholders of the Series for amounts due and unpaid on the Series for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Series for principal and interest, respectively; and

Third: to the Company or as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having the due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Series.

**ARTICLE SEVEN
TRUSTEE**

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing with respect to Securities of any Series, the Trustee shall, prior to the receipt of directions from the Holders of a majority in principal amount of the Securities of the Series, exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

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

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, in the case of certificates or opinions specifically required by any provision hereof to be furnished to it, shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture but need not confirm or investigate the accuracy of mathematical calculations or other facts or matters stated therein.

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

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

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

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 or any other direction of the Holders permitted hereunder.

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

(e) The Trustee may refuse to perform any duty or exercise any right or power if the Trustee has reasonable grounds to believe that such performance or exercise would require the Trustee to expend or risk its own funds or otherwise incur any financial liability for the performance, unless it receives indemnity satisfactory to it against any loss, liability or expense.

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

(g) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

Section 7.02 Rights of Trustee.

Subject to Section 7.01:

- (a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting on any document, resolution, certificate, instrument, report, or direction believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document, resolution, certificate, instrument, report, or direction.
- (b) Before the Trustee acts or refrains from acting at the request of the Company, it may require an Officer's Certificate or an Opinion of Counsel or both, which shall conform to Sections 11.04 and 11.05 hereof. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate, Opinion of Counsel or any other direction of the Company permitted hereunder.
- (c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.
- (d) The Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.
- (e) The Trustee may consult with counsel of its selection, and the advice of such counsel or any Opinion of Counsel as to matters of law shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.
- (f) Unless otherwise specifically provided in the Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.
- (g) For all purposes under this Indenture, the Trustee shall not be deemed to have notice or knowledge of any Event of Default unless written notice of any Event of Default is received by a Trust Officer of the Trustee at its address specified in Section 11.02 hereof and such notice references the Securities generally, the Company and this Indenture.
- (h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless the Trustee receives indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.
- (i) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.
- (j) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.
- (k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.
- (l) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(m) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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

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

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, must comply with Sections 7.10 and 7.11.

Section 7.04 Trustee's Disclaimer.

The Trustee makes no representation as to the validity or adequacy of this Indenture, the Securities or of any prospectus used to sell the Securities of any Series; it shall not be accountable for the Company's use of the proceeds from the Securities; it shall not be accountable for any money paid to the Company, or upon the Company's direction, if made under and in accordance with any provision of this Indenture; it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee; and it shall not be responsible for any statement of the Company in this Indenture or in the Securities other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default occurs hereunder with respect to a Series of Securities, the Trustee shall give the Holders of Securities of such Series notice of all Defaults known to the Trustee which have occurred with respect to such Securities, such notice to be transmitted within 90 days after the occurrence thereof, unless such Defaults shall have been cured before the giving of such notice; provided, however, that except in the case of a Default in the payment of principal or redemption price of (or premium, if any) or interest on any Securities, the Trustee shall be protected in withholding such notice if and so long as its board of directors, executive committee, or trust committee of directors or trustees and/or Trust Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders of Securities of such Series.

Section 7.06 Reports by Trustee to Holders.

Within 60 days after each May 15 beginning with the May 15 following the date of this Base Indenture, the Trustee shall send to each Securityholder a brief report dated as of such May 15 that complies with TIA § 313(a) (but if no event described in TIA §§ 313(a)(1) through (8) has occurred within the twelve months preceding the reporting date no report in relation thereto need be transmitted). The Trustee also shall comply with TIA § 313(b).

A copy of each report at the time of its sending to Securityholders shall be delivered to the Company and filed by the Trustee with the SEC and each national securities exchange on which the Securities are listed. The Company agrees to notify the Trustee of each national securities exchange on which the Securities are listed.

Section 7.07 Compensation and Indemnity.

The Company shall pay to the Trustee from time to time reasonable compensation for its services subject to any written agreement between the Trustee and the Company (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel. The Company shall indemnify the Trustee, its officers, directors, employees and agents and hold it harmless against any loss, liability or expense incurred or made by or on behalf of it in connection with the administration of this Indenture or the trust hereunder and its duties hereunder including the costs and expenses of defending itself against or investigating any claim in the premises. The Trustee shall notify the Company promptly of any claim of which it has received written notice and for which it may seek indemnity. The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the Trustee's, or its Officer's, directors', or employees' gross negligence or willful misconduct as determined by a final non-appealable order of competent jurisdiction.

Unless otherwise provided in any supplemental indenture or Authorizing Resolution relating to any Series, to ensure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities of all Series on all money or Property held or collected by the Trustee, except that held in trust to pay principal of or interest on particular Securities. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.01 or in connection with Article Six hereof, the expenses (including the reasonable fees and expenses of its counsel) and the compensation for services in connection therewith are to constitute expenses of administration under any Bankruptcy Law. This Section 7.07 shall survive the discharge of the Indenture or resignation of Trustee.

Section 7.08 Replacement of Trustee.

