

As filed with the Securities and Exchange Commission on May 9, 2022

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

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

Clover Health Investments, Corp.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization)

98-1515192
(I.R.S. Employer Identification No.)

3401 Mallory Lane, Suite 210
Franklin, Tennessee 37067
(201) 432-2133

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Vivek Garipalli
Chief Executive Officer
Clover Health Investments, Corp.
3401 Mallory Lane, Suite 210
Franklin, Tennessee 37067
(201) 432-2133

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

Copies to:

Andrew Barkan, Esq.
Brian Hecht, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
(212) 859-8000

Joseph Martin, Esq.
General Counsel
Clover Health Investments, Corp.
3401 Mallory Lane, Suite 210
Franklin, Tennessee 37067
(201) 432-2133

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. (Check one):

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

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

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information contained in this prospectus is not complete and may be changed. Clover Health Investments, Corp. may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not the solicitation of an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MAY 9, 2022 PRELIMINARY PROSPECTUS

Clover Health

\$300,000,000

Clover Health Investments, Corp.

Debt Securities

Class A Common Stock

Preferred Stock

Warrants

Clover Health Investments, Corp. may, from time to time, sell securities in one or more offerings pursuant to this prospectus separately or together in any combination. The specific terms of any securities to be offered will be provided in supplements to this prospectus. You should read this prospectus and any prospectus supplement carefully before you invest.

Our Class A common stock is listed on the NASDAQ Stock Market LLC (“NASDAQ”) under the symbol “CLOV.” Unless stated otherwise in a prospectus supplement, none of the other securities offered hereby will be listed on any securities exchange.

The securities may be sold to or through one or more agents, underwriters or dealers, or directly to purchasers, on a delayed or continuous basis.

Investing in our securities involves risks. You should consider the risk factors described in any accompanying prospectus supplement or any documents incorporated by reference herein and therein, including our most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, if applicable.

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

This prospectus is dated _____, 2022.

We have not authorized anyone to provide any information other than that contained or incorporated by reference in this prospectus, in any accompanying prospectus supplement or in any free writing prospectus filed by us with the Securities and Exchange Commission (the “SEC”). We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. You should not assume that the information contained in or incorporated by reference in this prospectus or any prospectus supplement or in any such free writing prospectus is accurate as of any date other than their respective dates. Our business, financial condition, results of operations and prospects may have changed since the date of this prospectus or of any prospectus supplement, free writing prospectus or document incorporated by reference.

We are not making an offer of these securities to any person or in any jurisdiction where the offer is not permitted.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC utilizing a “shelf” registration process. Under this shelf process, we may, from time to time, sell in one or more offerings, debt securities, Class A common stock, preferred stock, or warrants to purchase any of the foregoing or other securities, properties or assets.

Each time securities are sold, a prospectus supplement will be provided that will contain 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. To the extent any statement made in a prospectus supplement or a document incorporated by reference herein after the date hereof is inconsistent with the statements made in this prospectus, the statements made in this prospectus will be deemed modified or superseded by those made in the prospectus supplement or the incorporated document.

You should carefully read both this prospectus and any prospectus supplement together with additional information described below under the headings “Incorporation of Certain Information by Reference” and “Where You Can Find More Information.” We have filed or incorporated by reference exhibits to the registration statement of which this prospectus is a part. You should read the exhibits carefully for provisions that may be important to you.

Clover Health, the Clover Health logo, the Clover Assistant and our other registered or common law trademarks, tradenames and service marks appearing in this prospectus are our property. Solely for convenience, our trademarks, tradenames and service marks referred to in this prospectus appear without the ©, ™ and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights to these trademarks and tradenames. This prospectus contains or incorporates by reference additional trademarks, tradenames and service marks of other companies that are the property of their respective owners.

In both this prospectus and any accompanying prospectus supplement, unless we otherwise specify or the context otherwise requires, references to “Clover,” the “Company,” “we,” “us,” and “our” are to Clover Health Investments, Corp. and its subsidiaries.

CLOVER HEALTH INVESTMENTS, CORP.

At Clover Health, we are singularly focused on creating great, sustainable healthcare to improve every life. We have centered our strategy on building and deploying physician-enablement software that we believe can enable every physician to deliver data-driven value-based care, without the need to adopt complicated value-based payment schemes. We first launched this approach in our Medicare Advantage (“MA”) insurance business and have recently brought it to a new non-insurance line of business through fee-for-service Medicare.

The Clover Assistant, our proprietary software platform, is designed to enable healthcare providers to improve the care for all patients. Historically, value-based care has generally been restricted to sophisticated physician groups with the resources and infrastructure to support it. This has left behind physicians that care for many Medicare beneficiaries, especially among at-risk populations. With the Clover Assistant, we believe we can help all physicians, and thus all patients, enjoy the benefits of value-based care. This approach of empowering all physicians has allowed us to focus on driving Clover Assistant adoption as a means of rapidly growing our number of lives under management.

We were incorporated on October 18, 2019, as a special purpose acquisition company and a Cayman Islands exempted company under the name Social Capital Hedosophia Holdings Corp. III (“SCH”). On April 24, 2020, SCH completed its initial public offering. On January 7, 2021, SCH consummated a business combination with Clover Health Investments, Corp. and changed its name to Clover Health Investments, Corp. Our principal executive offices are located at 3401 Mallery Lane, Suite 210, Franklin, Tennessee 37067. Our telephone number is (201) 432-2133. Our website address is www.cloverhealth.com. The information contained on our website is not intended to form a part of, or be incorporated by reference into, this prospectus.

RISK FACTORS

Investing in our securities involves risks. Before deciding to invest in our securities, you should carefully consider the risk factors described in Item 1A of our most recent Annual Report on Form 10-K for the year ended December 31, 2021 (which is incorporated by reference herein), any subsequent Quarterly Reports on Form 10-Q and subsequent Annual Reports on Form 10-K, incorporated by reference herein, and all other information contained or incorporated by reference into this prospectus, and the risk factors and other information contained in or incorporated by reference into any accompanying prospectus supplement. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations.

FORWARD-LOOKING STATEMENTS

This document, any prospectus supplement and the documents incorporated by reference herein, contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements contained, or incorporated by reference, in this document other than statements of historical fact, including statements regarding our future results of operations, financial position, market size and opportunity, our business strategy and plans, the factors affecting our performance and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “could,” “should,” “would,” “can,” “expect,” “project,” “outlook,” “forecast,” “objective,” “plan,” “potential,” “seek,” “grow,” “target,” “if,” and the negative or plural of these words and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in this prospectus, any prospectus supplement, the section titled “Risk Factors” in Item 1A of our most recent Annual Report on Form 10-K for the year ended December 31, 2021 (which is incorporated by reference herein) and the risk factors described in our other filings with the SEC incorporated by reference herein. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, 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 materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this document, any prospectus supplement and the documents incorporated by reference, may not occur, and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. Forward-looking statements contained in this document, any prospectus supplement and the documents incorporated by reference, involve a number of judgments, risks and uncertainties, including, without limitation, risks related to:

- our expectations regarding results of operations, financial condition, and cash flows;
- our expectations regarding the development and expansion of our Insurance and Non-Insurance businesses;
- our ability to successfully enter new service markets and manage our operations;
- anticipated trends and challenges in our business and in the markets in which we operate;
- our ability to expand our beneficiary base and provider network;
- our ability to maintain and increase adoption and use of the Clover Assistant;
- the anticipated benefits associated with the use of the Clover Assistant platform, including our ability to utilize the platform to manage our medical care ratios;
- our ability to develop new features and functionality that meet market needs and achieve market acceptance;
- our ability to retain and hire necessary employees and staff our operations appropriately;
- the timing and amount of certain investments in growth;
- the effect of uncertainties related to the global COVID-19 pandemic on our business, results of operations and financial condition;
- the outcome of any known and unknown litigation and regulatory proceedings;
- any current, pending or future legislation, regulations or policies that could have a negative effect on our revenue and businesses, including rules, regulations and policies relating to healthcare and Medicare;

- our ability to maintain or improve our Star Ratings or otherwise continue to improve the financial performance of our business;
- our ability to maintain, protect and enhance our intellectual property; and
- general economic conditions, including the societal and economic impact of the COVID-19 pandemic and its variants, and geopolitical uncertainty and instability.

We caution you that the foregoing list of judgments, risks and uncertainties that may cause actual results to differ materially from those in the forward-looking statements may not be complete. You should not rely upon forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur or may be materially different from what we expect. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Except as required by law, we undertake no obligation to update any of these forward-looking statements after the date of this document or to conform these statements to actual results or revised expectations.

You should read this document, any prospectus supplement and the documents incorporated by reference herein with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect. This document, any prospectus supplement or the documents incorporated by reference, contain estimates, projections and other information concerning our industry, our business and the markets for our products. We obtained the industry, market, and similar data set forth in this document from our own internal estimates and research and from industry research, publications, surveys and studies conducted by third parties, including governmental agencies, and such information is inherently subject to uncertainties. Actual events or circumstances may differ materially from events and circumstances that are assumed in this information. You are cautioned not to give undue weight to any such information, projections, or estimates.

As a result of a number of known and unknown risks and uncertainties, including without limitation, the important factors described in this prospectus, any prospectus supplement and in the “Risk Factors” section in our most recent Annual Report on Form 10-K for the year ended December 31, 2021, as filed with the SEC and available on its website at www.sec.gov, any subsequent Quarterly Reports on Form 10-Q and any subsequent Annual Reports on Form 10-K incorporated by reference herein, our actual results or performance may be materially different from those expressed or implied by these forward-looking statements.

USE OF PROCEEDS

Unless otherwise indicated in the applicable prospectus supplement, we will use the net proceeds from the sale of securities offered by this prospectus and any related prospectus supplement for general corporate purposes. We may temporarily invest funds that are not immediately needed for these purposes in short-term investments, including, but not limited to, marketable securities. Additional information on the use of net proceeds from the sale of securities that we may offer from time to time by this prospectus and any related prospectus supplement may be set forth in the applicable prospectus supplement relating to a particular offering.

DESCRIPTION OF DEBT SECURITIES

We will set forth in the applicable prospectus supplement a description of the debt securities that may be offered under this prospectus.

The debt securities may be secured or unsecured. Except as otherwise provided in a supplemental indenture or prospectus supplement, the debt securities will be unsecured and will (i) rank equally in right of payment with any of our existing and future unsecured and unsubordinated indebtedness, (ii) rank senior in right of payment to any of our future subordinated indebtedness, (iii) be effectively subordinated to any of our future secured indebtedness, to the extent of the value of any assets securing such indebtedness; and (iv) be structurally subordinated to all of the liabilities of our subsidiaries.

All payments of principal of, premium, if any, and interest on, and all registration, transfer, exchange, authentication and delivery of, the debt securities will be effected initially by the trustee or its agent acting as trustee, paying agent or registrar as set forth in the indenture at an office designated by the trustee as its corporate trust office.

Information in the Prospectus Supplement

The prospectus supplement for any offered series of debt securities will describe the following terms, as applicable:

- the title;
- any limit on the aggregate principal amount;
- the percentage of the principal amount at which the debt securities will be sold and, if applicable, the method of determining the price;
- the maturity date or dates;
- the rate at which the debt securities will bear interest, if any, and the interest payment dates;
- the date or dates from which any interest will accrue, or how such date or dates will be determined, and the interest payment dates and any related record dates;
- any provisions for the payment of additional amounts for taxes;
- the denominations in which the currency or currency unit of the debt securities will be issuable if other than denominations of \$2,000 and integral multiples of \$1,000 in excess thereof;
- the terms and conditions on which we may optionally redeem the debt securities;
- the terms and conditions on which we may be required to redeem the debt securities;
- any obligation for us to redeem, purchase or repay the debt securities at the option of a holder upon the happening of an event, and the terms and conditions of redemption, purchase or repayment;
- the names and duties of any co-trustees, depositaries, authenticating agents, calculation agents, paying agents, transfer agents or registrars for the debt securities;
- any changes in or additions to the covenants applicable to the particular debt securities being issued;
- any additions to or changes in the events of default with respect to the securities and any change in the right of the trustee or the holders to declare the principal and interest, if any, with respect to such securities to be due and payable;
- the terms and conditions, if any, pursuant to which the debt securities are secured;

- any material provisions of the applicable indenture described in this prospectus that do not apply to the debt securities;
- any other terms of the debt securities, which may modify, supplement or delete any provision of the indenture as it applies to that series; and
- any other specific terms of the debt securities.

We will issue the debt securities only in registered form. As currently anticipated, debt securities of a series will trade in book-entry form.

DESCRIPTION OF EQUITY SECURITIES

General

The following summary of the material terms of our equity securities is not intended to be a complete summary of the rights and preferences of such securities, and is qualified by reference to the amended and restated certificate of incorporation (for purposes of this section, the “charter”) and the amended and restated bylaws (for purposes of this section, the “bylaws”), each of which is either filed or incorporated by reference as an exhibit to the registration statement of which this prospectus is a part, and applicable Delaware law. We urge to you read the charter and bylaws in their entirety for a complete description of the rights and preferences of our equity securities.

The total amount of our authorized capital stock consists of:

- 2,500,000,000 shares of our Class A common stock, par value \$0.0001 per share;
- 500,000,000 shares of our Class B common stock, par value \$0.0001 per share; and
- 25,000,000 shares of our preferred stock, par value \$0.0001 per share.

As of May 2, 2022, there were 378,916,307 shares of Class A common stock and 94,446,449 shares of Class B common stock outstanding. At that date, there were no shares of preferred stock issued or outstanding.

Capital Stock

We have two classes of authorized common stock, Class A common stock and Class B common stock. Unless our board of directors determines otherwise, all of our capital stock will be issued in uncertificated form.

Voting Rights

Holders of our Class A common stock are entitled to one vote per share, and holders of our Class B common stock are entitled to ten votes per share, on each matter submitted to a vote of stockholders, as provided by the charter. The holders of Class A common stock and Class B common stock will generally vote together as a single class on all matters (including the election of directors) submitted to a vote of our stockholders, unless otherwise required by Delaware law or the charter. Delaware law could require either holders of Class A common stock or Class B common stock to vote separately as a single class in the following circumstances:

- if we were to seek to amend the charter 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 the charter 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 such holders adversely, then that class would be required to vote separately to approve the proposed amendment.

The charter and bylaws provide for a classified board of directors that is divided into three classes with staggered three-year terms. Only the directors in one class will be subject to election by a plurality of the votes cast at each annual meeting of Clover’s stockholders, with the directors in the other classes continuing for the remainder of their respective three-year terms. The bylaws provide that the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, will constitute a quorum at all meetings of the stockholders for the transaction of business. When a quorum is present, the affirmative vote of a majority of the votes cast is required to take action, unless otherwise specified by law, the bylaws or the charter, and except for the election of directors, which is determined by a plurality vote. There are no cumulative voting rights.

Dividend Rights

Each holder of shares of our common stock is entitled to the payment of dividends and other distributions as may be declared by our board of directors from time to time out of our assets or funds legally available for dividends or other distributions. These rights are subject to the preferential rights of the holders of our preferred stock, if any, and any contractual limitations on our ability to declare and pay dividends.

Other Rights

Each holder of our Class A common stock and Class B common stock is subject to, and may be adversely affected by, the rights of the holders of any series of our preferred stock that we may designate and issue in the future. Our Class A common stock and Class B common stock are not entitled to preemptive rights and are not subject to conversion (except as noted below), redemption, or sinking fund provisions.

Liquidation Rights

If we are involved in a voluntary or involuntary liquidation, dissolution or winding up of the Company's affairs, or a similar event, each holder of our Class A common stock and Class B common stock will participate pro rata in all assets remaining after payment of liabilities, subject to prior distribution rights of our preferred stock, if any, then outstanding.

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. In addition, each share of Class B common stock will convert automatically into one share of Class A common stock upon 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 the charter. Once converted into Class A common stock, the Class B common stock will not be reissued. In addition, all the outstanding shares of Class B common stock will convert automatically into one share of Class A common stock upon the earliest of (i) January 7, 2031, (ii) the separation date of the last to separate of Vivek Garipalli and Andrew Toy (the "Founders"), (iii) the date that is one (1) year after the death or permanent disability of the last to die or become disabled of the Founders and (iv) the date specified by the affirmative vote of the holders of our Class B common stock representing not less than two-thirds (2/3) of the voting power of the outstanding shares of our Class B common stock, voting separately as a single class.

A transfer of Class B common stock will not trigger an automatic conversion of such stock to Class A common stock if it is a permitted transfer. A permitted transfer is a transfer by a holder of Class B common stock to any of the persons or entities listed in clauses (i) through (ix) below, each referred to herein as 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:

- (i) to a trust for the benefit of the holder of Class B common stock and for the benefit of no other person;
- (ii) to a trust for the benefit of the holder of Class B common stock and persons other than the holder of Class B common stock so long as the holder of Class B common stock retains sole dispositive power and voting control;
- (iii) 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 and/or a reversionary interest so long as the holder of Class B common stock retains sole dispositive power and exclusive voting control with respect to the shares of Class B common stock held by such trust;
- (iv) to an Individual Retirement Account, as defined in Section 408(a) of the Internal Revenue Code, or a pension, profit sharing, stock bonus, or other type of plan or trust of which such holder of Class B common stock is a participant or beneficiary and which satisfies the requirements for qualification under Section 401 of the Internal Revenue Code, so long as such holder of Class B common stock 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;
- (v) to a corporation, partnership, or limited liability company in which such holder of Class B common stock directly, or indirectly, 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;

- (vi) solely with respect to a holder of Class B common stock that is a venture capital, private equity or similar private investment fund, to any general partner, managing member, officer or director of such holder of Class B common stock or an affiliated investment fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management or advisory company with, such holder of Class B common stock;
- (vii) to any other corporation, partnership, limited liability company or trust approved by our board of directors;
- (viii) to a trust or private non-operating organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code so long as such holder of Class B common stock has dispositive power and voting control with respect to the shares of Class B common stock held by such trust or organization and the transfer to such trust does not involve any payment of cash, securities, property or other consideration (other than an interest in such trust or organization) to such holder of Class B common stock; and
- (ix) to any immediate family member of such holder of Class B common stock for estate planning purposes.

Anti-Takeover Effects of Delaware Law and Our Charter and Bylaws

The charter and bylaws contain provisions that may delay, defer or discourage another party from acquiring control of the Company. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of the Company to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage mergers that some of our stockholders may favor.

Dual Class Common Stock

The charter provides for a dual class common stock structure pursuant to which holders of our Class B common stock will have the ability to control the outcome of matters requiring stockholder approval, even if they own significantly less than a majority of the shares of our outstanding Class A common stock and Class B common stock, including the election of directors and significant corporate transactions, such as a merger or other sale of us or our assets. Current investors, executives, and employees will have the ability to exercise significant influence over those matters.