The Trustee may resign with respect to Securities of any or all Series by so notifying the Company. The Holders of a majority in principal amount of the outstanding Securities (or of the relevant Series) may remove the Trustee by so notifying the removed Trustee in writing and may appoint a successor trustee with the Company's consent. The Trustee for one or more Series of Securities may be removed by the Company, so long as no Event of Default has occurred and is continuing with respect to such Series. The Trustee may also be removed by the Company for purposes of the Base Indenture. Such resignation or removal shall not take effect until the appointment by the Securityholders of the relevant Series or the Company as hereinafter provided of a successor trustee and the acceptance of such appointment by such successor trustee. The Company may remove the Trustee and appoint a successor trustee, and any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged a bankrupt or an insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its Property; or
- (4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor trustee with respect to the Securities of the relevant Series. If a successor trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee at the expense of the Company, the Company or any Holder may petition any court of competent jurisdiction for the appointment of a successor trustee.

A successor trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall, upon payment of its charges hereunder, transfer all Property held by it as Trustee to the successor trustee, the resignation or removal of the retiring Trustee shall become

effective, and the successor trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor trustee shall send notice of its succession to each Securityholder.

Section 7.09 Successor Trustee by Merger, etc.

If the Trustee consolidates with, merges with or into or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor trustee.

Section 7.10 Eligibility; Disqualification.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1). The Trustee shall have a combined capital and surplus of at least \$10,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b).

Section 7.11 Preferential Collection of Claims Against Company.

The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

**ARTICLE EIGHT
DISCHARGE OF INDENTURE**

Section 8.01 Defeasance upon Deposit of Moneys or Government Obligations; Satisfaction and Discharge.

(a) The Company may, at its option and at any time, elect to have either paragraph (b) or paragraph (c) below be applied to the outstanding Securities of any Series upon compliance with the applicable conditions set forth in paragraph (d).

(b) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (b) with respect to any Series, the Company shall be deemed to have been released and discharged from its obligations with respect to the outstanding Securities of the Series on the date the applicable conditions set forth below are satisfied (hereinafter, "**Legal Defeasance**"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the outstanding Securities of a Series, which shall thereafter be deemed to be "outstanding" only for the purposes of the Sections and matters under this Indenture referred to in (i) and (ii) below, and the Company shall be deemed to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned, except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Securities of a Series to receive solely from the trust fund described in paragraph (d) below and as more fully set forth in such paragraph, payments in respect of the principal of and interest on such Securities when such payments are due and (ii) the Company's obligations with respect to such Securities under Section 2.06, Section 2.07, Section 2.09 and Section 4.02, (iii) the rights, powers, trusts, duties, immunities and other provisions in respect of the Trustee hereunder and (iv) this Article Eight. The Company may exercise its option under this paragraph (b) with respect to a Series notwithstanding the prior exercise of its option under paragraph (c) below with respect to the Securities of the Series.

(c) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (c) with respect to a Series, the Company shall be released and discharged from the obligations under any covenant contained in Article Four (except for Sections 4.01 or 4.02) or Article Five and any other covenant contained in or referenced in the Authorizing Resolution or supplemental indenture relating to such Series (to the extent such release and discharge shall not be prohibited thereby), on and after the date the conditions set forth below are satisfied (hereinafter, "**Covenant Defeasance**"), and the Securities of such Series shall thereafter be deemed to be not "outstanding" for the purpose of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for

all other purposes hereunder. For this purpose, such Covenant Defeasance means that, with respect to the outstanding Securities of a Series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01(3) or otherwise, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

(d) The following shall be the conditions to application of either paragraph (b) or paragraph (c) above to the outstanding Securities of the applicable Series:

(1) The Company shall have irrevocably deposited in trust with the Trustee (or another qualifying trustee) money in the currency in which the Securities of such Series are payable or Government Obligations or a combination thereof in such amounts and at such times as are sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of and interest on the outstanding Securities of such Series to maturity or redemption; *provided, however*, that the Trustee (or other qualifying trustee) shall have received an irrevocable written order from the Company instructing the Trustee (or other qualifying trustee) to apply such money or the proceeds of such Government Obligations to said payments with respect to the Securities of such Series to maturity or redemption;

(2) No Event of Default (other than an Event of Default resulting from non-compliance with any covenant from which the Company is released upon effectiveness of such Legal Defeasance or Covenant Defeasance pursuant to paragraph (b) or (c) hereof, as applicable) shall have occurred and be continuing on the date of such deposit or result therefrom;

(3) Such deposit will not result in a breach or violation of, or constitute a default under, any other material instrument or agreement to which the Company or any of any of its Restricted Subsidiaries is a party or by which it or any of their Property is bound;

(4) (i) In the event the Company elects paragraph (b) hereof, the Company shall deliver to the Trustee an Opinion of Counsel in the United States to the effect that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the Issue Date pertaining to such Series, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall state that, or (ii) in the event the Company elects paragraph (c) hereof, the Company shall deliver to the Trustee an Opinion of Counsel in the United States to the effect that, in the case of clauses (i) and (ii), and subject to customary assumptions and exclusions, Holders of the Securities of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and the defeasance contemplated hereby and will be subject to federal income tax in the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(5) The Company shall have delivered to the Trustee an Officer's Certificate, stating that the deposit under clause (1) was not made by the Company with the intent of preferring the Holders of the Securities of such Series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others; and

(6) The Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent specified herein relating to the defeasance contemplated by this Section 8.01 have been complied with.

In the event all or any portion of the Securities of a Series are to be redeemed through such irrevocable trust, the Company must make arrangements satisfactory to the Trustee, at the time of such deposit, for the giving of the notice of such redemption or redemptions by the Trustee in the name and at the expense of the Company.

(e) The Indenture will be discharged and will cease to be of further effect as to all outstanding Securities of any Series (except as to any surviving rights of conversion or transfer or exchange of Securities of such Series expressly provided for herein or in the form of Security for such Series), and the Trustee, at the expense of the Company, shall execute instruments reasonably requested by the Company acknowledging such satisfaction and discharge of the Indenture with respect to such Series, when:

(1) All Securities of such Series theretofore authenticated and delivered (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07 and Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation or all such Securities not theretofore delivered to the Trustee for cancellation (A) have become due and payable, (B) will become due and payable at maturity within one year or (C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and in each such case, the Company has irrevocably deposited or caused to be deposited with the Trustee (or another qualifying trustee) as trust funds in trust solely for that purpose an amount of money in the currency in which the Securities of such Series are payable or Government Obligations or a combination thereof sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay and discharge the entire indebtedness on the Securities of such Series not theretofore delivered to the Trustee for cancellation, for principal of and interest on the Securities of such Series, on the date of such deposit or to the maturity or redemption date, as the case may be;

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

(3) The Company has delivered irrevocable instructions to the Trustee (or such other qualifying trustee), to apply the deposited money toward the payment of the Securities of such Series at maturity or redemption, as the case may be; and

(4) The Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, stating that all conditions precedent specified in this Section 8.01(e) relating to the satisfaction and discharge of this Indenture have been complied with.

Section 8.02 Survival of the Company's Obligations.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any Series under Section 8.01(e), the obligations of the Company to the Trustee under Section 7.07, and, if money shall have been deposited with the Trustee pursuant to Section 8.01(e)(1), the obligations of the Trustee under Section 8.03 and Section 8.04 shall survive.

Section 8.03 Application of Trust Money.

The Trustee shall hold in trust money or Government Obligations deposited with it pursuant to Section 8.01. It shall apply the deposited money and the money from Government Obligations in accordance with this Indenture to the payment of principal of and interest on the Securities of the defeased or discharged Series.

Section 8.04 Repayment to the Company.

The Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or securities held by them at any time. The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal or interest that remains unclaimed for two years, *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once in a newspaper of general circulation in the City of New York or send to each such Holder notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or sending, any unclaimed balance of such money then remaining

will be repaid to the Company. After payment to the Company, Securityholders entitled to the money must look solely to the Company for payment unless applicable abandoned property law designates another Person and all liability of the Trustee or such Paying Agent with respect to such money shall cease.

Section 8.05 Reinstatement.

If the Trustee is unable to apply any money or Government Obligations in accordance with Section 8.01(b) or (c) by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities relating to the Series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01(b) or (c), as applicable, until such time as the Trustee is permitted to apply all such money or Government Obligations in accordance with Section 8.01(b) or (c), as applicable; *provided, however*, that (a) if the Company has made any payment of interest on or principal of any Securities of the Series because of the reinstatement of its obligations hereunder, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee and (b) unless otherwise required by any legal proceeding or any order or judgment of any court or governmental authority, the Trustee shall return all such money or Government Obligations to the Company promptly after receiving a written request therefor at any time, if such reinstatement of the Company's obligations has occurred and continues to be in effect.

**ARTICLE NINE
AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Section 9.01 Without Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Securities of a Series without notice to or consent of any Securityholder of such Series:

- (1) to cure any ambiguity or to correct or supplement any provision of the Indenture which may be defective or inconsistent with any other provision in the Indenture;
- (2) to comply with Article Five (or any other provisions of the Indenture regarding the consolidation or merger of the Company or the sale, conveyance, transfer, lease or other disposition of all or substantially all of its Property);
- (3) to create a Series and establish its terms;
- (4) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (5) to add to the covenants of the Company for the benefit of the Holders of all or any Series or to surrender any right or power conferred upon the Company by the Indenture;
- (6) to add any additional Events of Default for the benefit of Holders of all or any Series;
- (7) to add a guarantor or obligor in respect of any Series;
- (8) to secure any Series;
- (9) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;
- (10) to evidence and provide for the acceptance of appointment of a successor trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of the Indenture

as shall be necessary to provide for or facilitate the administration of the trusts under the Indenture by more than one trustee pursuant to the requirements set forth in the Indenture;

- (11) to make any change that does not adversely affect the rights of any Securityholder in any material respect; and
- (12) to conform the provisions of the Indenture to the final prospectus or offering memorandum in respect of any Series.

After an amendment under this Section 9.01 becomes effective, the Company shall send notice of such amendment to the Securityholders (with a copy to the Trustee).