Special Meetings of Stockholders

The charter provides that a special meeting of stockholders may be called by (a) the chairperson of our board of directors, (b) our Chief Executive Officer, (c) our lead independent director or (d) our board of directors pursuant to a resolution adopted by a majority of the board.

Action by Written Consent

The charter provides that any action required or permitted to be taken by our stockholders must be effected at an annual or special meeting of the stockholders, and may not be taken by written consent in lieu of a meeting.

Staggered Board

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. This system of electing and removing directors may tend to discourage a third-party from making a tender offer or otherwise attempting to obtain control of the Company, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Removal of Directors

Our board of directors or any individual director may be removed from office at any time, but only for cause and only by the affirmative vote of not less than two-thirds of the voting power of all of our then outstanding shares of voting stock entitled to vote at an election of directors.

Stockholders Not Entitled to Cumulative Voting

The charter does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of our outstanding shares of Class A common stock and Class B common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our preferred stock may be entitled to elect.

Delaware Anti-takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits persons deemed to be “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation’s voting stock. Generally, a “business combination” includes a merger, asset, or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by our board of directors.

Issuance of undesignated preferred stock

Our board of directors have the authority, without further action by the stockholders, to issue up to 25,000,000 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 enables 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 charter provides that the Court of Chancery of the State of Delaware will be the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees, or agents to us or our stockholders; (3) any action asserting a claim against us arising pursuant to any provision of the General Corporation Law of the State of Delaware or our charter or bylaws; (4) any action to interpret, apply, enforce, or determine the validity of our charter or bylaws; or (5) any action asserting a claim governed by the internal affairs doctrine. The provisions would not apply to suits brought to enforce a duty or liability created by the Securities Act, or the Exchange Act, or any other claim for which the U.S. federal courts have exclusive jurisdiction. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our charter provides that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act.

Transfer Agent and Registrar

The transfer agent and registrar for our Class A common stock is Continental Stock Transfer & Trust Company. The transfer agent and registrar’s telephone number and address are (212) 509-4000 and 1 State Street, 30th Floor, New York, NY 10004, respectively.

Listing

Our Class A common stock is listed on NASDAQ under the symbol “CLOV.” Our Class B common stock is not listed on any stock market or exchange.

Preferred Stock

Our board of directors has authority to issue shares of our preferred stock in one or more series, to fix for each such series such voting powers, designations, preferences, qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, redemption privileges and liquidation preferences for the issue of such series all to the fullest extent permitted by the Delaware General Corporation Law. The issuance of our preferred stock could have the effect of decreasing the trading price of our Class A common stock, restricting dividends on our capital stock, diluting the voting power of our common stock, impairing the liquidation rights of our capital stock, or delaying or preventing a change in control of the Company.

The particular terms of any series of preferred stock offered by us will be described in the prospectus supplement relating to that series of preferred stock. Those terms relating to the series of preferred stock offered may include:

- the number of shares of the preferred stock being offered;
- the title and liquidation preference per share of the preferred stock;
- voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
- conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as our board of directors shall determine;
- the purchase price of the preferred stock;
- the dividend rate or method for determining the dividend rate; and
- the dates on which dividends will be paid;
- whether dividends on the preferred stock will be cumulative or noncumulative and, if cumulative, the dates from which dividends shall commence to accumulate;
- any redemption or sinking fund provisions applicable to the preferred stock;
- any securities exchange on which the preferred stock may be listed; and
- any additional dividend, liquidation, redemption, sinking fund and other rights and restrictions applicable to the preferred stock.

DESCRIPTION OF WARRANTS

General

We may offer warrants, including warrants to purchase debt securities, Class A common stock, preferred stock or other securities, property or assets (including rights to receive payment in cash or securities based on the value, rate or price of one or more specified commodities, currencies, securities or indices), as well as other types of warrants. We may offer warrants independently or together with other securities offered under this prospectus, and they may be attached to or separate from those securities. We will issue the warrants under one or more warrant agreements between us and a bank or trust company, as warrant agent, that we will describe in the prospectus supplement relating to the warrants we offer.

The following is a summary of certain general terms and provisions of the warrants, but they are not complete and are subject to, and are qualified in their entirety by reference to, the warrant agreement and the warrant certificate relating to the warrants. Forms of these documents will be filed as exhibits to the registration statement of which this prospectus is a part, either by an amendment to the registration statement or by a Current Report on Form 8-K. See “Where You Can Find More Information” for information on how to obtain copies of these documents. You should read the summary below, the applicable prospectus supplement and the provisions of the warrant agreement and the warrant certificate before investing in our warrants.

Debt Warrants

We will describe in the applicable prospectus supplement the terms of warrants to purchase debt securities that we may offer, the warrant agreement relating to the debt warrants and the warrant certificates representing the debt warrants. These terms will include the following:

- the title of the debt warrants;
- the debt securities for which the debt warrants are exercisable;
- the aggregate number of the debt warrants;
- the price or prices at which we will issue the debt warrants, the principal amount of debt securities that holders may purchase upon exercise of each debt warrant and the price or prices at which such principal amount may be purchased upon exercise;
- currency, currencies, or currency units, if other than in U.S. dollars, in which such debt warrants are to be issued or for which the debt warrants may be exercised;
- the procedures and conditions relating to the exercise of the debt warrants;
- the designation and terms of any related debt securities issued with the debt warrants, and the number of debt warrants issued with each debt security;
- the date, if any, from which holders may separately transfer the debt warrants and the related securities;
- the date on which the right to exercise the debt warrants commences, and the date on which the right expires;
- the maximum or minimum number of the debt warrants which holders may exercise at any time;
- if applicable, a discussion of material U.S. federal income tax considerations;
- any other terms of the debt warrants and terms, procedures and limitations relating to the exercise of the debt warrants; and
- the terms of the securities that may be purchased upon exercise of the debt warrants.

We will also describe in the applicable prospectus supplement any provisions for a change in the exercise price or expiration date of the warrants and the kind, frequency and timing of any notice to be given. Holders may exchange debt warrant certificates for new debt warrant certificates of different denominations and may exercise debt warrants at the corporate trust office of the warrant agent or any other office that we indicate in the applicable prospectus supplement. Prior to exercise, holders will not have any of the rights of holders of the debt securities purchasable upon that exercise and will not be entitled to payments of principal, premium, if any, or interest on the debt securities purchasable upon the exercise.

Other Warrants

We may issue other warrants for Class A common stock, preferred stock or other securities, property or assets (including rights to receive payment in cash or securities based on the value, rate or price of one or more specified commodities, currencies, securities or indices), as well as other types of warrants. We will describe in the applicable prospectus supplement the following terms of those warrants:

- the title of the warrants;
- the securities, which may include Class A common stock, preferred stock or other securities, property or assets (including rights to receive payment in cash or securities based on the value, rate or price of one or more specified commodities, currencies, securities or indices), for which holders may exercise the warrants;
- the aggregate number of the warrants;
- the price or prices at which we will issue the warrants, the number of securities or amount of other property or assets that holders may purchase upon exercise of each warrant and the price or prices at which such securities, property or assets may be purchased;
- currency, currencies, or currency units, if other than in U.S. dollars, in which such warrants are to be issued or for which the warrants may be exercised;
- the procedures and conditions relating to the exercise of the warrants;
- the designation and terms of any related securities issued with the warrants, and the number of warrants issued with each security;
- the date, if any, from which holders may separately transfer the warrants and the related securities;
- the date on which the right to exercise the warrants commences, and the date on which the right expires;
- the maximum or minimum number of warrants which holders may exercise at any time;
- if applicable, a discussion of material U.S. federal income tax considerations; and
- any other terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

We will also describe in the applicable prospectus supplement any provisions for a change in the exercise price or the expiration date of the warrants and the kind, frequency and timing of any notice to be given. Holders may exchange warrant certificates for new warrant certificates of different denominations and may exercise warrants at the corporate trust office of the warrant agent or any other office that we indicate in the applicable prospectus supplement. Prior to the exercise of the warrants, holders will not have any of the rights of holders of the Class A common stock, preferred stock or other securities purchasable upon that exercise and will not be entitled to dividend payments, if any, or voting rights of Class A common stock, preferred stock or other securities purchasable upon the exercise.

Exercise of Warrants

We will describe in the prospectus supplement relating to the warrants the principal amount or the number of our securities, or amount of other securities, property or assets that holders may purchase for cash upon exercise of a warrant, and the exercise price. Holders may exercise a warrant as described in the prospectus supplement relating to the warrants at any time up to the close of business on the expiration date stated in the prospectus supplement. Unexercised warrants will become void after the close of business on the expiration date, or any later expiration date that we determine.

We will forward the securities purchasable upon the exercise as soon as practicable after receipt of payment and the properly completed and executed warrant certificate at the corporate trust office of the warrant agent or other office stated in the applicable prospectus supplement. If a holder exercises less than all of the warrants represented by the warrant certificate, we will issue the holder a new warrant certificate for the remaining warrants.

PLAN OF DISTRIBUTION

We may sell securities, separately or in combination, in one or more of the following ways:

- in the over-the-counter market or on any national securities exchange on which our securities are listed or traded, if any;
- to or through underwriting syndicates represented by managing underwriters;
- through one or more underwriters without a syndicate for them to offer and sell to the public;
- through brokers, dealers or agents;
- directly to investors, including through a specific bidding, auction or other process;
- in privately negotiated transactions;
- via block trades in which the broker-dealer will attempt to sell the securities as agent, but may position and sell a portion of the block as principal to facilitate the transaction; or
- in “at the market offerings,” within the meaning of Rule 415(a)(4) under the Securities Act, to or through a market maker or into an existing trading market, on an exchange or otherwise.

The securities we distribute by any of these methods may be sold to the public, in one or more transactions, either:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to prevailing market prices; or
- at negotiated prices.

We may sell securities from time to time to one or more underwriters, who would purchase the securities as principal for resale to the public, either on a firm-commitment or best-efforts basis and such securities may be resold by them, either at a fixed public offering price established at the time of offering or from time to time in one or more negotiated transactions or otherwise, at prices related to prevailing market prices determined at the time of sale. If we sell securities to underwriters, we may execute an underwriting agreement with them at the time of sale and will name them in the applicable prospectus supplement. In connection with those sales, underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and may also receive commissions from purchasers of the securities for whom they may act as agents. Underwriters may resell the securities to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from purchasers for whom they may act as agents. The applicable prospectus supplement will include any required information about underwriting compensation we pay to underwriters, and any discounts, concessions or commissions underwriters allow to participating dealers, in connection with an offering of securities.

We may solicit offers to purchase securities directly from the public from time to time. We may also designate agents from time to time to solicit offers to purchase securities from the public on our behalf. If required, the applicable prospectus supplement relating to any particular offering of securities will name any agents designated to solicit offers, and will include information about any commissions we may pay the agents, in that offering. Agents may be deemed to be “underwriters” as that term is defined in the Securities Act.

From time to time, we may sell securities to one or more dealers acting as principals. The dealers, who may be deemed to be “underwriters” as that term is defined in the Securities Act, may then resell those securities to the public.

Any underwriter or agent involved in the offer and sale of any securities will be named in the applicable prospectus supplement.

Underwriters, agents, and dealers may be entitled, under agreements with us, to indemnification against certain civil liabilities, including liabilities under the Securities Act. Unless otherwise stated in a prospectus supplement, the obligations of the underwriters to purchase any securities will be conditioned on customary closing conditions and the underwriters will be obligated to purchase all of such series of securities, if any are purchased.

In connection with an offering, the underwriters 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 an offering. Stabilizing transactions consist of certain bids or purchases made for the purpose of preventing or retarding a decline in the market price of the securities while an offering is in progress.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the underwriters have repurchased securities sold by or for the account of that underwriter in stabilizing or short-covering transactions.

These activities by the underwriters may stabilize, maintain or otherwise affect the market price of the securities. As a result, the price of the securities may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. These transactions may be effected on an exchange or automated quotation system, if the securities are listed on that exchange or admitted for trading on that automated quotation system, or in the over-the-counter market or otherwise.

We make no representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our securities. In addition, we make no representation that any underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Certain of the underwriters, dealers, or agents and their affiliates may engage in transactions with and perform services for us and/or any of our affiliates in the ordinary course of their businesses.

LEGAL MATTERS

Certain legal matters with respect to the securities will be passed upon for the Company by Fried, Frank, Harris, Shriver & Jacobson LLP, New York, New York.

EXPERTS

The consolidated financial statements of Clover Health Investments, Corp. and subsidiaries included in Clover Health Investments, Corp. and subsidiaries' Annual Report (Form 10-K) for the year ended December 31, 2021, and the effectiveness of Clover Health Investments, Corp. and subsidiaries' internal control over financial reporting as of December 31, 2021 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to "incorporate by reference" into this document the information which Clover filed with the SEC. This means that we can disclose important information by referring you to those documents. Any information referred to in this way is considered part of this prospectus from the date we file that document. The information incorporated by reference is an important part of this prospectus and information that Clover files later with the SEC will automatically update and supersede this information. The following documents filed by the Company (File No. 001-39252) with the SEC pursuant to the Exchange Act are incorporated herein by reference other than any portions of the respective filings that were furnished, pursuant to Item 2.02 or Item 7.01 of Current Reports on Form 8-K (including exhibits related thereto) or other applicable SEC rules, rather than filed, prior to the termination of the offerings under this prospectus:

- the Company's Annual Report on Form 10-K for the fiscal year ended [December 31, 2021](#);
- the Company's Quarterly Report on Form 10-Q for the quarterly period ended [March 31, 2022](#);
- the Company's Current Report on Form 8-K filed with the SEC on [January 19, 2022](#); and
- the description of Equity Securities contained in [Exhibit 4.3](#) to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021, as supplemented by the "Description of Equity Securities" included in this prospectus and including all amendments and reports filed for the purpose of updating such description.

All reports and other documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of filing of the registration statement of which this prospectus is a part and prior to the filing of a post-effective amendment, which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, but excluding any information furnished to, rather than filed with, the SEC (including exhibits related thereto), shall be incorporated by reference herein and shall be deemed to be a part of this prospectus from the dates of filing of such reports and documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of the registration statement of which this prospectus is a part to the extent that a statement contained in any subsequent prospectus or prospectus supplement hereunder or in any document subsequently filed with the SEC which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of the registration statement of which this prospectus is a part.

WHERE YOU CAN FIND MORE INFORMATION

We will provide without charge to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, upon the oral or written request of such person, a copy of any or all of the documents which

are incorporated by reference in this prospectus, other than exhibits to such documents (unless such exhibits are specifically incorporated by reference into such documents). Requests should be directed to:

Clover Health Investments, Corp.
Attn: Corporate Secretary
3401 Mallory Lane, Suite 210
Franklin, Tennessee 37067
Telephone: (401) 432-2133

The Company files annual, quarterly and current reports, proxy statements and other information with the SEC. The SEC also maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of the SEC's Internet site is www.sec.gov.

You may also get a copy of these reports from our website at <https://investors.cloverhealth.com/>. The information contained on our website is not intended to form a part of, or be incorporated by reference into, this prospectus.

PART II

Information Not Required in Prospectus

Item 14. Other Expenses of Issuance and Distribution

The following is a statement of the expenses (all of which are estimated) to be incurred by the Registrant in connection with the distribution of the securities registered under this registration statement:

	Amount to be paid
SEC registration fee	\$ 27,810
Legal fees and expenses	*
Accounting fees and expenses	*
Printing fees	*
Trustee's and transfer agent's fees and expenses	*
Rating agency fees	*
Miscellaneous	*
Total	*

* These fees and expenses depend on the securities offered and the number of issuances and accordingly cannot be estimated at this time.

Item 15. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended (the "Securities Act").

As permitted by the Delaware General Corporation Law, the Company's amended and restated certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, to the fullest extent permitted by law.

As permitted by the Delaware General Corporation Law, the Company's amended and restated bylaws provide that:

- the Company is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;
- the Company may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;
- the Company is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and
- the rights conferred in the bylaws are not exclusive.

The Company has entered, and intends to continue to enter into separate indemnification agreements with its current directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the protections and indemnification set forth in the Company's amended and restated certificate of incorporation and amended and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director, executive officer or employee of the Company for which indemnification is sought. The indemnification provisions in the Company's amended and restated certificate of incorporation, amended and restated bylaws and the indemnification agreements

entered into or to be entered into between the Company and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Company's directors and executive officers for liabilities arising under the Securities Act.

The Company has directors' and officers' liability insurance for securities matters.

The form of Underwriting Agreement(s) of the Company is expected to provide for indemnification of the Company and its directors, officers and certain other persons under certain circumstances described therein by each underwriter participating in an offering of securities.

Item 16. Exhibits

Exhibit No.	Description
1.1	Form of Underwriting Agreement (Debt Securities).*
1.2	Form of Underwriting Agreement (Equity Securities).*
1.3	Form of Underwriting Agreement (Warrants).*
4.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K (File No. 001-39252) filed on January 12, 2021).
4.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K (File No. 001-39252) filed on January 12, 2021).
4.3	Form of Indenture, to be entered into between the Company and Wilmington Trust, National Association, as Trustee.
4.4	Form of Debt Securities (included in Exhibit 4.3).
4.5	Specimen Class A Common Stock certificate (incorporated by reference to Exhibit 4.5 of the Company's Registration Statement on Form S-4/A (Registration No. 333-249558) filed on November 20, 2020).
4.6	Specimen Class B Common Stock certificate (incorporated by reference to Exhibit 4.6 of the Company's Registration Statement on Form S-4/A (File No. 333-249558) filed on November 20, 2020).
4.7	Specimen Preferred Stock Certificate.*
4.8	Form of Warrant Agreement (including form of warrant certificate).*
5.1	Opinion of Fried, Frank, Harris, Shriver & Jacobson LLP.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Fried, Frank, Harris, Shriver & Jacobson LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page of this registration statement).
25.1	Statement of Eligibility of Wilmington Trust, National Association, as Trustee, on Form T-1.
107	Filing Fee Table.

* To be filed by amendment or as an exhibit to a current report on Form 8-K and incorporated herein by reference.

Item 17. Undertakings

The undersigned Registrant hereby undertakes:

- (a) (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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

- (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 (a)(1)(i), (ii) and (iii) 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 Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (2) 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.
- (3) 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.
- (4) 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 the registration statement as of the date the filed prospectus was deemed part of and included in the 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 the 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 the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the 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 the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
- (5) 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.
- (b) 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.
- (c) 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the Act 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Clover Health Investments, Corp. 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 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Franklin, State of Tennessee, on the 9th day of May, 2022.

CLOVER HEALTH INVESTMENTS, CORP.

By: /s/ Vivek Garipalli

Name: Vivek Garipalli

Title: Chief Executive Officer and Chairman

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Vivek Garipalli, Joseph R. Martin and Christopher F. Nenno as his or her true and lawful attorney-in-fact and agent, 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 and all amendments (including post-effective amendments) to this registration statement on Form S-3 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, 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, 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. This Power of Attorney may be signed in several counterparts.