Section 9.02 With Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Securities of a Series without notice to any Securityholder of such Series but with the written consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by the amendment or supplement (voting as one class) (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). The Holders of a majority in principal amount of the outstanding Securities of each Series affected by a waiver (voting as one class) may waive any existing Default under, or compliance with, any provision of the Securities of each such Series or of this Indenture relating to each such Series without notice to any Securityholder (including any waiver granted in connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). Without the consent of each Holder of a Security affected thereby, however, an amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may not:

- (1) change the stated maturity of the principal of, or any installment of principal of or interest thereon, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or change the coin or currency in which, such Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date);
- (2) make any change to Section 6.04, except to increase the percentage in principal amount of Securities of any Series the consent of whose Holders is required for any waiver or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the Holder of each outstanding Security affected thereby;
- (3) waive a continuing Default or Event of Default in the payment of the principal of or interest on any Security or a continuing Default or Event of Default in respect of a covenant or a provision of the Indenture that cannot be modified or amended without the consent of all Holders of the applicable Securities; or
- (4) reduce the percentage in principal amount of Securities of any Series the consent of whose Holders is required for any amendment, supplement or waiver.

Any amendment, supplement or waiver which changes or eliminates any covenant or other provision of the Indenture which shall have been included expressly and solely for the benefit of one or more particular Series of Securities, or which modifies the rights of the Holders of such Series with respect to such covenant or other provision, shall be deemed not to affect the rights of the Holders of any other Series.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed supplement, but it shall be sufficient if such consent approves the substance thereof.

Section 9.03 Compliance with Trust Indenture Act.

If applicable, every amendment to or supplement of this Indenture or any Securities shall comply with the TIA as then in effect.

Section 9.04 Revocation and Effect of Consents.

A consent to an amendment, supplement or waiver by a Holder shall bind the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. Unless otherwise provided in the consent or the consent solicitation statement or other document describing the terms of the consent, any Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security. Any revocation of a consent by the Holder of a Security or any such subsequent Holder shall be effective only if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officer's Certificate from the Company certifying that the requisite number of consents have been received.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders of Securities of any Series entitled to consent to any amendment, supplement or waiver. If a record date is fixed, and if Holders otherwise have a right to revoke their consent under the consent or the consent solicitation statement or other document describing the terms of the consent, then notwithstanding the second to last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date.

An amendment, supplement or waiver with respect to a Series becomes effective upon the (i) receipt by the Company or the Trustee of the requisite consents, (ii) satisfaction of any conditions to effectiveness as set forth in the Indenture or any indenture supplemental hereto containing such amendment, supplement or waiver and (iii) execution of such amendment, supplement or waiver (or the related supplemental indenture) by the Company and the Trustee. After an amendment, supplement or waiver with respect to a Series becomes effective, it shall bind every Holder of such Series, unless it makes a change described in any of clauses (1) through (4) of Section 9.02, in which case, the amendment, supplement or waiver shall bind a Holder of a Security who is affected thereby only if it has consented to such amendment, supplement or waiver and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

Section 9.05 Notation on or Exchange of Securities.

If an amendment, supplement or waiver changes the terms of a Security, the Company may require the Holder of the Security to deliver it to the Trustee, at which time the Trustee shall place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Section 9.06 Trustee to Sign Amendments, etc.

Subject to Section 7.02(b), the Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be provided with and shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel as conclusive evidence that such amendment, supplement or waiver is authorized or permitted by this Indenture.

**ARTICLE TEN
SECURITIES IN FOREIGN CURRENCIES**

Section 10.01 Applicability of Article.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any Series in which not all of such Securities are denominated in the same currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary pursuant to this Indenture or the Securities of any particular Series, any amount in respect of any Security denominated in a Foreign Currency shall be treated for any such action or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Securities of such Series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the paying agent or agency or organization, if any, responsible for overseeing such composite currency may determine. The Trustee shall have no duty to calculate or verify the calculations made pursuant to this Section 10.01.

**ARTICLE ELEVEN
MISCELLANEOUS**

Section 11.01 Trust Indenture Act Controls.

If applicable, if any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 11.02 Notices.

Any order, consent, notice or communication shall be sufficiently given if in writing and delivered in person or mailed by first class mail, postage prepaid, or delivered by commercial courier service, addressed as follows:

if to the Company:

Affirm Holdings, Inc.
650 California Street
San Francisco, California 94108
Attention: Chief Financial Officer

if to the Trustee:

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication sent to a Securityholder shall be sent electronically or mailed to him by first class mail, postage prepaid, or delivered by commercial courier service, at his address as it appears on the registration books of the Registrar, or, in the case of Global Securities sent electronically in accordance with the procedures of the Depository, and shall be sufficiently given to him if so sent within the time prescribed.

Failure to send a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it except that notice to the Trustee shall only be effective upon receipt thereof by the Trustee.

If the Company sends notice or communications to the Securityholders, it shall send a copy to the Trustee at the same time.

In addition to the foregoing, the Trustee may accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee.