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	Title	Date
<u>/s/ Vivek Garipalli</u> Vivek Garipalli	Chief Executive Officer and Chairman (Principal Executive Officer)	May 9, 2022
<u>/s/ Andrew Toy</u> Andrew Toy	President, Chief Technology Officer and Director	May 9, 2022
<u>/s/ Mark C. Herbers</u> Mark C. Herbers	Interim Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	May 9, 2022
<u>/s/ Chelsea Clinton</u> Chelsea Clinton	Director	May 9, 2022
<u>/s/ Demetrios L. Kouzoukas</u> Demetrios L. Kouzoukas	Director	May 9, 2022
<u>/s/ William G. Robinson, Jr.</u> William G. Robinson, Jr.	Director	May 9, 2022
<u>/s/ Lee Shapiro</u> Lee Shapiro	Director	May 9, 2022
<u>/s/ Nathaniel S. Turner</u> Nathaniel S. Turner	Director	May 9, 2022

CLOVER HEALTH INVESTMENTS, CORP.

as the Company

and

WILMINGTON TRUST, NATIONAL ASSOCIATION

as the Trustee

Indenture

Dated as of

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	(c)	N.A.
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312	(a)	N.A.
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313	(a)	7.06
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	(c)	N.A.
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314	(a)	4.04
	(b)	N.A.
	(c)	N.A.
	(d)	N.A.
	(e)	N.A.
	(f)	N.A.
315	(a)	7.02
	(b)	7.02
	(c)	7.02
	(d)	7.02
	(e)	N.A.
316	(a) (last sentence)	N.A.
	(a)(1)(A)	N.A.
	(a)(1)(B)	N.A.
	(a)(2)	N.A.
	(b)	N.A.
317	(a)(1)	N.A.
	(a)(2)	N.A.
	(b)	N.A.
318	(a)	N.A.

N.A. Means Not Applicable.

Note: This Cross-Reference Table shall not, for any purposes, be deemed to be part of this Indenture

INDENTURE, dated as of _____, between Clover Health Investments, Corp., a Delaware corporation as the Company (the “**Company**”), and Wilmington Trust, National Association, a national banking association, as trustee (the “**Trustee**”).

RECITALS

WHEREAS, the Company has duly authorized the issuance from time to time of its senior debt securities to be issued in one or more series (the “**Securities**”) up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture;

WHEREAS, the Company has duly authorized, among other things, the authentication, execution and delivery of this Indenture and the Securities; and

WHEREAS, all things necessary to make this Indenture a valid indenture and agreement according to its terms have been done.

NOW, THEREFORE:

In consideration of the premises and the purchases of the Securities by the holders thereof, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective holders from time to time of the Securities or of any and all series thereof as follows:

ARTICLE 1 DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

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

“**Agent**” means any Registrar, Paying Agent, transfer agent or Authenticating Agent.

“**Board of Directors**” means:

- (a) with respect to a corporation, the board of directors of the corporation or any committee or subcommittee thereof duly authorized to act on behalf of such board;
- (b) with respect to a partnership, the board of directors of the general partner of the partnership;
- (c) with respect to a limited liability company, the managing member or members or any controlling committee of managers or members thereof or any board or committee serving a similar management function; and

(d) with respect to any other Person, the individual or board or committee of such Person serving a management function similar to those described in clauses (a), (b) or (c) of this definition.

“Board Resolution” means one or more resolutions of the Board of Directors of the Company or any authorized committee or subcommittee thereof, certified by the secretary or an assistant secretary, to have been duly adopted and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions or trust companies in the City of New York, New York, Wilmington, Delaware, or the Corporate Trust Office are authorized or required by law, regulation or executive order to close.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Company” means the party named as such in the first paragraph of this Indenture until a Successor replaces it pursuant to Article 5 of this Indenture and thereafter means the Successor.

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

“Corporate Trust Office” means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the date of this Indenture, located at Wilmington Trust, National Association, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, Attention: Clover Health Investments, Corp. Administrator.

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

“Depositary” means, with respect to the Securities of any series issuable or issued in the form of one or more Registered Global Securities, the Person designated as Depositary by the Company pursuant to Section 2.03 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter **“Depositary”** shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, **“Depositary”** as used with respect to the Securities of any such series shall mean the Depositary with respect to the Registered Global Securities of that series.

“Exchange Act” means the Securities Exchange Act of 1934 and any successor statute thereto, as amended from time to time.

“GAAP” means with respect to any computations required or permitted hereunder, generally accepted accounting principles in the United States as in effect from time to time, including, without limitation, in each case, those accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified

Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. At any time the Company may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in this Indenture); provided that any such election, once made, shall be irrevocable; provided, further, any calculation or determination in this Indenture that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Company shall give notice of any such election made in accordance with this definition to the Trustee.

“**Holder**” or “**Securityholder**” means the registered holder of any Security as indicated on the Security Register.

“**IFRS**” means the international financial reporting standards as issued by the International Accounting Standards Board as in effect from time to time.

“**Indenture**” means this Indenture as originally executed and delivered or as it may be amended or supplemented from time to time by one or more indentures supplemental to this Indenture entered into pursuant to the applicable provisions of this Indenture and shall include the forms and terms of the Securities of each series established as contemplated pursuant to Sections 2.01 and 2.03.

“**Officer**” means, with respect to the Company, the chairman of the Board of Directors, the president or chief executive officer, any president, any executive vice president, any senior vice president, any vice president, the chief financial officer, the chief accounting officer, the chief operating officer, the general counsel, the treasurer or any assistant treasurer, or the secretary or any assistant secretary.

“**Officer’s Certificate**” means, with respect to the Company, a certificate signed in the name of the Company by any Officer and delivered to the Trustee. Each such certificate shall comply with Section 314 of the Trust Indenture Act, if applicable, and include (except as otherwise expressly provided in this Indenture) the statements provided in Section 10.04, if applicable.

“**Opinion of Counsel**” means a written opinion signed by legal counsel, who may be an employee of or counsel to the Company, reasonably satisfactory to the Trustee. Each such opinion shall comply with Section 314 of the Trust Indenture Act, if applicable, and include the statements provided in Section 10.04, if and to the extent required thereby. Opinions of Counsel required to be delivered under this Indenture may have qualifications customary for opinions of the type required.

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

“**Periodic Offering**” means an offering of Securities of a series from time to time, the specific terms of which Securities, including, without limitation, the rate or rates of interest, if

any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Securities.

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

“**Principal**” of a Security means the principal amount of, and, unless the context indicates otherwise, includes any premium payable on, the Security.

“**Registered Global Security**” means a Security evidencing all or a part of a series of Securities, issued to the Depository for such series in accordance with Section 2.02, and bearing the legend prescribed in Section 2.02.

“**Responsible Officer**” when used with respect to the Trustee, shall mean an officer of the Trustee in the Corporate Trust Office assigned by the Trustee to administer its corporate trust matters, having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“**Securities**” means any of the securities, as defined in the first paragraph of the recitals hereof, that are authenticated and delivered under this Indenture.

“**Securities Act**” means the Securities Act of 1933 and any successor statute thereto, as amended from time to time.

“**Subsidiary**” means with respect to the Company at any date, any corporation, limited liability company, partnership, limited partnership, association or other entity of which the Company, or the Company and one or more Subsidiaries, or any one or more Subsidiaries, directly or indirectly own more than 50% of the Voting Stock.

“**Trustee**” means the party named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of Article 7 and thereafter shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “**Trustee**” as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended and any successor statute thereto (15 U.S. Code §§ 77aaa-77bbb), as it may be amended from time to time.

“**U.S. Government Obligations**” means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account

of the holder of a depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

“**Voting Stock**” means, with respect to any Person, capital stock of any class or kind the holders of which have general voting power under ordinary circumstances to vote for the election of the board of directors, managers or other voting members of the governing body of a Person; provided that, for the purpose of such definition, capital stock which carries only the right to vote conditioned on the occurrence of an event shall not be considered Voting Stock whether or not such event shall have occurred.

“**Yield to Maturity**” means, as the context may require, the yield to maturity (i) on a series of Securities or (ii) if the Securities of a series are issuable from time to time, on a Security of such series, calculated at the time of issuance of such series in the case of clause (i) or at the time of issuance of such Security of such series in the case of clause (ii), or, if applicable, at the most recent redetermination of interest on such series or on such Security, and calculated in accordance with the constant interest method or such other accepted financial practice as is specified in the terms of such Security.

Section 1.02 *Other Definitions*. Each of the following terms is defined in the section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Authenticating Agent	Section 2.02
cash transaction	Section 7.02(a)
Covenant Defeasance	Section 8.07
Event of Default	Section 6.01
Judgment Currency	Section 10.15
Legal Defeasance	Section 8.06
Paying Agent	Section 2.05
record date	Section 2.04
Registrar	Section 2.05
Required Currency	Section 10.15
Security Register	Section 2.05
Successor	Section 5.01(a)

Section 1.03 *Incorporation by Reference of Trust Indenture Act*. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in, and made a part of, this Indenture. The following term used in this Indenture that is defined by the Trust Indenture Act has the following meaning:

“**obligor**” on the Securities means the Company or any other obligor on the Securities.

All other terms used in this Indenture that are defined by the Trust Indenture Act or defined by reference in the Trust Indenture Act to another statute and not otherwise defined herein have the meanings assigned to them therein, as applicable.

Section 1.04 *Rules of Construction*. Unless the context otherwise requires:

- (a) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (b) words in the singular include the plural, and words in the plural include the singular;
- (c) “herein”, “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (d) all references to Sections or Articles refer to Sections or Articles of this Indenture unless otherwise indicated;
- (e) use of masculine, feminine or neuter pronouns should not be deemed a limitation, and the use of any such pronouns should be construed to include, where appropriate, the other pronouns;
- (f) “including” means including without limitation; and
- (g) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to.

ARTICLE 2 THE SECURITIES

Section 2.01 *Form and Dating*. The Securities of each series shall be substantially in such form or forms (not inconsistent with this Indenture) as shall be established by or pursuant to one or more Board Resolutions or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law, or with any rules of any securities exchange or usage, all as may be determined by the Officer executing such Securities as evidenced by their execution of the Securities.

Section 2.02 *Execution and Authentication*. One Officer shall execute the Securities for the Company by facsimile, manual signature or electronic signature in the name and on behalf of the Company. If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

The Trustee, at the expense of the Company, may appoint an authenticating agent (the “**Authenticating Agent**”) to authenticate Securities. The Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Authenticating Agent.

A Security shall not be valid until the Trustee or Authenticating Agent manually signs the certificate of authentication on the Security by an authorized signatory of the Trustee or the Authenticating Agent. The signature shall be conclusive evidence that the Security has been authenticated under this 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 together with a written request for the authentication and delivery of such Securities and the applicable documents referred to below in this Section, and the Trustee shall thereupon authenticate and deliver such Securities upon the written order of the Company. In authenticating any Securities of a series, the Trustee shall receive prior to the authentication of any Securities of such series, and (subject to Article 7) shall be fully protected in conclusively relying upon, unless and until the Trustee receives written notice that such documents have been superseded or revoked:

(a) any Board Resolution or executed supplemental indenture referred to in Sections 2.01 and 2.03 by or pursuant to which the forms and terms of the Securities of that series were established;

(b) an Officer's Certificate setting forth the form or forms and terms of the Securities, stating that the form or forms and terms of the Securities of such series have been, or, in the case of a Periodic Offering, will be when established in accordance with such procedures as shall be referred to therein, established in compliance with this Indenture and all conditions precedent to the authorization and delivery of the Securities have been complied with; and

(c) an Opinion of Counsel substantially to the effect that the form or forms and terms of the Securities of such series have been, or, in the case of a Periodic Offering, will be when established in accordance with such procedures as shall be referred to therein, established in compliance with this Indenture and that the supplemental indenture, to the extent applicable, and Securities have been duly authorized and, if executed and authenticated in accordance with the provisions of this Indenture and delivered to and duly paid for by the purchasers thereof on the date of such opinion, would be entitled to the benefits of this Indenture and would be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting creditors' rights generally, general principles of equity and other customary exceptions and all conditions precedent to the authorization and delivery of the Securities have been complied with.

Notwithstanding the provisions of Sections 2.01 and 2.02, if, in connection with a Periodic Offering, all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Board Resolution or indentures supplemental otherwise required pursuant to Section 2.01 or the written order, Officer's Certificate and Opinion of Counsel otherwise required pursuant to Section 2.02 at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may conclusively rely, as to the authorization by the Company of any of such Securities, the forms and terms thereof and the validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Sections 2.01 and 2.02, as applicable, in connection with the first authentication of Securities of such series.

If the Company shall establish pursuant to Section 2.03 that the Securities of a series or a portion thereof are to be issued in the form of one or more Registered Global Securities, then the Company shall execute and upon receipt of a Company Order, the Trustee shall authenticate and deliver one or more Registered Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate Principal amount of all of the Securities of such series issued in such form and not yet cancelled, (ii) shall be registered in the name of the Depository for such Registered Global Security or Securities or the nominee of such Depository, (iii) shall be delivered by the Trustee to such Depository or its custodian pursuant to such Depository's instructions and (iv) shall bear a legend substantially to the following effect:

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

TRANSFERS OF THIS REGISTERED GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS REGISTERED GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

THIS SECURITY IS A REGISTERED GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREIN AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

Section 2.03 *Amount Unlimited; Issuable in Series.* The aggregate Principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution or one or more indentures supplemental hereto, prior to the initial issuance of Securities of any series, subject to the last sentence of this Section 2.03,

- (a) the designation of the Securities of the series, which shall distinguish the Securities of the series from the Securities of all other series;
- (b) any limit upon the aggregate Principal amount of the Securities of the series that may be authenticated and delivered under this Indenture and any limitation on the ability of the Company to increase such aggregate Principal amount after the initial issuance of the Securities of that series (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, or upon redemption of, other Securities of the series pursuant hereto);
- (c) the date or dates on which the Principal of the Securities of the series is payable (which date or dates may be fixed or extendible);
- (d) the rate or rates (which may be fixed or variable) per annum at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable and on which a record shall be taken for the determination of Holders to whom interest is payable and/or the method by which such rate or rates or date or dates shall be determined;
- (e) if other than as provided in Section 4.02, the place or places where the Principal of and any interest on Securities of the series shall be payable, any Securities of the series may be surrendered for exchange, notices, demands to or upon the Company in respect of the Securities of the series and this Indenture may be served and notice to Holders may be published;
- (f) the right, if any, of the Company to redeem Securities of the series, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which Securities of the series may be so redeemed, pursuant to any sinking fund or otherwise;
- (g) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any mandatory redemption, sinking fund or analogous provisions or at the option of a Holder thereof and the price or prices at which and the period or periods within which and any of the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;
- (h) the guarantors, if any, of the Securities of the series, and the extent of the guarantees (including provisions relating to seniority, subordination, and the release of the guarantors), if any, and any additions or changes to permit or facilitate guarantees of such Securities;
- (i) the form of Securities of the series;
- (j) the security for any Securities or collateral related thereto, if applicable;

(k) any covenant solely for the benefit of the Holders of the Securities of such series and any additions, deletions or other changes to the provisions of Article 4 or any definitions relating to such Article that shall be applicable to the Securities of such series (including a provision making any Section of such Article inapplicable to the Securities of such series); if other than minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, the denominations in which Securities of the series shall be issuable;

(l) if other than the Principal amount thereof, the portion of the Principal amount of Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof;

(m) if other than the coin or currency in which the Securities of the series are denominated, the coin or currency in which payment of the Principal of or interest on the Securities of the series shall be payable or if the amount of payments of Principal of and/or interest on the Securities of the series may be determined with reference to an index based on a coin or currency other than that in which the Securities of the series are denominated, the manner in which such amounts shall be determined;

(n) if other than the currency of the United States of America, the currency or currencies, including composite currencies, in which payment of the Principal of and interest on the Securities of the series shall be payable, and the manner in which any such currencies shall be valued against other currencies in which any other Securities shall be payable;

(o) whether the Securities of the series may be exchangeable for and/or convertible into the common stock of the Company, any other security or cash or any combination thereof;

(p) if the Securities of the series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(q) any trustees, depositaries, authenticating or paying agents, transfer agents or the registrar or any other agents with respect to the Securities of the series;

(r) provisions, if any, for the defeasance of the Securities of the series (including provisions permitting defeasance of less than all Securities of the series), which provisions may be in addition to, in substitution for, or in modification of (or any combination of the foregoing) the provisions of Article 8;

(s) if the Securities of the series are issuable in whole or in part as one or more Registered Global Securities, the identity of the Depositary or common Depositary for such Registered Global Security;

(t) any other Events of Default or covenants with respect to the Securities of the series; and

(u) any other terms of the Securities of the series (which terms shall not be inconsistent with the provisions of this Indenture except as permitted by Article 9).

All Securities of any one series shall be substantially identical, except as to date and denomination, except in the case of any Periodic Offering and except as may otherwise be provided by or pursuant to the Board Resolution referred to above or as set forth in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to such Board Resolution or in any such indenture supplemental hereto and any forms and terms of Securities to be issued from time to time may be completed and established from time to time prior to the issuance thereof by procedures described in such Board Resolution or supplemental indenture.

Unless otherwise expressly provided with respect to a series of Securities, the aggregate Principal amount of a series of Securities may be increased and additional Securities of such series may be issued up to the maximum aggregate Principal amount authorized with respect to such series as increased.

Section 2.04 *Denomination and Date of Securities; Payments of Interest.* The Securities of each series shall be issuable in denominations established as contemplated by Section 2.03 or, if not so established with respect to Securities of any series, in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof. The Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the Officer of the Company executing the same may determine, as evidenced by their execution thereof.

Unless otherwise specified with respect to a series of Securities, each Security shall be dated the date of its authentication. The Securities of each series shall bear interest, if any, from the date, and such interest shall be payable on the dates, established as contemplated by Section 2.03.

The person in whose name any Security of any series is registered at the close of business on any record date applicable to a particular series with respect to any interest payment date for such series shall be entitled to receive the interest, if any, payable on such interest payment date notwithstanding any transfer or exchange of such Security subsequent to the record date and prior to such interest payment date, except if and to the extent the Company shall default in the payment of the interest due on such interest payment date for such series, in which case the provisions of Section 2.13 shall apply. The term “**record date**” as used with respect to any interest payment date (except a date for payment of defaulted interest) for the Securities of any series shall mean the date specified as such in the terms of the Securities of such series established as contemplated by Section 2.03, or, if no such date is so established, the fifteenth day next preceding such interest payment date, whether or not such record date is a Business Day.

Section 2.05 *Registrar and Paying Agent; Agents Generally.* The Company shall maintain an office or agency where Securities may be presented for registration, registration of transfer or for exchange (the “**Registrar**”) and an office or agency where Securities may be presented for payment (the “**Paying Agent**”), which shall be the Corporate Trust Office (if the Trustee is the Registrar and the Paying Agent) or in the Borough of Manhattan, The City of New York (if the Company is the Registrar and the Paying Agent). The Company shall cause the

Registrar to keep a register of the Securities and of their registration, transfer and exchange (the “**Security Register**”). The Company may have one or more additional Paying Agents or transfer agents with respect to any series.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture and the Trust Indenture Act that relate to such Agent. The Company shall give prompt written notice to the Trustee of the name and address of any Agent and any change in the name or address of an Agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such. The Company may remove any Agent upon prior written notice to such Agent and the Trustee; *provided* that no such removal shall become effective until (i) the acceptance of an appointment by a successor Agent to such Agent as evidenced by an appropriate agency agreement entered into by the Company and such successor Agent and delivered to the Trustee or (ii) written notification to the Trustee that the Trustee shall serve as such Agent until the appointment of a successor Agent in accordance with clause (i) of this proviso. The Registrar or Paying Agent may resign at any time upon written notice to the Company and the Trustee. The Company or any Affiliate of the Company may act as Paying Agent or Registrar; *provided* that neither the Company nor an Affiliate of the Company shall act as Paying Agent in connection with the defeasance of the Securities or the discharge of this Indenture under Article 8.

The Company initially appoints the Trustee as Registrar and Paying Agent. In acting hereunder and in connection with the Securities, each of the Paying Agent and the Registrar shall act solely as agents of the Company, and will not thereby assume any obligations towards or relationship of agency or trust for or with any Holder. If, at any time, the Trustee is not the Registrar, the Registrar shall make available to the Trustee no less than ten days prior to each interest payment date and at such other times as the Trustee may reasonably request the names and addresses of the Holders as they appear in the Security Register.

Section 2.06 Paying Agent to Hold Money in Trust. Not later than 11:00 a.m. New York City time on each due date of any Principal or interest on any Securities, the Company shall deposit with the Paying Agent money in immediately available funds sufficient to pay such Principal or interest. The Company shall require each Paying Agent other than the Trustee to agree in writing that such Paying Agent shall hold in trust for the benefit of the Holders of such Securities or the Trustee all money held by the Paying Agent for the payment of Principal of and interest on such Securities and shall promptly notify the Trustee in writing of any default by the Company in making any such payment. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds disbursed, and the Trustee may at any time during the continuance of any payment default, upon written request to a Paying Agent, require such Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon doing so, the Paying Agent (if other than the Company or a Subsidiary of the Company) shall have no further liability for the money so paid over to the Trustee. If the Company or any Affiliate of the Company acts as Paying Agent, it will, on or before each due date of any Principal of or interest on any Securities, segregate and hold in a separate trust fund for the benefit of the Holders thereof a sum of money sufficient to pay such Principal or interest so becoming due until such sum of money shall be paid to such Holders or otherwise disposed of as provided in this Indenture, and will promptly notify the Trustee in writing of its action or failure to act as required by this Section.

Section 2.07 *Transfer and Exchange*. At the option of the Holder thereof, Securities of any series (other than a Registered Global Security, except as set forth below) may be exchanged for a Security or Securities of such series and tenor having authorized denominations and an equal aggregate Principal amount, upon surrender of such Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 2.05 and upon payment, if the Company shall so require, of the charges hereinafter provided. Whenever any Securities are so surrendered for exchange, the Company shall execute, and upon receipt of a Company Order, the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Upon surrender for registration of transfer of any Security of a series at the agency of the Company that shall be maintained for that purpose in accordance with Section 2.05 and upon payment, if the Company shall so require, of the charges hereinafter provided, the Company shall execute, and upon receipt of a Company Order, the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of like tenor and aggregate Principal amount.

All Securities presented for registration of transfer, exchange, redemption or payment shall be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder or his attorney duly authorized in writing.

The Company and/or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any exchange or registration of transfer of Securities. No service charge shall be made for any such transaction.

Notwithstanding any other provision of this Section 2.07, unless and until it is exchanged in whole or in part for Securities in definitive registered form, a Registered Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

If at any time the Depositary for any Registered Global Securities of any series notifies the Company that it is unwilling or unable to continue as Depositary for such Registered Global Securities or if at any time the Depositary for such Registered Global Securities shall no longer be eligible under applicable law, the Company shall appoint a successor Depositary eligible under applicable law with respect to such Registered Global Securities. If a successor Depositary eligible under applicable law for such Registered Global Securities is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and any deliverables required under this Article 2 and delivery of definitive Securities of such series and tenor, will authenticate and deliver Securities of such series and tenor, in any authorized denominations, in an aggregate Principal amount equal to the Principal amount of such Registered Global Securities, in exchange for such Registered Global Securities.

The Company may at any time and in its sole discretion and subject to the procedures of the Depository determine that any Registered Global Securities of any series shall no longer be maintained in global form. In such event the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication, any deliverables required under this Article 2 and delivery of definitive Securities of such series and tenor, will authenticate and deliver, definitive Securities of such series and tenor in any authorized denominations, in an aggregate Principal amount equal to the Principal amount of such Registered Global Securities, in exchange for such Registered Global Securities.

Any time the Securities of any series are not in the form of Registered Global Securities pursuant to the preceding two paragraphs, the Company agrees to supply the Trustee with a reasonable supply of certificated Securities without the legend required by Section 2.02 and the Trustee agrees to hold such Securities in safekeeping until authenticated and delivered pursuant to the terms of this Indenture.

If established by the Company pursuant to Section 2.03 with respect to any Registered Global Security, the Depository for such Registered Global Security may surrender such Registered Global Security in exchange in whole or in part for Securities of the same series and tenor in definitive registered form on such terms as are acceptable to the Company and such Depository. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge,

(a) to the Person specified by such Depository new Securities of the same series and tenor, of any authorized denominations as requested by such Person, in an aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Registered Global Security; and

(b) to such Depository a new Registered Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Registered Global Security and the aggregate principal amount of Securities authenticated and delivered pursuant to clause (a) above.

Securities issued in exchange for a Registered Global Security pursuant to this Section 2.07 shall be registered in such names and in such authorized denominations as the Depository for such Registered Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or an agent of the Company or the Trustee in writing. The Trustee or such agent shall deliver such Securities to or as directed by the Persons in writing in whose names such Securities are so registered.

All Securities issued upon any transfer or exchange of Securities shall be valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

Neither the Trustee, any agent of the Trustee nor any Agent shall have any responsibility or liability for any actions taken or not taken by the Depository or its participants or other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any

notice (including any notice of redemption or purchase) or the payment of any amount or delivery of any Securities (or other security or property) under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Securities shall be given or made only to or upon the order of the registered Holders (which shall be DTC or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

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 Depository participants 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 Depository.

The Company and the Registrar shall not be required (i) to issue, authenticate, register the transfer of or exchange Securities of any series for a period beginning at the opening of 15 Business Days before the mailing of a notice of redemption of such Securities to be redeemed and ending at the close of business on the day such notice of redemption is mailed or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part.

Section 2.08 *Replacement Securities*. If any mutilated Security is surrendered to the Trustee, the Company shall execute and upon receipt of a Company Order, the Trustee shall authenticate, upon receipt of order for authentication, and deliver, in exchange for such mutilated Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security and/or indemnity as may be required by either of them to save each of them and any agent of any of them harmless with an order of authentication delivered by the Company, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee upon receipt of a Company Order, shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security (without surrender thereof except in the case of a mutilated Security) if the

applicant for such payment shall furnish to the Company and the Trustee such security and/or indemnity as may be required by either of them to save each of them and any agent of any of them harmless, and in the case of destruction, loss or theft, evidence satisfactory to the Company and the Trustee and any agent of them of the destruction, loss or theft of such Security and the ownership thereof.

Upon the issuance of any new Security under this Section, the Company and/or the Trustee may require payment by the holder thereof of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security or in exchange for any mutilated Security, shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and any such new Security shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) any other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.09 *Outstanding Securities*. Securities outstanding at any time are all Securities that have been authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those paid pursuant to Section 2.08, those described in this Section 2.09 as not outstanding and those that have been defeased pursuant to Section 8.06.

If a Security is replaced pursuant to Section 2.08, it ceases to be outstanding unless and until the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a holder in due course.

If the Paying Agent (other than the Company or an Affiliate of the Company) holds on the maturity date or any redemption date or date for repurchase of the Securities money sufficient to pay Securities payable or to be redeemed or repurchased on that date, then on and after that date such Securities cease to be outstanding and interest on them shall cease to accrue.

A Security does not cease to be outstanding because the Company or one of its Affiliates holds such Security, *provided, however*, that, in determining whether the Holders of the requisite principal amount of the outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in conclusively relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities as to which a Responsible Officer of the Trustee has received written notice to be so owned shall be so disregarded. Any Securities so owned which are pledged by the Company, or by any Affiliate of the Company, as security for loans or other obligations, otherwise than to another such Affiliate of the Company, shall be deemed to be outstanding, if the pledgee is entitled pursuant to the

terms of its pledge agreement and is free to exercise in its or his discretion the right to vote such securities, uncontrolled by the Company or by any such Affiliate.

Section 2.10 *Temporary Securities*. Until definitive Securities of any series are ready for delivery, the Company may prepare and, upon receipt of a Company Order, the Trustee shall authenticate temporary Securities of such series. Temporary Securities of any series shall be substantially in the form of definitive Securities of such series but may have insertions, substitutions, omissions and other variations determined to be appropriate by the Officer executing the temporary Securities, as evidenced by his or her execution of such temporary Securities. If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of any series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series and tenor upon surrender of such temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 4.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee, upon receipt of a Company Order, shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series and tenor and authorized denominations. Until so exchanged, the temporary Securities of any series shall be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 2.11 *Cancellation*. The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Registrar, any transfer agent and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee shall cancel and dispose of in accordance with its retention policy then in effect all Securities surrendered for transfer, exchange, payment or cancellation and shall, upon written request of the Company, deliver a certificate of disposition to the Company. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee for cancellation.

Section 2.12 *CUSIP Numbers*. The Company in issuing the Securities may use "CUSIP" numbers, and the Trustee shall use CUSIP numbers in notices of redemption or exchange as a convenience to Holders and no representation shall be made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or exchange. The Company will promptly notify the Trustee in writing of any change in the CUSIP numbers.

Section 2.13 *Defaulted Interest*. If the Company defaults in a payment of interest on the Securities, it shall pay, or shall deposit with the Paying Agent money in immediately available funds sufficient to pay, the defaulted interest plus (to the extent lawful) any interest payable on the defaulted interest (as may be specified in the terms thereof, established pursuant to Section 2.03) to the Persons who are Holders on a subsequent special record date, which shall mean the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, whether or not such day is a Business Day. At least 15 days before such special record

date, the Company shall deliver to each Holder of such Securities and to the Trustee a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

ARTICLE 3 REDEMPTION

Section 3.01 *Applicability of Article*. The provisions of this Article 3 shall be applicable to the Securities of any series which are redeemable before their maturity or to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 2.03 for Securities of such series.

Section 3.02 *Notice of Redemption; Partial Redemptions*. Notice of redemption to the Holders of Securities of any series to be redeemed as a whole or in part at the option of the Company shall be given by mailing notice of such redemption by first class mail, postage prepaid, or by electronic transmission in the case of Securities held in book-entry form, at least 10 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities of such series at their last addresses as they shall appear upon the registry books. Any notice delivered in the manner herein provided shall be conclusively presumed to have been duly given and is effective, whether or not the Holder receives the notice and any defect in notice shall not affect the validity of the notices properly given. Failure to give notice, or any defect in the notice to the Holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security of such series.

The notice of redemption to each such Holder shall specify the name of the Securities including the series and issue date, the principal amount of each Security of such series held by such Holder to be redeemed, the CUSIP numbers of the Securities to be redeemed, the interest rate of the Securities to be redeemed, the maturity date of the Securities to be redeemed, the certificate number of the Securities to be redeemed (if applicable), the date fixed for redemption, whether the redemption is subject to any conditions precedent (noting that, in the Company's discretion, the date of redemption may be delayed until such time as any or all such conditions shall be satisfied or waived, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption or by the date of redemption as so delayed), the redemption price, or if not then ascertainable, the manner of calculation thereof (provided that the actual redemption price, calculated as described in the notice of redemption, will be set forth in an Officer's Certificate delivered to the Trustee on or prior to the redemption date), the place or places of payment, that payment will be made upon presentation and surrender of such Securities, that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. In case any Security of a series is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such series and tenor in principal amount equal to the unredeemed portion thereof will be issued.

Any notice of redemption of Securities of any series to be redeemed shall be given by the Company or, at the Company's written request to the Trustee, at least 3 Business Days prior to the notice date (or such shorter period as shall be acceptable to the Trustee), by the Trustee in the name and at the expense of the Company.

Once notice of redemption is delivered in accordance with Section 3.02 hereof, Securities called for redemption become irrevocably due and payable on the redemption date at the redemption price; *provided* that, redemptions and notices of redemption may, at the Company's discretion, be conditioned on one or more conditions precedent. The date of redemption may, at the Company's discretion, be delayed until such time as any or all such conditions shall be satisfied or waived. Such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption or by the date of redemption as so delayed. To effect a delay in the date of redemption or a rescission of redemption, the Company shall (i) furnish to the Trustee an Officer's Certificate identifying the redemption and notice of redemption being delayed or rescinded, as applicable, and setting forth the conditions precedent that were not satisfied or waived and (ii) mail by first class mail or deliver electronically, or cause to be mailed by first class mail or delivered electronically, a notice of delay of redemption or a notice of rescission of redemption, as applicable, to each Holder whose Securities were to have been redeemed.

If given in the manner provided for in Section 3.02, the notice of redemption shall be conclusively presumed to have been given whether or not a Holder receives such notice. Failure to give timely notice or any defect in the notice shall not affect the validity of the redemption.

On or before 11:00 a.m. New York City time on the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 2.06) an amount of money sufficient to redeem on the redemption date all the Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. If all of the outstanding Securities of a series are to be redeemed, the Company will deliver to the Trustee at least 10 days prior to the redemption date (or such shorter period as shall be acceptable to the Trustee) an Officer's Certificate stating that all such Securities are to be redeemed. If less than all the outstanding Securities of a series are to be redeemed, the Company will deliver to the Trustee at least 10 days prior to the redemption date (or such shorter period as shall be acceptable to the Trustee) an Officer's Certificate stating the aggregate principal amount of such Securities to be redeemed and requesting that the Trustee select the Securities to be redeemed, which the Trustee may do subject to customary procedures and guidelines of the Depository or in case of definitive Securities, on a pro rata basis or by lot (subject to adjustments to satisfy the authorized denominations). In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall deliver to the Trustee, prior to the giving of any notice of redemption to Holders pursuant to this Section, an Officer's Certificate evidencing compliance with such restriction or condition.

Securities may be redeemed in part in principal amounts equal to authorized denominations for Securities of such series. The Trustee shall promptly notify the Company in writing of the Securities of such series selected for redemption and, in the case of any Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

Section 3.03 *Payment of Securities Called for Redemption.* If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after such date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to such date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue, and except as provided in Sections 7.12 and 8.03, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a place of payment specified in said notice, said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; *provided* that payment of interest becoming due on or prior to the date fixed for redemption shall be payable in the case of Securities, to the Holders of such Securities registered as such on the relevant record date subject to the terms and provisions of Sections 2.04 and 2.13 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount Security) borne by such Security.

Upon presentation of any Security of any series redeemed in part only, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of such series and tenor, of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

ARTICLE 4 COVENANTS

Section 4.01 *Payment of Securities.* The Company shall pay the Principal (and any premium thereon) of and interest on the Securities by 11:00 a.m. New York City time on the dates and in the manner provided in the Securities and this Indenture. The interest on Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only to the Holders thereof (subject to Section 2.04).

Notwithstanding any provisions of this Indenture to the contrary, if the Company and a Holder of any Security so agree, payments of interest on, and any portion of the Principal of, such Holder's Security (other than interest payable at maturity or on any redemption or repayment date or the final payment of Principal on such Security) shall be made by the Paying Agent, upon receipt from the Company of immediately available funds by 11:00 a.m., New York City time on the date of payment (or such other time as may be agreed to between the Company and the Paying Agent), directly to the Holder of such Security (by Federal funds wire transfer or otherwise) if the Holder has delivered written instructions to the Trustee 15 days prior (or such other time frame acceptable to the Trustee) to such payment date requesting that such payment will be so made and designating the bank account to which such payments shall be so made and in the case of payments of Principal, surrenders the same to the Trustee in exchange for a Security or Securities aggregating the same principal amount as the unredeemed principal amount of the Securities surrendered. The Trustee shall be entitled to conclusively rely on the last instruction delivered by the Holder pursuant to this Section 4.01 unless a new instruction is delivered 15 days (or such shorter time frame acceptable to the Trustees) prior to a payment date. The Company will indemnify and hold each of the Trustee and any Paying Agent harmless against any loss, liability or expense (including attorneys' fees and expenses) resulting from any act or omission to act on the part of the Company or any such Holder in connection with any such agreement or from making any payment in accordance with any such agreement.

The Company shall pay interest on overdue Principal, and interest on overdue installments of interest, to the extent lawful, at the rate per annum specified in the Securities.

Notwithstanding anything to the contrary contained in this Indenture, the Company or the Paying Agent may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America or other domestic or foreign taxing authorities from any payments hereunder.

Section 4.02 *Maintenance of Office or Agency*. The Company will maintain in the United States of America, an office or agency where Securities may be surrendered for registration of transfer or exchange or for presentation for payment and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company hereby initially designates the Corporate Trust Office as such office or agency of the Company. The Company will give prompt 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 set forth in Section 10.02; *provided, however*, no service of legal process in connection with the transactions contemplated hereunder may be made at the Corporate Trust Office.

The Company may also from time to time designate one or more other offices or agencies where the Securities of any series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America for such purposes. The Company will give prompt

written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 4.03 *Corporate Existence*. Except as otherwise permitted by Article 5 hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence. This Section 4.03 shall not prohibit or restrict the Company from converting into a different form of legal entity.

Section 4.04 *Certificate to Trustee*. So long as Securities are outstanding, the Company will furnish to the Trustee annually, on or before a date not more than 120 days after the end of its fiscal year (which, on the date hereof, is a calendar year ending December 31st), commencing with the first fiscal year after which Securities are first issued, a brief certificate (which need not contain the statements required by Section 10.04) from its principal executive officer, principal financial officer, principal accounting officer, any vice president or the treasurer or any assistant treasurer as to his or her knowledge of the compliance of the Company with all conditions and covenants under this Indenture (such compliance to be determined without regard to any period of grace or requirement of notice provided under this Indenture) and, in the event of any Default, specifying such Default and the nature and status thereof of which such person may have knowledge. The Company shall deliver to the Trustee, as soon as possible and in any event within 30 days after the Company becomes aware of the occurrence of any Default or Event of Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the actions which the Company is taking or proposes to take with respect thereto.