Section 11.03 Communications by Holders with Other Holders.

Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 11.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (1) an Officer's Certificate (which shall include the statements set forth in Section 11.05) stating that, in the opinion of the signers (who may rely upon an Opinion of Counsel with respect to matters of law), all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel (which shall include the statements set forth in Section 11.05) stating that, in the opinion of such counsel (who may rely upon an Officer's Certificate or certificates of public officials as to matters of fact), all such conditions precedent and covenants, compliance with which constitutes a condition precedent, if any, provided for in this Indenture relating to the proposed action or inaction, have been complied with.

Section 11.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

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

(4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 11.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar or Paying Agent may make reasonable rules for its functions.

Section 11.07 Legal Holidays.

A “**Legal Holiday**” is a day that is not a Business Day. If any interest or other payment date of a Security falls on a Legal Holiday, the required payment of principal, premium, if any, or interest will be due on the next succeeding Business Day as if made on the date that the payment was due, and no interest will accrue on that payment for the period from and after that interest or other payment date, as the case may be, to the date of that payment on the next succeeding Business Day. If this Indenture provides for a time period that ends or requires performance of any non-payment obligation by a day that is not a Business Day, then such time period shall instead be deemed to end on, and such obligation shall instead be performed by, the next succeeding Business Day.

Section 11.08 Governing Law.

The laws of the State of New York shall govern this Indenture and the Securities of each Series.

Section 11.09 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 11.10 No Recourse Against Others.

All liability described in Paragraph 12 of the Securities of any director, officer, employee or stockholder, as such, of the Company is, to the fullest extent permitted by applicable law, waived and released.

Section 11.11 Successors and Assigns.

All covenants and agreements of the Company in this Indenture and the Securities shall bind its successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

Section 11.12 Duplicate Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Signatures of the parties hereto transmitted by facsimile or other electronic transmission (including, without limitation, electronic imaging means (including “.pdf”)) shall be deemed to be their original signatures for all purposes. Any signature to this Indenture or any notice or other document delivered in connection herewith may be delivered by any electronic signature complying with the Electronic Signatures in Global and National Commerce Act, the New York Electronic Signature and Records Act or any other similar state laws based on the Uniform Electronic Transaction Act, or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law.

Section 11.13 Severability.

In case any one or more of the provisions contained in this Indenture or in the Securities of a Series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Securities.

Section 11.14 PATRIOT ACT.

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

Section 11.15 Waiver of Jury Trial.

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

SIGNATURES

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

AFFIRM HOLDINGS, INC.

By:
Name:
Title:

_____, as Trustee

By:
Name:
Title:

EXHIBIT A

No. _____ CUSIP/ISIN No.: _____

[Title of Security]

Affirm Holdings, Inc.
a Delaware corporation

promises to pay to _____ or registered assigns the principal sum of
_____ [Dollars]* on _____.

Interest Payment Dates: _____ and _____

Record Dates: _____ and _____

Authenticated: _____ Dated: _____

Affirm Holdings, Inc.

By:
Name:
Title:

[_____] ,
as Trustee, certifies that this is one of the Securities
referred to in the within mentioned Indenture.

By: _____
Authorized Signatory

* Or other currency. Insert corresponding provisions on reverse side of Security in respect of foreign currency denomination or interest payment requirement.

Affirm Holdings, Inc.

[Title of Security]

Affirm Holdings, Inc. a Delaware corporation (together with its successors and assigns, the “**Company**”), issued this Security under an Indenture dated as of _____, (as amended, modified or supplemented from time to time in accordance therewith, the “**Base Indenture**”), as supplemented by the Supplemental Indenture dated as of _____, (the “**Supplemental Indenture**” and together with the Base Indenture, the “**Indenture**”), by and among the Company and _____, as trustee (in such capacity, the “**Trustee**”), to which reference is hereby made for a statement of the respective rights, obligations, duties and immunities thereunder of the Company, the Trustee and the Holders and of the terms upon which the Securities are, and are to be, authorized and delivered. All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them therein. If any terms of this Security conflicts with the terms of the Indenture, the terms of the Indenture shall govern and control.

1. **Interest.** The Company promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company will pay interest semiannually on _____ and _____ of each year, commencing _____, _____, until the principal is paid or made available for payment. Interest on the Securities will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid, from _____, _____, *provided* that, if there is no existing default in the payment of interest, and if this Security is authenticated between a record date referred to on the face hereof and the next succeeding interest payment date, interest shall accrue from such interest payment date. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. **Method of Payment.** The Company will pay interest on the Securities (except defaulted interest, if any, which will be paid on such special payment date to Holders of record on such special record date as may be fixed by the Company) to the persons who are registered Holders of Securities at the close of business on the [Insert record dates] immediately preceding the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of [Insert applicable country or currency] that at the time of payment is legal tender for payment of public and private debts.

3. **Paying Agent and Registrar.** Initially, the Trustee will act as Paying Agent and Registrar. The Company may change or appoint any Paying Agent, Registrar or co-Registrar without notice. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Registrar or co-Registrar.