ARTICLE 5 SUCCESSOR CORPORATION

Section 5.01 *Merger, Consolidation or Sale of Assets*. The Company may consolidate or merge with or into, or transfer or lease all or substantially all its properties or assets to, in one transaction or a series of related transactions, any other Person, *provided* that:

(a) The Company shall be the surviving Person, or the resulting, surviving or transferee Person (the "**Successor**") shall be an entity organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and the Successor (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Company under the Securities and this Indenture;

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

(c) the Company (or, if applicable, the Successor) shall have delivered, or cause to be delivered, to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, transfer or lease complies with the requirements of this Indenture and any supplemental indenture thereto, and an Opinion of Counsel stating that the Securities, the Indenture and any supplemental indenture thereto constitute valid and binding obligations of the Company (or, if applicable, the Successor), subject to customary exceptions.

Section 5.02 *Successor Substituted*. Upon any consolidation or merger, or any sale, conveyance, transfer, lease or other disposition of all or substantially all of the property and assets of the Company in accordance with Section 5.01 of this Indenture, the Successor may exercise every right and power of the Company under this Indenture with the same effect as if such Successor had been named as the Company herein and thereafter the predecessor Person, except in the case of a lease, shall be relieved of all obligations and covenants under the Securities and this Indenture.

ARTICLE 6
DEFAULT AND REMEDIES

Section 6.01 *Events of Default*. Each of the following is an “**Event of Default**” with respect to each series of Securities:

- (a) the Company defaults in the payment of interest on any Security of such series when the same becomes due and payable, and such default continues for a period of 30 consecutive days;
- (b) the Company defaults in the payment of the Principal of, or premium, if any, on, any Security of such series when the same becomes due and payable at maturity, upon acceleration, redemption, or otherwise;
- (c) a failure by the Company to observe or perform any other covenant or agreement in such series of Securities or this Indenture and the continuance of such failure for 90 days after receipt by the Company of notice of such failure, specifying such failure and requiring the same to be remedied, from the Trustee or Holders of at least 25% of the Principal amount of such series of Securities outstanding;
- (d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company, or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days;
- (e) the Company (i) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (ii) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company, for all or substantially all of the property and assets of the Company, or (iii) effects any general assignment for the benefit of creditors; or
- (f) any other Event of Default established pursuant to Section 2.03 with respect to the Securities of such series occurs.

No Event of Default with respect to a single series of Securities issued hereunder (and under or pursuant to any supplemental indenture, Officer’s Certificate or Board Resolution) specific to such series shall constitute an Event of Default with respect to any other series of

Securities unless otherwise provided in this Indenture or any supplemental indenture, Officer's Certificate or Board Resolution with respect to any other series of Securities.

Section 6.02 *Acceleration.* If an Event of Default other than as described in clauses (d) or (e) of Section 6.01 with respect to the Securities of any series then outstanding occurs and is continuing, then, either the Trustee or the Holders of at least 25% in the Principal amount (or, if the Securities are Original Issue Discount Securities, such portion of the Principal as may be specified in the terms thereof established pursuant to Section 2.03) of the then outstanding Securities of such series may declare each Security of that series due and payable immediately without further action or notice. If an Event of Default as described in clauses (d) or (e) of Section 6.01 occurs with respect to the Company, the Securities of such series will immediately become due and payable without any declaration or other act on the part of the Trustee or the Holders of the Securities of such series and if not already the Paying Agent, the Trustee shall immediately and automatically become the Paying Agent. The Holders of a majority in Principal amount of Securities of such series may rescind any acceleration and its consequences (other than with respect to an Event of Default as described in clauses (d) or (e) of Section 6.01) if (1) the rescission would not conflict with any judgment or decree, (2) the Company has paid or deposited with the Trustee a sum sufficient to pay in the currency in which the Securities of that series are payable (A) all overdue interest, if any, on all outstanding Securities of that series, (B) all unpaid Principal of and premium, if any, on any outstanding Securities of that series which have become due otherwise than by such a declaration of acceleration, and interest on such unpaid Principal or premium at the rate or rates prescribed therefor in such Securities or, if no such rate or rates are so prescribed, at the rate borne by the Securities during the period of such default, (C) the compensation due and outstanding to the Trustee and the Agents under this Indenture and all outstanding expenses, disbursements and advances of the Trustee and the Agents and (D) to the extent that payment of such interest is enforceable under applicable law, interest upon overdue interest to that date of such payment or deposit at the rate or rates prescribed therefor in such Securities, or, if no such rate or rates are so prescribed, at the rate borne by the Securities during the period of such default and (3) all existing Events of Default (other than for nonpayment of Principal, premium, if any, or interest that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies.* If a payment Default or an Event of Default with respect to the Securities of any series occurs and is continuing, the Trustee may pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of Principal of and interest on the Securities of such series or to enforce the performance of any provision of the Securities of such series or this Indenture.

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.

Section 6.04 *Waiver of Past Defaults.* The Holders of a majority in aggregate Principal amount of the then outstanding Securities of any series may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee under the Indenture. The Holders of a majority in aggregate Principal amount of the then outstanding Securities of any series also will be entitled to waive past defaults regarding such Securities, except for a default in payment of Principal of or premium, if any, or interest on such Securities

or in respect of a covenant or provision that cannot be modified or amended hereunder without the consent of the Holder of each such Security.

Section 6.05 *Control by Majority*. The Holders of a majority in aggregate Principal amount of the then outstanding Securities of any series may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee. The Holders of a majority in aggregate Principal amount of the then outstanding Securities of any series also will be entitled to waive past defaults regarding such Securities, except for a default in payment of Principal of or premium, if any, or interest on such Securities or in respect of a covenant or provision that cannot be modified or amended hereunder without the consent of the Holder of each such Security. The Trustee generally may not be ordered or directed by any of the Holders of Securities to take any action unless one or more of the Holders shall have offered to the Trustee indemnity and/or security satisfactory to it prior to taking such actions, and *provided further* than, the Trustee may refuse to follow any written direction of the Holders that conflicts with law or the Indenture, is unduly prejudicial to the rights of other Holders (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders), or would involve the Trustee in personal liability (*provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction).

Section 6.06 *Limitation on Suits*. No Holder of any Security of any series may institute any proceeding, judicial or otherwise, with respect to this Indenture or the Securities of any series, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

- (a) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Securities of such series;
- (b) the Holders of at least 25% in aggregate Principal amount of outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such Holder or Holders have offered to the Trustee indemnity and/or security satisfactory to the Trustee against any costs, liabilities or expenses to be incurred in compliance with such request;
- (d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity and/or security has failed to institute any such proceeding; and
- (e) during such 60-day period, the Holders of a majority in aggregate Principal amount of the outstanding Securities of such series have not given the Trustee a direction that is inconsistent with such written request.

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

Section 6.07 *[Reserved]*.

Section 6.08 *Collection Suit by Trustee*. If an Event of Default with respect to the Securities of any series in payment of Principal or interest specified in clause (a) or (b) of Section 6.01 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 (or such portion thereof as specified in the terms established pursuant to Section 2.03 of Original Issue Discount Securities) of Principal of, and accrued interest remaining unpaid on, together with interest on overdue Principal of, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest on, the Securities of such series, in each case at the rate or Yield to Maturity (in the case of Original Issue Discount Securities) specified in such Securities, and such further amount as shall be sufficient to cover all amounts owing the Trustee hereunder.

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 amounts due the Trustee hereunder) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any moneys, securities or other property payable or deliverable upon conversion or exchange of the Securities or upon any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it hereunder. Nothing herein contained shall be deemed to empower the Trustee to authorize or consent to, or accept or adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Application of Proceeds*. Any moneys collected by the Trustee pursuant to this Article in respect of the Securities of any series shall be applied in the following order at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of Principal or interest, upon presentation of the several Securities in respect of which moneys have been collected and noting thereon the payment, or issuing Securities of such series and tenor in reduced principal amounts in exchange for the presented Securities of such series and tenor if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee (acting in any capacity hereunder) and any Agent applicable to the Securities of such series in respect of which moneys have been collected;

SECOND: To Holders for amounts due and unpaid on the Securities of such series for principal of, or premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities of such series for principal of, or premium, if any, and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company.

Section 6.11 *Restoration of Rights and Remedies*. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then, and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored to their former positions hereunder and thereafter all rights and remedies of the Company, the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.12 *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, in either case in respect to the Securities of any series, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by a Holder pursuant to Section 6.07, a suit instituted by the Trustee or a suit by Holders of more than 10% in Principal amount of the outstanding Securities of such series.

Section 6.13 *Rights and Remedies Cumulative*. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities in Section 2.08, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.14 *Delay or Omission not Waiver*. No delay or omission of the Trustee, any Agent or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

ARTICLE 7 TRUSTEE

Section 7.01 *General*. The duties and responsibilities of the Trustee shall be as explicitly provided by the Trust Indenture Act and as set forth herein.

Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, unless it receives indemnity and/or security satisfactory to it against any loss, liability or expense. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article 7. The Trustee, prior to the occurrence of an Event of Default of which a

Responsible Officer of the Trustee has actual knowledge and after the curing of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee.

Section 7.02 *Certain Rights of Trustee*. Subject to Trust Indenture Act Sections 315(a) through (d):

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, affidavit, certificate, Officer's Certificate, Opinion of Counsel (or both), statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person or persons. The Trustee need not investigate any fact or matter stated in the document, but the Trustee 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;

(b) before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel, which shall conform to Section 10.04 and shall cover such other matters as the Trustee may reasonably request. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion. Subject to Sections 7.01 and 7.02, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such certificate, in the absence of gross negligence or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof;

(c) the Trustee may act through its attorneys and agents and shall not be responsible for the acts or omissions of any agent or attorney appointed with due care;

(d) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(e) the Trustee shall not be liable for any action taken or omitted by it in good faith at the direction of the Holders of not less than a majority in principal amount of the Securities as to the time, method, and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by the documents;

(f) any action taken, or omitted to be taken, by the Trustee in good faith upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the Holder of any Security shall be conclusive and binding upon all future Holders of Securities and upon Securities executed and delivered in exchange therefore or in place thereof;

(g) the Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the direction of the Holders in accordance with Section 6.05 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(h) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Trustee shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Trustee in accordance with the advice of counsel or other professionals retained or consulted by the Trustee;

(i) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all Events of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in the Indenture and shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, Officer's Certificate, Opinion of Counsel, Board Resolution, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing so to do by the Holders of not less than a majority in aggregate Principal amount of the Securities of all series affected then outstanding; *provided* that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not assured to the Trustee by the security and/or indemnity afforded to it by the terms of this Indenture, the Trustee may require additional indemnity and/or security satisfactory to it against such expenses or liabilities as a condition to proceeding or may refuse to take the requested action;

(j) in no event shall the Trustee be responsible or liable for special, indirect, punitive, 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 Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof;

(l) 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, the Agents and each agent, custodian and other Person employed to act hereunder or in connection herewith by the Trustee or any Agent;

- (m) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;
- (n) the Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of Officers authorized to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;
- (o) during the existence of any Event of Default (which has not been cured), the Trustee shall exercise the rights, duties and powers vested in it with 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 their own affairs;
- (p) the Trustee shall not be answerable or liable for any acts or omissions, except for such losses, damages or expenses which have been adjudicated by a court of competent jurisdiction in a final non-appealable order to have directly resulted from the Trustee's gross negligence or willful misconduct;
- (q) the Trustee shall not be liable for an error of judgment made in good faith, unless it has been proven that the Trustee was negligent in ascertaining the pertinent facts;
- (r) the Trustee undertakes to perform only such duties as are specifically set forth in this Indenture, and no implied duties shall be read into the Indenture against the Trustee;
- (s) the Trustee has no liability or responsibility for the action or inaction of any Depositary or Agent (unless it is acting as such Agent);
- (t) the Trustee shall not be required to take notice or be deemed to have notice of any Event of Default, except failure to receive any of the payments required to be made to the Trustee under Section 6.01(a) and (b) of this Indenture, unless the Company or Holders of at least 25% in aggregate principal amount of the Securities shall deliver a written notice of such Event of Default to a Responsible Officer of the Trustee at its Corporate Trust Office and such notice references the Company, this Indenture and the Securities, and in the absence of such notice the Trustee may conclusively assume no default exists
- (u) under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Securities;
- (v) the Trustee shall have no obligation to undertake any calculation hereunder or have any liability for any calculation performed in connection herewith or the transactions contemplated hereunder.
- (w) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, unless such Holders shall have offered to the Trustee security and/or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request, order or direction;

(x) except as set forth above, no provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct;

(y) the permissive rights of the Trustee enumerated herein shall not be construed as duties of the Trustee and, with respect to such permissive rights, the Trustee shall not be answerable other than for its gross negligence or willful misconduct; and

(z) delivery of any reports, information and documents to the Trustee under this Indenture is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

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 the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311.

Section 7.04 *Trustee's Disclaimer.* The recitals contained herein and in the Securities (except the Trustee's certificate of authentication) shall be taken as statements of the Company and not of the Trustee and the Trustee assumes no responsibility for the correctness of the same. Neither the Trustee nor any of its agents (a) makes any representation as to the validity or adequacy of this Indenture or the Securities, (b) shall be accountable for the Company's use or application of the proceeds from the Securities or for any funds received and disbursed in accordance with the Indenture, (c) shall be responsible for the validity of the execution by the Company of the Indenture or any supplemental indenture thereto, and (d) shall be responsible or liable with respect to any information, statement or recital herein, in the prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to any of the Securities.

Section 7.05 *Notice of Default.* The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default, except failure to receive any of the payments required to be made to the Trustee under Section 6.01(a) and (b) of this Indenture, unless the Company or the Holders of at least 25% in aggregate principal amount of the Securities shall deliver a written notice of such Event of Default to a Responsible Officer of the Trustee at its Corporate Trust Office and such notice references the Company, this Indenture and the Securities, and in the absence of such notice the Trustee may conclusively assume no Default exists. If any Default with respect to the Securities of any series occurs and is continuing and if the Trustee receives written notice of such Default from the Company or Holders of at least 25% in aggregate principal amount of the Securities (along with any indemnity or security requested by the Trustee), the Trustee shall give or cause to be given to each Holder of Securities of such series notice of such Default within 90 days after it occurs if any Securities of such series are then outstanding, by first class mail, postage prepaid, at such addresses as were so furnished to the Trustee or via electronic delivery, unless such Default shall have been cured or waived before the delivery of such notice; *provided, however,* that, except in the case of a Default in the

payment of the Principal of or interest on any Security, the Trustee shall be protected in withholding such notice if the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 7.06 *Reports by Trustee to Holders.* The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each July 15 following the date of the first issuance of Securities hereunder, deliver to Holders a brief report, dated as of such July 15, which complies with the provisions of such Section 313(a).

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee in writing when any Securities are listed on any stock exchange and of any delisting thereof.

Section 7.07 *Compensation and Indemnity.* The Company shall pay to the Trustee and each Agent such compensation for its services as agreed in writing from time to time among the parties. The compensation of the Trustee shall not be limited by any law on compensation of a Trustee of an express trust. The Company shall reimburse the Trustee and each Agent and any predecessor Trustee upon request for all reasonable out-of-pocket expenses, disbursements, expenditures and advances incurred or made by the Trustee, any Agent or such predecessor Trustee. Such expenses shall include the compensation and expenses of the Trustee's, any Agent's or such predecessor Trustee's agents, counsel, consultants, other experts employed by it in its exercise and performance of its powers and duties as Trustee or Agent, as the case may be, and other persons not regularly in their employ.

The Company shall indemnify and defend the Trustee (acting in any capacity hereunder) and its officers, directors, employees, agents, successors and assigns and any predecessor Trustee for, and hold them harmless from and against, any and all loss, damage, claim, cost, liability or expense, including taxes (other than income taxes), suffered or incurred by them (without gross negligence or willful misconduct on the part of the Trustee as determined by a court of competent jurisdiction in a final non-appealable order) arising out of or in connection with the acceptance or administration of this Indenture and the Securities or the issuance of the Securities or of series thereof or the trusts hereunder and the performance of duties under this Indenture and the Securities, including the costs and expenses of defending themselves against or investigating any claim, charge, complaint, allegation, assertion or demand of any nature (whether asserted by the Company, a Holder or any other Person) or liability and of complying with any process served upon them or any of their officers in connection with the exercise or performance of any of their powers or duties under this Indenture and the Securities. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity of which it has received written notice. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall provide reasonable cooperation in such defense. The Trustee may have separate counsel, and the Company shall pay the reasonable fees and expenses of such counsel for the Trustee. If the Company has assumed the defense of the Trustee, the Company need not pay for any settlement

made without its consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any settlement that affects the Trustee may not be entered into without the consent of the Trustee, unless the Trustee is given a full and unconditional release from liability with respect to the claims covered thereby and such settlement does not include a statement or admission of fault, culpability or failure to act by or on behalf of the Trustee.

To secure the Company's payment obligations hereunder, the Trustee shall have a first lien on the trust estate with right of payment prior to payment on account of interest, principal and premium, if any, on the Securities for all administrative expenses, advances, disbursements, and counsel fees incurred or made in and about execution of the trusts and performance of the duties of the Trustee and for the cost and expense incurred in defending against any liability (unless such liability is adjudicated by a court of competent jurisdiction in a final non-appealable order to have resulted from the negligence or willful misconduct of the Trustee).

No provision of the Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties thereunder, or in the exercise of any of its rights or powers.

The obligations of the Company under this Section to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture or the rejection or termination of this Indenture under bankruptcy law or the removal or resignation of the Trustee. Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities, and the Securities are hereby subordinated to such senior claim. Without prejudice to any other rights available to the Trustee under applicable law, if the Trustee renders services and incurs expenses following an Event of Default under Section 6.01(d) or Section 6.01(e) hereof, the parties hereto and the holders by their acceptance of the Securities hereby agree that such expenses are intended to constitute expenses of administration under any bankruptcy law.

Section 7.08 *Replacement of Trustee.* A resignation or removal of the Trustee as Trustee with respect to the Securities of any series and appointment of a successor Trustee as Trustee with respect to the Securities of any series shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign as Trustee with respect to the Securities of any series at any time by giving 30 days' advance written notice to the Company. The Holders of a majority in Principal amount of the outstanding Securities of any series may remove the Trustee as Trustee with respect to the Securities of such series by so notifying the Trustee in writing and may appoint a successor Trustee with respect thereto with the consent of the Company. The Company may remove the Trustee as Trustee with respect to the Securities of any series if: (i) the Trustee is no longer eligible under Section 7.11 of this Indenture; (ii) the Trustee is adjudged a bankrupt or insolvent; (iii) a receiver or other public officer takes charge of the Trustee or its property; or (iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed as Trustee with respect to the Securities of any series, or if a vacancy exists in the office of Trustee with respect to the Securities of any series for any reason, the Company shall promptly appoint a successor Trustee with respect thereto. Within one year after the successor Trustee takes office, the Holders of a majority in Principal amount of the outstanding Securities of such series may appoint a successor Trustee in respect of such Securities to replace the successor Trustee appointed by the Company. If the successor Trustee with respect to the Securities of any series does not deliver its written acceptance required by Section 7.09 within 30 days after the retiring Trustee gives notice of its resignation or is removed, the retiring Trustee, the Trustee, the Company or the Holders of a majority in Principal amount of the outstanding Securities of such series may, at the expense of the Company, petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee with respect thereto or the Trustee may, at the expense of the Company, appoint a successor (in the case of resignation). The resigning or removed Trustee shall not have any liability or responsibility for the action or inaction of any successor Trustee.

The Company shall give notice of any resignation and any removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee in respect of the Securities of such series to all Holders of Securities of such series. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Notwithstanding replacement of the Trustee with respect to the Securities of any series pursuant to this Section 7.08 and Section 7.09, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

Section 7.09 Acceptance of Appointment by Successor. In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of any amounts owed hereunder and subject to the lien provided for in Section 7.07, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those

series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article and qualified under Section 310(b) of the Trust Indenture Act.

Section 7.10 *Successor Trustee by Merger, Etc.* If the Trustee consolidates with, merges, consolidates or converts into, or transfers all or part of its corporate trust business to, another corporation or national banking association, the resulting, surviving or transferee corporation or national banking association without any further act shall be the successor Trustee with the same effect as if the successor Trustee had been named as the Trustee herein and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 7.11 *Eligibility.* This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Section 310(a). The Trustee shall have a combined capital and surplus of at least \$25,000,000 as set forth in its most recent published annual report of condition.

Section 7.12 *Money Held in Trust.* The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law and except for money held in trust under Article 8 of this Indenture.

ARTICLE 8

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance.* Except as otherwise provided with respect to such series pursuant to Section 2.03, the Company, at the

Company's option and at any time, may elect to have Section 8.06 or Section 8.07 of this Indenture applied to all of the then outstanding Securities of any series upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Satisfaction and Discharge of Indenture*. Except as otherwise provided with respect to such series pursuant to Section 2.03, this Indenture will be discharged and will cease to be of further effect with respect to the Securities of a particular series, when (a) either (i) all Securities of such series that have been authenticated and, except for lost, stolen or destroyed Securities of such series that have been replaced or paid and Securities of such series for whose payment money has been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or (ii) all Securities of such series that have not been delivered to the Trustee for cancellation (1) have become due and payable, (2) will become due and payable at their stated maturity within one year or (3) if redeemable in accordance with the terms of such Securities, 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 Company's name, and at the Company's expense; (b)(i) the Company has irrevocably deposited or caused to be deposited with the Trustee U.S. legal tender, U.S. Government Obligations or a combination thereof as may be provided with respect to the Securities, in the case of U.S. Government Obligations or combination of U.S. legal tender and U.S. Government Obligations, in amounts that will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants (with a copy to the Trustee), without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness (including all Principal, premium, if any, and interest) on such series of Securities not delivered to the Trustee for cancellation (in the case of Securities of such series that have become due and payable on or prior to the date of such deposit) or to the stated maturity or redemption date, as the case may be; (ii) the Company has paid or caused to be paid all other sums payable under this Indenture in respect of the Securities of such series; and (iii) the Company has delivered irrevocable instructions to the Trustee under the Indenture to apply the deposited amounts toward the payment of the Securities at maturity or on the redemption date, as the case may be, and (c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent in connection with such satisfaction and discharge have been satisfied.

Section 8.03 *Application by Trustee of Funds Deposited for Payment of Securities*. Subject to Section 8.05, all moneys (including U.S. Government Obligations and the proceeds thereof) deposited with the Trustee pursuant to Section 8.02, 8.06 or 8.07 shall be held in trust and applied by it to the payment, either directly or through any Paying Agent to the Holders of the particular Securities of such series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for Principal and interest; but such money need not be segregated from other funds except to the extent required by law.

Section 8.04 *Repayment of Moneys Held by Paying Agent*. In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series, all moneys then held by any Paying Agent under the provisions of this Indenture with respect to such series

of Securities shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

Section 8.05 *Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years.* Any moneys deposited with or paid to the Trustee or any Paying Agent for the payment of the Principal of or interest on any Security of any series and not applied but remaining unclaimed for two years after the date upon which such Principal or interest shall have become due and payable, shall, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee for such series or such Paying Agent, and the Holder of the Security of such series shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Company for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any Paying Agent with respect to such moneys shall thereupon cease.

Section 8.06 *Legal Defeasance of Indenture.* The Company shall be deemed to have paid and shall be discharged from any and all obligations in respect of the Securities of any series, on the 91st day after the deposit referred to in Section 8.08(i) has been made, and the provisions of this Indenture shall no longer be in effect with respect to the Securities of such series (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except as to: (a) rights of registration of transfer and exchange, and the Company's right of optional redemption, if any, (b) rights of Holders to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration) and remaining rights of Holders to receive mandatory sinking fund payments, if any, (c) the issuance of temporary Securities or the substitution of mutilated, defaced, destroyed, lost or stolen Securities, (d) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (e) the rights of Holders of such series as beneficiaries hereof with respect to the property deposited with the Trustee payable to all or any of them ("**Legal Defeasance**"); *provided* that the conditions in Section 8.08 below shall have been satisfied.

Section 8.07 *Defeasance of Certain Obligations.* The Company may omit to comply with any term, provision or condition set forth in, and this Indenture will no longer be in effect with respect to, any covenant established pursuant to clauses (q) or (r) of Section 2.03, and clauses (c) (with respect to any covenants established pursuant to Section 2.03(q) or (r)) and (f) of Section 6.01 shall be deemed not to be an Event of Default with respect to Securities of any series ("**Covenant Defeasance**"); *provided* that the conditions in Section 8.08 below shall have been satisfied.

Section 8.08 *Conditions to Legal or Covenant Defeasance.* The following shall be the conditions to the application of either Section 8.06 or 8.07 hereof to any Securities or any series of Securities, as the case may be, to be defeased:

(i) the Company shall irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Securities as to which Legal Defeasance or Covenant Defeasance will occur, money, U.S. Government Obligations or a combination thereof, as may be provided with respect to such Securities, in the case of U.S. Government

Obligations or a combination of U.S. legal tender and U.S. Government Obligations, in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants (with a copy to the Trustee), to pay the principal of, premium, if any, and interest on such Securities on the stated date for payment thereof or on the redemption date of such principal or installment of principal of, premium, if any, or interest on such Securities, and the Trustee, for the benefit of the Holders of such Securities, has a valid and perfected security interest in obligations so deposited;

(ii) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel confirming that: (A) the Company has received from, or there has been published by the Internal Revenue Service, a ruling or (B) since the date of this Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of such Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(iii) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel confirming that the Holders of such Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(iv) no Default or Event of Default with respect to such Securities shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and no Default or Event of Default under Section 6.01(d) or Section 6.01(e) occurs, at any time in the period ending on the 91st day after the date of deposit; and

(v) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent provided for in, in the case of the Officer's Certificate, (i) through (v) and, in the case of the Opinion of Counsel, clauses (i), (ii), (iii) and (v) of this paragraph have been complied with.

If the amount deposited with the trustee to effect a Covenant Defeasance is insufficient to pay the principal of, premium, if any, and interest on, the applicable series of debt securities when due, then the Company's obligations under the Indenture and such series of Securities will be revived, and such Covenant Defeasance will be deemed not to have occurred.

ARTICLE 9
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 any series without notice to or the consent of any Holder:

- (a) to cure any ambiguity, omission, defect or inconsistency in this Indenture; *provided* that such amendments or supplements shall not adversely affect the interests of the Holders in any material respect;
- (b) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act;
- (c) to evidence and provide for the acceptance of appointment hereunder with respect to the Securities of any or all series by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 7.09;
- (d) to establish the form or forms or terms of Securities of any series as permitted by Section 2.03;
- (e) to add covenants for the benefit of the Holders of the Securities of any series or to surrender any rights the Company has under this Indenture or to add circumstances under which the Company will pay additional interest on the Securities of the relevant series;
- (f) to add co-obligors or one or more guarantees for the benefit of Holders of the Securities;
- (g) to secure any Securities or add collateral thereto;
- (h) to provide for the issuance of any Securities or additional Securities of such series;
- (i) to comply with the rules of any applicable securities depository;
- (j) to conform the provisions of this Indenture to the “Description of Notes” and “Description of Debt Securities” sections of any prospectus, prospectus supplement or other offering document prepared in connection with the issuance of the Securities;
- (k) to make changes to this Indenture applicable only to other series of Securities issuable hereunder;
- (l) to make any change that does not adversely affect in any material respect the rights of any Holder in any respect;
- (m) to comply with Article 5; or
- (n) to add any additional Events of Default with respect to Securities of any series.

Section 9.02 *With Consent of Holders*. Subject to Section 6.04, without prior notice to any Holders, the Company and the Trustee may amend this Indenture and the Securities of any series with the consent of the Holders of a majority in Principal amount of the outstanding Securities of each series affected by such amendment voting separately, and the Holders of a majority in Principal amount of the outstanding Securities of each series affected thereby by notice to the Trustee voting separately may waive future compliance by the Company with any provision of this Indenture or the Securities of such series.

Notwithstanding the provisions of this Section 9.02, without the consent of each Holder affected thereby, an amendment or waiver, including a waiver pursuant to Section 6.04, may not:

- (a) extend the stated maturity date of the Principal of, or any installment of interest on, any such Security;
- (b) reduce the principal amount of or the rate (or extend the time for payment) of interest on (including any amount in respect of original issue discount), or any premium payable upon the redemption of, any such Security;
- (c) reduce the amount of Principal payable upon acceleration of the maturity thereof;
- (d) change the currency of payment of Principal of, or premium, if any, or interest on, any such Security;
- (e) impair the right to institute suit for the enforcement of any payment on, or with respect to, any such Security on or after the stated maturity thereof (or in the case of redemption, after the redemption date);
- (f) reduce the above stated percentage of outstanding Securities the consent of whose holders is necessary to modify or amend the Indenture with respect to the Securities of the relevant series;
- (g) modify any waiver provision, except to increase any required percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Security of the series affected thereby; or
- (h) make any changes to this paragraph of Section 9.02.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of Holders of Securities of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for the consent of any Holder under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall give to the Holders affected thereby a notice briefly describing the

amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

Section 9.03 *Revocation and Effect of Consent.* Until an amendment or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the Security of the consenting Holder, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of its Security. Such revocation shall be effective only if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver is executed or otherwise becomes effective. After an amendment, supplement or waiver becomes effective, it shall bind every Holder. An amendment, supplement or waiver shall become effective with respect to any Securities affected thereby on receipt by the Trustee of written consents from the requisite Holders of outstanding Securities affected thereby.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders of the Securities of any series affected entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then, notwithstanding the immediately preceding paragraph, those Persons who were such Holders at such record date (or their duly designated proxies) and only those Persons shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such Persons continue to be such Holders after such record date.

After an amendment, supplement or waiver becomes effective with respect to the Securities of any series affected thereby, it shall bind every Holder of such Securities unless it is of the type described in any of clauses (a) through (h) of Section 9.02. In case of an amendment or waiver of the type described in clauses (a) through (h) of Section 9.02, the amendment or waiver shall bind each such Holder who has consented to it and every subsequent Holder of a Security that evidences the same indebtedness as the Security of the consenting Holder.

Section 9.04 *Notation on or Exchange of Securities.* If an amendment, supplement or waiver changes the terms of any Security, the Trustee may require the Holder thereof to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder and the Trustee may place an appropriate notation on any Security of such series thereafter authenticated. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and upon receipt of a Company Order, the Trustee shall authenticate a new Security of the same series and tenor that reflects the changed terms.

Section 9.05 *Trustee to Sign Amendments, Etc.* The Trustee shall receive, and shall be fully protected in conclusively relying upon, (i) an Officer's Certificate and (ii) an Opinion of Counsel. The Opinion of Counsel shall state that the execution of any amendment, supplement or waiver authorized pursuant to this Article 9 is authorized or permitted by this Indenture and that such supplemental indenture constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to customary exceptions. The Trustee may, but shall not be obligated to, execute any such amendment, supplement or

waiver that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. All fees, costs and expenses (including reasonable attorneys' fees, costs and expenses) of the Trustee incurred in connection with any amendment, modification or supplement shall be payable by the Company.

Section 9.06 *Conformity with Trust Indenture Act*. Every supplemental indenture executed pursuant to this Article 9 shall conform to the requirements of the Trust Indenture Act as then in effect.

ARTICLE 10
MISCELLANEOUS

Section 10.01 *Trust Indenture Act of 1939*. This Indenture shall incorporate and be governed by the provisions of the Trust Indenture Act that are required to be part of and to govern indentures qualified under the Trust Indenture Act.

If any provision of this Indenture limits, qualifies or conflicts with a provision of the Trust Indenture Act which is required under the Trust Indenture Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 10.02 *Notices*. Any notice or communication shall be sufficiently given if written and (a) if delivered in person when received or (b) if mailed by first class mail 5 days after mailing, or (c) as between the Company and the Trustee if sent by facsimile or e-mail, PDF or other electronic transmission, in each case addressed as follows:

if to the Company:

Clover Health Investments, Corp.
3401 Mallory Lane, Suite 210
Franklin, TN 37067
Tel: (201) 432-2133
E-mail: joseph.martin@cloverhealth.com
Attention: General Counsel

if to the Trustee:

Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: Clover Health Investments, Corp. Administrator
Fax: (302) 636-4145

The Company or the Trustee by written notice to the other may designate additional or different addresses, including e-mail, for subsequent notices or communications.

Any notice or communication shall be sufficiently given to Holders of any Securities, by mailing (or delivering electronically in the case of a global security) to such Holders at their addresses as they shall appear on the Security Register. Notice mailed shall be sufficiently given if so mailed (or delivered electronically in the case of a global security) within the time prescribed. Copies of any such communication or notice to a Holder shall also be mailed (or delivered electronically in the case of a global security) to the Trustee and each Agent at the same time. Holders may communicate pursuant to TIA § 312(b) with other Holders 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).

If the Trustee is then acting as the Depository's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the procedures of the Depository, provided such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days (or such shorter period as shall be acceptable to the Trustee) before the date such notice is to be so sent. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

Failure to mail (or deliver electronically in the case of a global security) a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. Except as otherwise provided in this Indenture, if a notice or communication is mailed (or delivered electronically in the case of a global security) in the manner provided in this Section 10.02, it is duly given, whether or not the addressee receives it.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case it shall be impracticable to give notice as herein contemplated, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

In addition to the foregoing, the Trustee agrees to 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 delivered by authorized representatives of the Company as previously identified and provided to the Trustee. 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.

In respect of this Indenture, the Trustee shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by electronic transmission is, in fact, a Person authorized to give such instructions, directions, reports notices or other communications or information on behalf of the

party purporting to send such electronic transmission. The Company agrees to assume all risks arising out of the use of electronic methods to submit instructions, directions, reports, notices or other communications or indemnifications to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, notices, reports or other communications or information, and the risks of interception and misuse by third parties.

All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any communication sent to the Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature), in English. If a notice or communication is delivered in the manner provided above within the time prescribed, it is duly given, whether or not the addressee received it, except in the case of notices or communications given to the Trustee, which shall be effective only upon actual receipt.

Section 10.03 *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officer's Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

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

Section 10.04 *Statements Required in Certificate or Opinion.* Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate required by Section 4.04) shall include:

(a) a statement that each person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based;

(c) a statement that, in the opinion of each such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; *provided, however,* that, with respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 10.05 *Evidence of Ownership.* The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the person in whose name any Security shall be registered upon the Security Register for such series as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the Principal of

and, subject to the provisions of this Indenture, interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary.

Section 10.06 *Rules by Trustee, Paying Agent or Registrar.* The Trustee may make reasonable rules for action by or at a meeting of Holders. The Paying Agent or Registrar may make reasonable rules for its functions.

Section 10.07 *Payment Date Other Than a Business Day.* Except as otherwise provided with respect to a series of Securities, if any date for payment of Principal or interest on any Security (including any redemption date) shall not be a Business Day at any place of payment, then payment of Principal or interest on such Security, as the case may be, need not be made on such date, but may be made on the next succeeding Business Day at any place of payment with the same force and effect as if made on such date and no interest shall accrue in respect of such payment for the period from and after such date.

Section 10.08 *Governing Law; Waiver of Jury Trial; Jurisdiction.* This Indenture and the Securities shall be governed by, and construed in accordance with, the law of the State of New York. EACH OF THE PARTIES HERETO 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 OR THE SECURITIES. The parties hereby (i) irrevocably submit to the exclusive jurisdiction of any federal or state court sitting in the Borough of Manhattan, City of New York, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party.

Section 10.09 *No Adverse Interpretation of Other Agreements.* This Indenture may not be used to interpret another indenture or loan or debt agreement of the Company or any Subsidiary of the Company. Any such indenture or agreement may not be used to interpret this Indenture.

Section 10.10 *Successors.* All agreements of the Company in this Indenture and the Securities shall bind their Successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 10.11 *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. The exchange of copies of this Indenture and of signature pages by facsimile or e-mail, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or e-mail, PDF or other electronic transmission shall be deemed to be their original signatures for all purposes.

Section 10.12 *Separability.* In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.13 *Table of Contents, Headings, Etc.* The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms and provisions hereof.

Section 10.14 *Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability.* No recourse under or upon any obligation, covenant or agreement contained in this Indenture or any indenture supplemental hereto, or in any Security or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such or against any past, present or future stockholder, officer, director or employee, as such, of the Company or of any Successor, either directly or through the Company or of any Successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the holders thereof and as part of the consideration for the issue of the Securities.

Section 10.15 *Judgment Currency.* The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the Principal of or interest on or premium, if any, on the Securities of any series (the “**Required Currency**”) into a currency in which a judgment will be rendered (the “**Judgment Currency**”), the rate of exchange used shall be the rate at which in accordance with normal banking procedures a bank could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a Business Day, then, to the extent permitted by applicable law, the rate of exchange used shall be the rate at which in accordance with normal banking procedures a bank could purchase in The City of New York the Required Currency with the Judgment Currency on the Business Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (1) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (2) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture.

Section 10.16 *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 10.17 *U.S.A. Patriot Act*. The parties hereto acknowledge 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 parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 10.18 *Benefits of Indenture*. Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 10.19 *Entire Agreement*. This Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersede all prior agreements and understandings, oral or written.