4. **Optional Redemption.** [Insert provisions relating to redemption at the option of the Company, if any] [Insert provisions relating to redemption at option of Holders, if any]

5. **Mandatory Redemption.** [Insert provisions relating to Mandatory Redemption, if any]

6. **Denominations, Transfer, Exchange.** The Securities are in registered form only without coupons in minimum denominations of _____ and integral multiples of _____ in excess thereof. A Holder may transfer or exchange Securities by presentation of such Securities to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal principal amount of Securities of other denominations. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Security selected for redemption or purchase, except the unredeemed or unpurchased part thereof if the Security is redeemed or purchased in part, or transfer or exchange any Securities for a period of 15 days before a selection of Securities to be redeemed or purchased.

7. **Persons Deemed Owners.** The registered Holder of this Security shall be treated as the owner of it for all purposes.

8. **Unclaimed Money.** Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal or interest that remains unclaimed for two years, and thereafter, Holders entitled to the money must look to the Company for payment as general creditors.

9. **Amendment, Supplement, Waiver.** Subject to certain exceptions, the Indenture or the Securities may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by the amendment and any past default or compliance with any provision relating to any Series of the Securities may be waived in a particular instance with the consent of the Holders of a majority in principal amount of the outstanding Securities of such Series. Without the consent of any Securityholder, the Company and the Trustee may amend or supplement the Indenture or the Securities in certain respects as specified in the Indenture.

10. **Successor Corporation.** When a successor corporation assumes all the obligations of its predecessor under the Securities and the Indenture, the predecessor corporation will be released from those obligations.

11. **Trustee Dealings With Company.** Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its affiliates, and may otherwise deal with the Company or its affiliates, as if it were not Trustee, including owning or pledging the Securities.

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

13. **Discharge of Indenture.** The Indenture contains certain provisions pertaining to defeasance and discharge, which provisions shall for all purposes have the same effect as if set forth herein.

14. **Authentication.** This Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the other side of this Security.

15. **Abbreviations.** Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gift to Minors Act).

16. **GOVERNING LAW.** THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

17. **CUSIP and ISIN Numbers.** Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Securities and has directed the Trustee to use CUSIP and ISIN numbers in notices of repurchase as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of repurchase and reliance may be placed only on the other identification numbers placed thereon.

18. **Copies.** The Company will furnish to any Holder upon written request and without charge a copy of the Indenture and the applicable Authorizing Resolution or supplemental indenture. Requests may be made to: Affirm Holdings, Inc., 650 California Street, San Francisco, California 94108, Attention: [Chief Financial Officer].

ASSIGNMENT FORM

If you the Holder want to assign this Security, fill in the form below:

I or we assign and transfer this Security to _____ (insert assignee's social security or tax ID number)

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

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your signature
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee:

March 3, 2022

Affirm Holdings, Inc.
650 California Street
San Francisco 94108

Re: Affirm Holdings, Inc.
Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special counsel to Affirm Holdings, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of a Registration Statement on Form S-3 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration under the Securities Act and the proposed issuance and sale from time to time pursuant to Rule 415 under the Securities Act, together or separately and in one or more series (if applicable) of:

- (a) the Company's unsecured debt securities, which may either be senior debt securities ("Senior Debt Securities") or subordinated debt securities ("Subordinated Debt Securities") and, collectively with the Senior Debt Securities, the "Debt Securities";
- (b) shares of the Company's Class A common stock, par value \$0.00001 per share (the "Class A Common Stock");
- (c) shares of the Company's preferred stock, par value \$0.00001 per share (the "Preferred Stock");
- (d) warrants for the purchase of Class A Common Stock, Preferred Stock, Depositary Shares, or Debt Securities (the "Warrants");
- (e) depositary shares each representing a fraction of a share of a particular series of Preferred Stock (the "Depositary Shares");
- (f) contracts for the purchase or sale of Debt Securities, Preferred Stock or Class A Common Stock or other securities, currencies or commodities (the "Purchase Contracts");
- (g) guarantees ("Guarantees");

March 3, 2022
Page 2

(h) units of the Company comprised of any combination of Class A Common Stock, Preferred Stock, Depositary Shares, Purchase Contracts, Debt Securities or Guarantees (the “Units”).

The Debt Securities, Class A Common Stock, Preferred Stock, Warrants, Depositary Shares, Purchase Contracts, Guarantees and Units are collectively referred to herein as the “Securities.” The Debt Securities are to be issued under an indenture to be entered into between the Company and a financial institution to be named at the time such indenture is executed (the “Trust Company”), as indenture trustee (the “Base Indenture”).

In arriving at the opinions expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of the Base Indenture, forms of the Debt Securities, specimen Class A Common Stock certificates and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render these opinions. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. As to any facts material to these opinions, we have relied to the extent we deemed appropriate and without independent investigation upon statements and representations of officers and other representatives of the Company and others.

We have assumed without independent investigation that:

(i) at the time any Securities are sold pursuant to the Registration Statement (the “Relevant Time”), the Registration Statement and any supplements and amendments thereto (including post-effective amendments) will be effective and will comply with all applicable laws;

(ii) at the Relevant Time, a prospectus supplement will have been prepared and filed with the Commission describing the Securities offered thereby and all related documentation and will comply with all applicable laws;

(iii) all Securities will be issued and sold in the manner stated in the Registration Statement and the applicable prospectus supplement;

(iv) at the Relevant Time, all corporate or other action required to be taken by the Company to duly authorize each proposed issuance of Securities and any related documentation (including (i) the due reservation of any shares of Class A Common Stock or Preferred Stock for issuance upon exercise, conversion or exchange of any Securities for Class A Common Stock or Preferred Stock (a “Convertible Security”), and (ii) the execution (in the case of certificated Securities), delivery and performance of the Securities and any related documentation referred to in paragraphs 1 through 8 below) shall have been duly completed and shall remain in full force and effect;

March 3, 2022
Page 3

(v) upon issuance of any Class A Common Stock or Preferred Stock, including upon exercise, conversion or exchange of any Convertible Security, the total number of shares of Class A Common Stock or Preferred Stock issued and outstanding will not exceed the total number of shares of Class A Common Stock or Preferred Stock, as applicable, that the Company is then authorized to issue under its certificate of incorporation and other relevant documents;

(vi) in the case of Debt Securities, at the Relevant Time, the Base Indenture shall have been duly qualified under the Trust Indenture Act of 1939, as amended;

(vii) at the Relevant Time, a definitive purchase, underwriting or similar agreement and any other necessary agreement with respect to any Securities offered or issued will have been duly authorized by all necessary corporate or other action of the Company and duly executed and delivered by the Company and the other parties thereto.

Based on the foregoing and in reliance thereon, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

With respect to any Debt Securities, when:

- a. the terms and conditions of such Debt Securities have been duly established by supplemental indenture or officers' certificate in accordance with the terms and conditions of the relevant Base Indenture,
- b. any such supplemental indenture has been duly executed and delivered by the Company and the relevant trustee (together with the relevant Base Indenture, the "Indenture"), and
- c. such Debt Securities have been executed (in the case of certificated Debt Securities), delivered and authenticated in accordance with the terms of the applicable Indenture and issued and sold for the consideration set forth in the applicable definitive purchase, underwriting or similar agreement,

such Debt Securities will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

With respect to shares of Class A Common Stock, when:

- a. such shares of Class A Common Stock have been duly executed (in the case of certificated shares) and delivered either (i) in accordance with the applicable definitive purchase, underwriting or similar agreement for the consideration provided for therein, or (ii) upon conversion or exercise of any Convertible Security, in accordance with the terms of such Convertible Security or the instrument governing such Convertible Security providing for such conversion or exercise, and for any additional consideration specified

therein, which consideration (including any consideration paid for such Convertible Security), on a per-share basis, shall in either event not be less than the par value of the Class A Common Stock, and

- b. any such Convertible Security was previously validly issued and is fully paid and non-assessable (in the case of an equity Security) or is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms,

such shares of Class A Common Stock will be validly issued, fully paid and non-assessable.

With respect to any shares of Preferred Stock, when:

- a. the certificate of designations relating to such Preferred Stock (the “Certificate of Designations”) has been duly executed and filed with the Office of the Secretary of State of the State of Delaware,
- b. such shares have been issued either (i) in accordance with the applicable definitive purchase, underwriting or similar agreement and for the consideration therefor provided for therein or (ii) upon exercise, conversion or exchange of any Convertible Security and for any additional consideration specified in such Convertible Security or the instrument governing such Convertible Security providing for such conversion or exercise, which consideration (including any consideration paid for such Convertible Security), on a per-share basis, shall in either event not be less than the par value of the Preferred Stock, and
- c. any such Convertible Security was previously validly issued and is fully paid an non-assessable (in the case of an equity Security) or is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms,

such shares of Preferred Stock will be validly issued, fully paid and non-assessable.

With respect to any Warrants, when:

- a. the warrant agreement relating to such Warrants (the “Warrant Agreement”), if any, has been duly executed and delivered by the Company and each other party thereto,
- b. the terms of the Warrants have been established in accordance with the Warrant Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement, and

- c. the Warrants have been duly executed (in the case of certificated Warrants) and delivered in accordance with the Warrant Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement for the consideration provided for therein,

such Warrants will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

With respect to Depositary Shares, when:

- a. a deposit agreement relating to such Depositary Shares (“Deposit Agreement”) has been duly executed and delivered by the Company and the depositary appointed by the Company,
- b. the terms of the Depositary Shares have been established in accordance with the Deposit Agreement, and
- c. the depositary receipts representing the Depositary Shares have been duly executed and countersigned (in the case of certificated Depositary Shares), registered and delivered in accordance with the related Deposit Agreement and the applicable definitive purchase, underwriting or similar agreement for the consideration provided therein,

the depositary receipts evidencing the Depositary Shares will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

With respect to any Purchase Contracts, when:

- a. the related purchase contract agreement (“Purchase Contract Agreement”), if any, has been duly executed by the Company and each other party thereto,
- b. the terms of the Purchase Contracts have been established in accordance with the Purchase Contract Agreement, if any, or the applicable definitive purchase, underwriting or similar agreement,
- c. the terms of any collateral or security arrangements relating to such Purchase Contracts have been established and the agreements thereto have been validly executed and delivered by each of the parties thereto and any collateral has been deposited with the collateral agent, if applicable, in accordance with such arrangements, and
- d. such Purchase Contracts have been executed (in the case of certificated Purchase Contracts) and delivered in accordance with the Purchase Contract Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement for the consideration provided for therein,

March 3, 2022
Page 6

such Purchase Contracts will be legal, valid and binding obligations of the Company, enforceable in accordance with their terms.