Section 10.20 *Electronic Signatures*. Unless otherwise provided herein, the words “execute”, “execution”, “signed”, and “signature” and words of similar import used in or related to any document to be signed in connection with this Indenture or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other similar state laws based on the Uniform Electronic Transactions Act.

SIGNATURES

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

CLOVER HEALTH INVESTMENTS, CORP., as the Company

By: _____

Name:

Title:

[Signature page to Base Indenture]

WILMINGTON TRUST, NATIONAL ASSOCIATION, as the
Trustee

By:

Name:

Title: Vice President

[Signature page to Base Indenture]

[Letterhead of Fried, Frank, Harris, Shriver & Jacobson LLP]

May 9, 2022

Clover Health Investments, Corp.
3401 Mallory Lane, Suite 210
Franklin, Tennessee 37067

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We are acting as counsel to Clover Health Investments, Corp., a Delaware corporation (the “Company”), in connection with the Registration Statement on Form S-3 (as may be amended from time to time, the “Registration Statement”), under the Securities Act of 1933, as amended (the “Securities Act”), with respect to the contemplated issuance by the Company from time to time, as set forth in the prospectus contained in the Registration Statement (the “Prospectus”) and as may be set forth in one or more supplements to the Prospectus (each, a “Prospectus Supplement”) by the Company, of up to \$300,000,000 in aggregate amount of (i) shares of the Company’s Class A common stock, par value \$0.0001 per share (the “Common Stock”), (ii) shares of the Company’s preferred stock (the “Preferred Stock”), (iii) one or more series of debt securities of the Company (the “Debt Securities”) and (iv) warrants of the Company to purchase Common Stock, Preferred Stock, Debt Securities or other securities, property or assets (including rights to receive payment in cash or securities based on the value, rate or price of one or more specified commodities, currencies, securities or indices), as well as other types of warrants (collectively, the “Warrants”). With your permission, all assumptions and statements of reliance herein have been made without any independent investigation or verification on our part, and we express no opinion with respect to the subject matter or accuracy of such assumptions or items relied upon.

The Debt Securities may be issued pursuant to an indenture, to be entered into by and between the Company and Wilmington Trust, National Association, as trustee (the “Trustee”) (as may be amended or supplemented from time to time, the “Indenture”), the form of which is included as Exhibit 4.3 to the Registration Statement. The Warrants may be issued under one or more warrant agreements (each, a “Warrant Agreement” and collectively the “Warrant Agreements”) by and between the Company and a bank or trust company identified therein as warrant agent (each, a “Warrant Agent”). The Indenture, the Warrants, the Warrant Agreements and any other documents contemplated thereby or hereby are collectively referred to herein as the “Documents.”

In connection with this opinion, we have (i) investigated such questions of law, (ii) examined originals or certified, conformed, electronic or reproduction copies of such agreements, instruments, documents and records of the Company, such certificates of public officials and such other documents and (iii) received such information from officers and representatives of the Company and others, in each case as we have deemed necessary or appropriate for the purposes of this opinion.

In all such examinations, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of original and certified documents and the conformity to original or certified documents of all copies submitted to us as certified, conformed, electronic or reproduction copies. As to various questions of fact relevant to the opinions expressed herein, we have relied upon, and assume the accuracy of, the statements, representations and warranties contained in certificates and oral or written statements and other information of or from public officials and officers and representatives of the Company and

others and assume compliance on the part of all parties to the Documents with their respective covenants and agreements contained therein.

To the extent it may be relevant to the opinions expressed below, we have assumed that (i) all of the parties to the Documents (other than the Company), are validly existing and in good standing under the laws of their respective jurisdictions of organization; (ii) the Company has or will have sufficient authorized but unissued and unreserved shares of Common Stock and Preferred Stock on the date of any issuance of such shares registered pursuant to the Registration Statement; (iii) the parties to the Documents (other than the Company) have or will have the power and authority to (a) execute and deliver the Documents, (b) perform their obligations thereunder, and (c) consummate the transactions contemplated thereby; (iv) each of the Documents has been or will be duly authorized, executed and delivered by each of the parties thereto; (v) each of the Documents constitutes or will constitute a valid and binding obligation of each of the parties thereto (other than as expressly addressed in the opinions below as to the Company), enforceable against such parties in accordance with their terms; and (vi) all of the parties to the Documents will comply with all laws applicable thereto.

Based upon the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

1. When (i) the Registration Statement, and any amendments thereto (including any post-effective amendments) have become effective under the Securities Act, (ii) the terms of the issuance and sale of the shares of Common Stock by the Company (including any Common Stock duly issued upon the exercise of any Warrants exercisable for Common Stock or upon exchange or conversion of any Debt Securities or shares of Preferred Stock that are exchangeable or convertible into Common Stock) registered pursuant to the Registration Statement have been duly approved by the Board of Directors of the Company or an authorized committee thereof (the "Board") in conformity with the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") and the Company's Amended and Restated Bylaws (the "Bylaws") and all other necessary corporate action on the part of the Company has been taken in connection therewith and in a manner so as not to violate any applicable law or result in a default under or breach of any agreement or instrument then binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, and (iii) such shares of Common Stock have been issued and delivered against payment therefor in an amount in excess of the par value thereof, in accordance with the terms of the agreement under which they are sold and in the manner contemplated by the Registration Statement and/or the applicable Prospectus Supplement, such shares of Common Stock will be validly issued, fully paid and non-assessable.

2. When (i) the Registration Statement, and any amendments thereto (including any post-effective amendments) have become effective under the Securities Act, (ii) in accordance with Section 151 of the General Corporation Law of the State of Delaware (the "DGCL") and in conformity with the Certificate of Incorporation and the Bylaws, (a) the Board has fixed the powers, designations, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of a series of Preferred Stock (including any Preferred Stock duly issued upon the exercise of any Warrants exercisable for Preferred Stock or upon exchange or conversion of any Debt Securities that are exchangeable or convertible into Preferred Stock) registered pursuant to the Registration Statement and adopted a Certificate of Designations (the "Certificate of Designations") in the form required by applicable law and (b) proper and valid filing with the Office of the Secretary of State of the State of Delaware of such Certificate of Designations has been made, (iii) the terms of the issuance and sale of such shares of Preferred Stock have been duly approved by the Board in conformity with the Certificate of Incorporation and the Bylaws and all other necessary corporate action on the part of the Company has been taken in connection therewith and in a manner so as not to violate any

applicable law or result in a default under or breach of any agreement or instrument then binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, and (iv) such shares of Preferred Stock have been issued and delivered against payment therefor in an amount in excess of the par value thereof, in accordance with the terms of the agreement under which they are sold and in the manner contemplated by the Registration Statement and/or the applicable Prospectus Supplement, such shares of Preferred Stock will be validly issued, fully paid and non-assessable.

3. When (i) the Registration Statement, and any amendments thereto (including post-effective amendments) have become effective under the Securities Act, (ii) the terms of the issuance and sale of the Debt Securities (including any Debt Securities duly issued upon the exercise of any Warrants exercisable for Debt Securities or upon exchange or conversion of shares of Preferred Stock that are exchangeable or convertible into Debt Securities) have been established in conformity with the Indenture and any relevant supplemental indenture and duly approved by the Board in conformity with the Certificate of Incorporation and the Bylaws and all other necessary corporate action on the part of the Company has been taken in connection therewith and in a manner so as not to violate any applicable law or result in a default under or breach of any agreement or instrument then binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, (iii) the Indenture and any relevant supplemental indenture has been duly authorized, executed and delivered by the Company and the Trustee and (iv) the Debt Securities have been duly authenticated by the Trustee and duly executed and delivered on behalf of the Company against payment therefor in accordance with the terms of the Indenture, any relevant supplemental indenture and the agreement under which they are sold and in the manner contemplated by the Registration Statement and/or the applicable Prospectus Supplement, such Debt Securities will constitute valid and binding obligations of the Company.

4. When (i) the Registration Statement, and any amendments thereto (including post-effective amendments) have become effective under the Securities Act, (ii) the terms of the issuance and sale of the Warrants registered pursuant to the Registration Statement have been established in conformity with the applicable Warrant Agreement and duly approved by the Board in conformity with the Certificate of Incorporation and the Bylaws and all other necessary corporate action on the part of the Company has been taken in connection therewith and in a manner so as not to violate any applicable law or result in a default under or breach of any agreement or instrument then binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, (iii) the applicable Warrant Agreement has been duly authorized, executed and delivered by the Company and the Warrant Agent, (iv) such Warrants have been duly authenticated by the Warrant Agent and duly executed and delivered by the Company against payment therefor in accordance with the terms of the applicable Warrant Agreement, in accordance with the terms of the agreement under which they are sold and in the manner contemplated by the Registration Statement and/or the applicable Prospectus Supplement, (v) the terms of the Common Stock, the Preferred Stock or the Debt Securities issuable upon exercise of the Warrants have been duly approved by the Board in conformity with the Certificate of Incorporation and the Bylaws as specified above, (vi) the Common Stock and the Preferred Stock issuable upon exercise of the Warrants have been properly reserved for issuance, and (vii) upon exercise of such Warrants into shares of Common Stock or Preferred Stock, such shares of Common Stock or Preferred Stock have been issued and delivered against payment therefor in an amount in excess of the par value thereof, such Warrants will constitute valid and binding obligations of the Company.

We express no opinion as to the validity or binding effect of any provision of the Documents:

(i) relating to indemnification, contribution or exculpation (a) in connection with violations of any applicable laws, statutory duties or public policy, or (b) in connection with willful, reckless or unlawful acts or gross negligence of the indemnified or exculpated party or the party receiving contribution, or (c) under circumstances involving the negligence of the indemnified or exculpated party or the party receiving contribution in which a court might determine the provision to be unfair or insufficiently explicit;

(ii) containing any purported waiver, release, variation, disclaimer, consent or other agreement of similar effect (all of the foregoing, collectively, a "Waiver") by any party under any of such agreements or instruments to the extent limited by provisions of applicable law (including judicial decisions), or to the extent that such a Waiver applies to a right, claim, duty, defense or ground for discharge otherwise existing or occurring as a matter of law (including judicial decisions), except to the extent that such a Waiver is effective under, and is not prohibited by or void or invalid under, provisions of applicable law (including judicial decisions);

(iii) related to (a) forum selection or submission to jurisdiction (including, without limitation, any waiver of any objection to venue in any court or of any objection that a court is an inconvenient forum) to the extent that the validity or binding effect of any such provision is to be determined by any court other than a court of the State of New York, (b) choice of governing law to the extent that the validity or binding effect of any such provision is to be determined by any court other than a court of the State of New York or a federal district court sitting in the State of New York and applying the law of the State of New York, in each case, applying the choice of law principles of the State of New York, (c) service of process or (d) any waiver of any rights to trial by jury;

(iv) specifying that provisions thereof may be modified or waived only in writing;

(v) purporting to give any person or entity the power to accelerate obligations without any notice to the obligor;

(vi) specifying that any person may exercise set-off or similar rights other than in accordance with applicable law; and

(vii) relating to payment of late charges, interest (or discount or equivalent amounts), premium, "make-whole" payments, collection costs or fees at a rate or in an amount, after or upon the maturity or acceleration of the liabilities evidenced or secured thereby or after or during the continuance of any default or other circumstance, or upon prepayment, that a court would determine in the circumstances to be unreasonable, a penalty or a forfeiture.

We express no opinion as to the validity or binding effect of any provision of any agreement (i) providing for payments thereunder in a currency other than currency of the United States of America to the extent that a court of competent jurisdiction, under applicable law, will convert any judgment rendered in such other currency into currency of the United States of America or to the extent that payment in a currency other than currency of the United States of America is contrary to applicable law, (ii) providing for governmental authority to limit, delay or prohibit the making of payments outside the United States or in foreign currency or composite currency, or (iii) concerning the enforceability of the waiver of rights or defenses contained in the Documents relating to waiver of stay, extension or usury laws.

We express no opinion as to the effect of any law of any jurisdiction other than the State of New York wherein any party to the Documents may be located or wherein enforcement of any Documents may be sought that limits the rates of interest legally chargeable or collectible.

We express no opinion as to the validity or binding effect of any provision of any agreement purporting to give any person or entity the power to accelerate obligations without any notice to the obligor.

The opinions set forth above are subject to the following qualifications: (i) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws (or related judicial doctrines) now or hereafter in effect affecting creditors' rights and remedies generally, (ii) general principles of equity including, without limitation, standards of materiality, good faith, fair dealing and reasonableness, equitable defenses and limits as to the availability of equitable remedies, whether such principles are considered in a proceeding at law or in equity, and (iii) the application of any applicable fraudulent conveyance, fraudulent transfer, fraudulent obligation, or preferential transfer law or any law governing the distribution of assets of any person now or hereafter in effect affecting creditors' rights and remedies generally.

The opinions expressed herein are limited to the laws of the State of New York and, to the extent relevant to the opinions expressed herein, the applicable provisions of the DGCL, in each case as currently in effect, and no opinion is expressed with respect to any other laws or any effect that such other laws may have on the opinions expressed herein. This opinion letter is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. This letter is given only as of the time of its delivery, and we undertake no responsibility to update or supplement this letter after its delivery.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the references to this firm under the captions "Legal Matters" in the Prospectus and "Legal Matters" in any Prospectus Supplement. In giving these consents, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission.

Very truly yours,

/s/ Fried, Frank, Harris, Shriver & Jacobson LLP

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related Prospectus of Clover Health Investments, Corp. for the registration of warrants, debt securities, Class A common stock, and preferred stock and to the incorporation by reference therein of our report dated February 28, 2022, with respect to the consolidated financial statements of Clover Health Investments, Corp., and the effectiveness of internal control over financial reporting of Clover Health Investments, Corp., included in its Annual Report (Form 10-K) for the year ended December 31, 2021, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

New York, New York

May 9, 2022

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

FORM T-1

Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2)

WILMINGTON TRUST, NATIONAL ASSOCIATION
(Exact name of trustee as specified in its charter)

16-1486454
(I.R.S. employer identification no.)

1100 North Market Street
Wilmington, DE 19890-0001
(Address of principal executive offices)

Kyle Barry
Administrative Vice President
Wilmington Trust Company
285 Delaware Ave.
Buffalo, NY 14202
(716) 839-6909
(Name, address and telephone number of agent for service)

Clover Health Investments, Corp.
(Exact name of obligor as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

98-1515192
(I.R.S. Employer Identification No.)

3401 Mallory Lane, Suite 210
Franklin, Tennessee 37067
(Address of principal executive offices, including zip code)

Debt Securities
(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Comptroller of Currency, Washington, D.C.
Federal Deposit Insurance Corporation, Washington, D.C.

- (b) Whether it is authorized to exercise corporate trust powers.
The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and information available to the trustee, the obligor is not an affiliate of the trustee.

ITEM 3 – 15. Not applicable

ITEM 16. LIST OF EXHIBITS.

Listed below are all exhibits filed as part of this Statement of Eligibility and Qualification.

1. A copy of the Charter for Wilmington Trust, National Association.
2. The authority of Wilmington Trust, National Association to commence business was granted under the Charter for Wilmington Trust, National Association, incorporated herein by reference to Exhibit 1 above.
3. The authorization to exercise corporate trust powers was granted under the Charter for Wilmington Trust, National Association, incorporated herein by reference to Exhibit 1 above.
4. A copy of the existing By-Laws of Trustee, as now in effect, incorporated herein by reference to Exhibit 4 of this Form T-1.
5. Not applicable.
6. The consent of Wilmington Trust, National Association as required by Section 321(b) of the Trust Indenture Act of 1939, attached hereto as Exhibit 6 of this Form T-1.
7. Current Report of the Condition of Wilmington Trust, National Association, published pursuant to law or the requirements of its supervising or examining authority, attached hereto as Exhibit 7 of this Form T-1.
8. Not applicable.
9. Not applicable.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 9th day of May, 2022.

WILMINGTON TRUST, NATIONAL ASSOCIATION

By: /s/ Karen Ferry

Name: Karen Ferry

Title: Vice President

EXHIBIT 1

CHARTER OF WILMINGTON TRUST, NATIONAL ASSOCIATION

**ARTICLES OF ASSOCIATION
OF
WILMINGTON TRUST, NATIONAL ASSOCIATION**

For the purpose of organizing an association to perform any lawful activities of national banks, the undersigned do enter into the following articles of association:

FIRST. The title of this association shall be Wilmington Trust, National Association.

SECOND. The main office of the association shall be in the City of Wilmington, County of New Castle, State of Delaware. The general business of the association shall be conducted at its main office and its branches.

THIRD. The board of directors of this association shall consist of not less than five nor more than twenty-five persons, unless the OCC has exempted the bank from the 25-member limit. The exact number is to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of a majority of the shareholders at any annual or special meeting thereof. Each director shall own common or preferred stock of the association or of a holding company owning the association, with an aggregate par, fair market or equity value \$1,000. Determination of these values may be based as of either (i) the date of purchase or (ii) the date the person became a director, whichever value is greater. Any combination of common or preferred stock of the association or holding company may be used.

Any vacancy in the board of directors may be filled by action of a majority of the remaining directors between meetings of shareholders. The board of directors may not increase the number of directors between meetings of shareholders to a number which:

- 1) exceeds by more than two the number of directors last elected by shareholders where the number was 15 or less; or
- 2) exceeds by more than four the number of directors last elected by shareholders where the number was 16 or more, but in no event shall the number of directors exceed 25, unless the OCC has exempted the bank from the 25-member limit.

Directors shall be elected for terms of one year and until their successors are elected and qualified. Terms of directors, including directors selected to fill vacancies, shall expire at the next regular meeting of shareholders at which directors are elected, unless the directors resign or are removed from office. Despite the expiration of a director's term, the director shall continue to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors and his or her position is eliminated.

Honorary or advisory members of the board of directors, without voting power or power of final decision in matters concerning the business of the association, may be appointed by resolution of a majority of the full board of directors, or by resolution of shareholders at any annual or special meeting. Honorary or advisory directors shall not be counted to determine the number of directors of the association or the presence of a quorum in connection with any board action, and shall not be required to own qualifying shares.

FOURTH. There shall be an annual meeting of the shareholders to elect directors and transact whatever other business may be brought before the meeting. It shall be held at the main office or any

other convenient place the board of directors may designate, on the day of each year specified therefor in the bylaws, or, if that day falls on a legal holiday in the state in which the association is located, on the next following banking day. If no election is held on the day fixed, or in the event of a legal holiday on the following banking day, an election may be held on any subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by shareholders representing two-thirds of the shares issued and outstanding. In all cases at least 10 days advance notice of the time, place and purpose of a shareholders' meeting shall be given to the shareholders by first class mail, unless the OCC determines that an emergency circumstance exists. The sole shareholder of the bank is permitted to waive notice of the shareholders' meeting.