With respect to the Guarantees, when:

- a. the Guarantees have been duly authorized and validly executed and delivered by the Company, and
- b. the debt underlying such Guarantees have been executed, issued, delivered and authenticated in accordance with the terms of the applicable indenture and the applicable definitive purchase, underwriting or similar agreement against receipt of requisite consideration therefor provided for therein,

the Guarantees will constitute legal, valid and binding obligations of the Company, enforceable in accordance with their terms.

With respect to any Units, when:

- a. the unit agreement relating to the Units (the "Unit Agreement"), if any, has been duly executed and delivered by the Company and each other party thereto,
- b. the terms of the Units have been duly established in accordance with the Unit Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement, and
- c. the Units have been duly executed (in the case of certificated Units) and delivered in accordance with the Unit Agreement, if any, and the applicable definitive purchase, underwriting or similar agreement for the consideration provided for therein,

the Units will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

The opinions expressed above are subject to the following exceptions, qualifications, limitations and assumptions:

A. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the United States of America and, for purposes of paragraphs 2 and 3 above, the Delaware General Corporation Law. We are not admitted to practice in the State of Delaware; however, we are generally familiar with the Delaware General Corporation Law as currently in effect and have made such inquiries as we consider necessary to render the opinions contained in paragraphs 2 and 3 above. Without limitation, we do not express any opinion regarding any Delaware contract law. This opinion is limited to the effect of the current state of the laws of the State of New York, and, to the limited extent set forth above, the laws of the State of Delaware and the facts as they

March 3, 2022
Page 7

currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or the interpretations thereof or such facts.

B. The opinions above with respect to the Indenture, the Debt Securities, the depositary receipts representing the Depositary Shares, the Deposit Agreement, the Purchase Contracts, any Purchase Contract Agreement, the Warrants, the Warrant Agreement, the Units and the Unit Agreement (collectively, the “Documents”) are each subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors’ generally, including without limitation the effect of statutory or other laws regarding fraudulent transfers or preferential transfers, and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law.

C. We express no opinion regarding the effectiveness of (i) any waiver of stay, extension or usury laws; (ii) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws or due to the negligence or willful misconduct of the indemnified party; (iii) any provision in any Document waiving the right to object to venue in any court; (iv) any agreement to submit to the jurisdiction of any Federal court; (v) any waiver of the right to jury trial; or (vi) any provision to the effect that every right or remedy is cumulative and may be exercised in addition to any other right or remedy or that the election of some particular remedy does not preclude recourse to one or more others.

D. To the extent relevant to our opinions in paragraphs 4, 5, 6 and 8 and not covered by our opinions in paragraphs 1, 2, or 3, we have assumed that any securities, currencies or commodities underlying, comprising or issuable upon exchange, conversion or exercise of any Depositary Shares, Purchase Contracts, Warrants, or Units are validly issued, fully paid and non-assessable (in the case of an equity security) or a legal, valid and binding obligation of the issuer thereof, enforceable against such issuer in accordance with its terms.

You have informed us that you intend to issue Securities from time to time on a delayed or continuous basis, and we understand that prior to issuing any Securities pursuant to the Registration Statement (i) you will advise us in writing of the terms thereof, and (ii) you will afford us an opportunity to (x) review the operative documents pursuant to which such Securities are to be issued or sold (including the applicable offering documents), and (y) file such supplement or amendment to this opinion (if any) as we may reasonably consider necessary or appropriate.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption “Validity of the Securities” in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

March 3, 2022
Page 8

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in this Registration Statement (Form S-3) and related Prospectus of Affirm Holdings, Inc. for the registration of debt securities, Class A common stock, preferred stock, warrants, depository shares, purchase contracts, guarantees, and units and to the incorporation by reference therein of our report dated October 07, 2020, with respect to the consolidated statements of operations, shareholders' equity, and cash flows of Affirm Holdings, Inc. for the year ended June 30, 2019, and the related notes (collectively referred to as the "financial statements"), all included in its Annual Report (Form 10-K) for the year ended June 30, 2021, filed with the Securities and Exchange Commission.

/s/Ernst & Young LLP

San Francisco, CA
March 3, 2022

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated September 17, 2021, relating to the financial statements of Affirm Holdings, Inc., appearing in the Annual Report on Form 10-K of Affirm Holdings, Inc. for the year ended June 30, 2021. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ Deloitte & Touche LLP
San Francisco, CA
March 3, 2022