In all elections of directors, the number of votes each common shareholder may cast will be determined by multiplying the number of shares such shareholder owns by the number of directors to be elected. Those votes may be cumulated and cast for a single candidate or may be distributed among two or more candidates in the manner selected by the shareholder. If, after the first ballot, subsequent ballots are necessary to elect directors, a shareholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate. On all other questions, each common shareholder shall be entitled to one vote for each share of stock held by him or her.

Nominations for election to the board of directors may be made by the board of directors or by any stockholder of any outstanding class of capital stock of the association entitled to vote for election of directors. Nominations other than those made by or on behalf of the existing management shall be made in writing and be delivered or mailed to the president of the association not less than 14 days nor more than 50 days prior to any meeting of shareholders called for the election of directors; provided, however, that if less than 21 days notice of the meeting is given to shareholders, such nominations shall be mailed or delivered to the president of the association not later than the close of business on the seventh day following the day on which the notice of meeting was mailed. Such notification shall contain the following information to the extent known to the notifying shareholder:

- 1) The name and address of each proposed nominee.
- 2) The principal occupation of each proposed nominee.
- 3) The total number of shares of capital stock of the association that will be voted for each proposed nominee.
- 4) The name and residence address of the notifying shareholder.
- 5) The number of shares of capital stock of the association owned by the notifying shareholder.

Nominations not made in accordance herewith may, in his/her discretion, be disregarded by the chairperson of the meeting, and the vote tellers may disregard all votes cast for each such nominee. No bylaw may unreasonably restrict the nomination of directors by shareholders.

A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the association, which resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

A director may be removed by shareholders at a meeting called to remove the director, when notice of the meeting stating that the purpose or one of the purposes is to remove the director is provided, if there is a failure to fulfill one of the affirmative requirements for qualification, or for cause; provided, however, that a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal.

FIFTH. The authorized amount of capital stock of this association shall be ten thousand shares of common stock of the par value of one hundred dollars (\$100) each; but said capital stock may be increased or decreased from time to time, according to the provisions of the laws of the United States.

No holder of shares of the capital stock of any class of the association shall have any preemptive or preferential right of subscription to any shares of any class of stock of the association, whether now or hereafter authorized, or to any obligations convertible into stock of the association, issued, or sold, nor any right of subscription to any thereof other than such, if any, as the board of directors, in its discretion, may from time to time determine and at such price as the board of directors may from time to time fix. Preemptive rights also must be approved by a vote of holders of two-thirds of the bank's outstanding voting shares. Unless otherwise specified in these articles of association or required by law, (1) all matters requiring shareholder action, including amendments to the articles of association, must be approved by shareholders owning a majority voting interest in the outstanding voting stock, and (2) each shareholder shall be entitled to one vote per share.

Unless otherwise specified in these articles of association or required by law, all shares of voting stock shall be voted together as a class, on any matters requiring shareholder approval. If a proposed amendment would affect two or more classes or series in the same or a substantially similar way, all the classes or series so affected must vote together as a single voting group on the proposed amendment.

Shares of one class or series may be issued as a dividend for shares of the same class or series on a pro rata basis and without consideration. Shares of one class or series may be issued as share dividends for a different class or series of stock if approved by a majority of the votes entitled to be cast by the class or series to be issued, unless there are no outstanding shares of the class or series to be issued. Unless otherwise provided by the board of directors, the record date for determining shareholders entitled to a share dividend shall be the date authorized by the board of directors for the share dividend.

Unless otherwise provided in the bylaws, the record date for determining shareholders entitled to notice of and to vote at any meeting is the close of business on the day before the first notice is mailed or otherwise sent to the shareholders, provided that in no event may a record date be more than 70 days before the meeting.

If a shareholder is entitled to fractional shares pursuant to a stock dividend, consolidation or merger, reverse stock split or otherwise, the association may: (a) issue fractional shares; (b) in lieu of the issuance of fractional shares, issue script or warrants entitling the holder to receive a full share upon surrendering enough script or warrants to equal a full share; (c) if there is an established and active market in the association's stock, make reasonable arrangements to provide the shareholder with an opportunity to realize a fair price through sale of the fraction, or purchase of the additional fraction required for a full share; (d) remit the cash equivalent of the fraction to the shareholder; or (e) sell full shares representing all the fractions at public auction or to the highest bidder after having solicited and received sealed bids from at least three licensed stock brokers; and distribute the proceeds pro rata to shareholders who otherwise would be entitled to the fractional shares. The holder of a fractional share is entitled to exercise the rights for shareholder, including the right to vote, to receive dividends, and to participate in the assets of the association upon liquidation, in proportion to the fractional interest. The holder of script or warrants is not entitled to any of these rights unless the script or warrants explicitly provide for such rights. The script or warrants may be subject to such additional conditions as: (1) that the script or warrants will become void if not exchanged for full shares before a specified date; and (2) that the shares for which the script or warrants are exchangeable may be sold at the option of the association and the proceeds paid to scripsholders.

The association, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the shareholders. Obligations classified as debt, whether or not subordinated, which may be issued by the association without the approval of shareholders, do not carry voting rights on any issue, including an increase or decrease in the aggregate number of the securities, or the exchange or reclassification of all or part of securities into securities of another class or series.

SIXTH. The board of directors shall appoint one of its members president of this association, and one of its members chairperson of the board and shall have the power to appoint one or more vice presidents, a secretary who shall keep minutes of the directors' and shareholders' meetings and be responsible for authenticating the records of the association, and such other officers and employees as may be required to transact the business of this association.

A duly appointed officer may appoint one or more officers or assistant officers if authorized by the board of directors in accordance with the bylaws.

The board of directors shall have the power to:

- 1) Define the duties of the officers, employees, and agents of the association.
- 2) Delegate the performance of its duties, but not the responsibility for its duties, to the officers, employees, and agents of the association.
- 3) Fix the compensation and enter into employment contracts with its officers and employees upon reasonable terms and conditions consistent with applicable law.
- 4) Dismiss officers and employees.
- 5) Require bonds from officers and employees and to fix the penalty thereof.
- 6) Ratify written policies authorized by the association's management or committees of the board.
- 7) Regulate the manner in which any increase or decrease of the capital of the association shall be made, provided that nothing herein shall restrict the power of shareholders to increase or decrease the capital of the association in accordance with law, and nothing shall raise or lower from two-thirds the percentage required for shareholder approval to increase or reduce the capital.
- 8) Manage and administer the business and affairs of the association.
- 9) Adopt initial bylaws, not inconsistent with law or the articles of association, for managing the business and regulating the affairs of the association.
- 10) Amend or repeal bylaws, except to the extent that the articles of association reserve this power in whole or in part to shareholders.
- 11) Make contracts.
- 12) Generally perform all acts that are legal for a board of directors to perform.

SEVENTH. The board of directors shall have the power to change the location of the main office to any other place within the limits of Wilmington, Delaware, without the approval of the shareholders, or with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of Wilmington Delaware, but not more than 30 miles beyond such limits. The board of directors shall have the power to establish or change the location of any branch or branches of the association to any other location permitted under applicable law, without approval of shareholders, subject to approval by the Comptroller of the Currency.

EIGHTH. The corporate existence of this association shall continue until termination according to the laws of the United States.

NINTH. The board of directors of this association, or any one or more shareholders owning, in the aggregate, not less than 50 percent of the stock of this association, may call a special meeting of shareholders at any time. Unless otherwise provided by the bylaws or the laws of the United States, a notice of the time, place, and purpose of every annual and special meeting of the shareholders shall be given at least 10 days prior to the meeting by first-class mail, unless the OCC determines that an emergency circumstance exists. If the association is a wholly-owned subsidiary, the sole shareholder may waive notice of the shareholders' meeting. Unless otherwise provided by the bylaws or these articles, any action requiring approval of shareholders must be effected at a duly called annual or special meeting.

TENTH. For purposes of this Article Tenth, the term "institution-affiliated party" shall mean any institution-affiliated party of the association as such term is defined in 12 U.S.C. 1813(u).

Any institution-affiliated party (or his or her heirs, executors or administrators) may be indemnified or reimbursed by the association for reasonable expenses actually incurred in connection with any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, governmental, administrative or investigative, in accordance with and to the fullest extent permitted by law, as such law now or hereafter exists; provided, however, that when an administrative proceeding or action instituted by a federal banking agency results in a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association, then the association shall require the repayment of all legal fees and expenses advanced pursuant to the next succeeding paragraph and may not indemnify such institution-affiliated parties (or their heirs, executors or administrators) for expenses, including expenses for legal fees, penalties or other payments incurred. The association shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by an institution-affiliated party (or by his or her heirs, executors or administrators) only if such action or proceeding (or part thereof) was authorized by the board of directors.

Expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding under 12 U.S.C. 164 or 1818 may be paid by the association in advance of the final disposition of such action or proceeding upon (a) a determination by the board of directors acting by a quorum consisting of directors who are not parties to such action or proceeding that the institution-affiliated party (or his or her heirs, executors or administrators) has a reasonable basis for prevailing on the merits, (b) a determination that the indemnified individual (or his or her heirs, executors or administrators) will have the financial capacity to reimburse the bank in the event he or she does not prevail, (c) a determination that the payment of expenses and fees by the association will not adversely affect the safety and soundness of the association, and (d) receipt of an undertaking by or on behalf of such institution-affiliated party (or by his or her heirs, executors or administrators) to repay such advancement in the event of a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association. In all other instances, expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding as to which indemnification may be given under these articles of association may be paid by the association in advance of the final disposition of such action or proceeding upon (a) receipt of an undertaking by or on behalf of such institution-affiliated party (or by or

on behalf of his or her heirs, executors or administrators) to repay such advancement in the event that such institution-affiliated party (or his or her heirs, executors or administrators) is ultimately found not to be entitled to indemnification as authorized by these articles of association and (b) approval by the board of directors acting by a quorum consisting of directors who are not parties to such action or proceeding or, if such a quorum is not obtainable, then approval by stockholders. To the extent permitted by law, the board of directors or, if applicable, the stockholders, shall not be required to find that the institution-affiliated party has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding.

In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Article Tenth have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Article Tenth have been met. If legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in these articles of association (a) shall be available with respect to events occurring prior to the adoption of these articles of association, (b) shall continue to exist after any restrictive amendment of these articles of association with respect to events occurring prior to such amendment, (c) may be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, or on the basis of applicable law in effect at the time such rights are claimed, and (d) are in the nature of contract rights which may be enforced in any court of competent jurisdiction as if the association and the institution-affiliated party (or his or her heirs, executors or administrators) for whom such rights are sought were parties to a separate written agreement.

The rights of indemnification and to the advancement of expenses provided in these articles of association shall not, to the extent permitted under applicable law, be deemed exclusive of any other rights to which any such institution affiliated party (or his or her heirs, executors or administrators) may now or hereafter be otherwise entitled whether contained in these articles of association, the bylaws, a resolution of stockholders, a resolution of the board of directors, or an agreement providing such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in these articles of association shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any such institution-affiliated party (or of his or her heirs, executors or administrators) in any such action or proceeding to have assessed or allowed in his or her favor, against the association or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

If this Article Tenth or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article Tenth shall remain fully enforceable.

The association may, upon affirmative vote of a majority of its board of directors, purchase insurance to indemnify its institution-affiliated parties to the extent that such indemnification is allowed in these articles of association; provided, however, that no such insurance shall include coverage to pay or reimburse any institution-affiliated party for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by any federal banking agency. Such insurance may, but need not, be for the benefit of all institution-affiliated parties.

ELEVENTH. These articles of association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount. The association's board of directors may propose one or more amendments to the articles of association for submission to the shareholders.

EXHIBIT 4

BY-LAWS OF WILMINGTON TRUST, NATIONAL ASSOCIATION

**AMENDED AND RESTATED BYLAWS
OF
WILMINGTON TRUST, NATIONAL ASSOCIATION**

(Effective as of April 17, 2018)

**ARTICLE I
Meetings of Shareholders**

Section 1. Annual Meeting. The annual meeting of the shareholders to elect directors and transact whatever other business may properly come before the meeting shall be held at the main office of the association, Rodney Square North, 1100 Market Street, City of Wilmington, State of Delaware, at 1:00 o'clock p.m. on the first Tuesday in March of each year, or at such other place and time as the board of directors may designate, or if that date falls on a legal holiday in Delaware, on the next following banking day. Notice of the meeting shall be mailed by first class mail, postage prepaid, at least 10 days and no more than 60 days prior to the date thereof, addressed to each shareholder at his/her address appearing on the books of the association. If, for any cause, an election of directors is not made on that date, or in the event of a legal holiday, on the next following banking day, an election may be held on any subsequent day within 60 days of the date fixed, to be designated by the board of directors, or, if the directors fail to fix the date, by shareholders representing two-thirds of the shares. In these circumstances, at least 10 days' notice must be given by first class mail to shareholders.

Section 2. Special Meetings. Except as otherwise specifically provided by statute, special meetings of the shareholders may be called for any purpose at any time by the board of directors or by any one or more shareholders owning, in the aggregate, not less than fifty percent of the stock of the association. Every such special meeting, unless otherwise provided by law, shall be called by mailing, postage prepaid, not less than 10 days nor more than 60 days prior to the date fixed for the meeting, to each shareholder at the address appearing on the books of the association a notice stating the purpose of the meeting.

The board of directors may fix a record date for determining shareholders entitled to notice and to vote at any meeting, in reasonable proximity to the date of giving notice to the shareholders of such meeting. The record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs a demand for the meeting describing the purpose or purposes for which it is to be held.

A special meeting may be called by shareholders or the board of directors to amend the articles of association or bylaws, whether or not such bylaws may be amended by the board of directors in the absence of shareholder approval.

If an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment, unless any additional items of business are to be considered, or the association becomes aware of an intervening event materially affecting any matter to be voted on more than 10 days prior to the date to which the meeting is adjourned. If a new record date for the adjourned meeting is fixed, however, notice of the adjourned meeting must be given to persons who are shareholders as of the new record date. If, however, the meeting to elect the directors is adjourned before the election takes place, at least ten days' notice of the new election must be given to the shareholders by first-class mail.

Section 3. Nominations of Directors. Nominations for election to the board of directors may be made by the board of directors or by any stockholder of any outstanding class of capital stock of the association entitled to vote for the election of directors. Nominations, other than those made by or on behalf of the existing management of the association, shall be made in writing and shall be delivered or mailed to the president of the association and the Comptroller of the Currency, Washington, D.C., not less than 14 days nor more than 50 days prior to any meeting of shareholders called for the election of directors; *provided, however*, that if less than 21 days' notice of the meeting is given to shareholders, such nomination shall be mailed or delivered to the president of the association not later than the close of business on the seventh day following the day on which the notice of meeting was mailed. Such notification shall contain the following information to the extent known to the notifying shareholder:

- (1) The name and address of each proposed nominee;
- (2) The principal occupation of each proposed nominee;
- (3) The total number of shares of capital stock of the association that will be voted for each proposed nominee;
- (4) The name and residence of the notifying shareholder; and
- (5) The number of shares of capital stock of the association owned by the notifying shareholder.

Nominations not made in accordance herewith may, in his/her discretion, be disregarded by the chairperson of the meeting, and upon his/her instructions, the vote tellers may disregard all votes cast for each such nominee.

Section 4. Proxies. Shareholders may vote at any meeting of the shareholders by proxies duly authorized in writing, but no officer or employee of this association shall act as proxy. Proxies shall be valid only for one meeting, to be specified therein, and any adjournments of such meeting. Proxies shall be dated and filed with the records of the meeting. Proxies with facsimile signatures may be used and unexecuted proxies may be counted upon receipt of a written confirmation from the shareholder. Proxies meeting the above requirements submitted at any time during a meeting shall be accepted.

Section 5. Quorum. A majority of the outstanding capital stock, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law, or by the shareholders or directors pursuant to Article IX, Section 2, but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law or by the articles of association, or by the shareholders or directors pursuant to Article IX, Section 2. If a meeting for the election of directors is not held on the fixed date, at least 10 days' notice must be given by first-class mail to the shareholders.

ARTICLE II

Directors

Section 1. Board of Directors. The board of directors shall have the power to manage and administer the business and affairs of the association. Except as expressly limited by law, all corporate powers of the association shall be vested in and may be exercised by the board of directors.

Section 2. Number. The board of directors shall consist of not less than five nor more than twenty-five members, unless the OCC has exempted the bank from the 25-member limit. The exact number within such minimum and maximum limits is to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of a majority of the shareholders at any meeting thereof.

Section 3. Organization Meeting. The secretary or treasurer, upon receiving the certificate of the judges of the result of any election, shall notify the directors-elect of their election and of the time at which they are required to meet at the main office of the association, or at such other place in the cities of Wilmington, Delaware or Buffalo, New York, to organize the new board of directors and elect and appoint officers of the association for the succeeding year. Such meeting shall be held on the day of the election or as soon thereafter as practicable, and, in any event, within 30 days thereof. If, at the time fixed for such meeting, there shall not be a quorum, the directors present may adjourn the meeting, from time to time, until a quorum is obtained.

Section 4. Regular Meetings. The Board of Directors may, at any time and from time to time, by resolution designate the place, date and hour for the holding of a regular meeting, but in the absence of any such designation, regular meetings of the board of directors shall be held, without notice, on the first Tuesday of each March, June and September, and on the second Tuesday of each December at the main office or other such place as the board of directors may designate. When any regular meeting of the board of directors falls upon a holiday, the meeting shall be held on the next banking business day unless the board of directors shall designate another day.

Section 5. Special Meetings. Special meetings of the board of directors may be called by the Chairman of the Board of the association, or at the request of two or more directors. Each member of the board of directors shall be given notice by telegram, first class mail, or in person stating the time and place of each special meeting.

Section 6. Quorum. A majority of the entire board then in office shall constitute a quorum at any meeting, except when otherwise provided by law or these bylaws, but a lesser number may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice. If the number of directors present at the meeting is reduced below the number that would constitute a quorum, no business may be transacted, except selecting directors to fill vacancies in conformance with Article II,

Section 7. If a quorum is present, the board of directors may take action through the vote of a majority of the directors who are in attendance.

Section 7. Meetings by Conference Telephone. Any one or more members of the board of directors or any committee thereof may participate in a meeting of such board or committees by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation in a meeting by such means shall constitute presence in person at such meeting.

Section 8. Procedures. The order of business and all other matters of procedure at every meeting of the board of directors may be determined by the person presiding at the meeting.

Section 9. Removal of Directors. Any director may be removed for cause, at any meeting of stockholders notice of which shall have referred to the proposed action, by vote of the stockholders. Any director may be removed without cause, at any meeting of stockholders notice of which shall have referred to the proposed action, by the vote of the holders of a majority of the shares of the Corporation entitled to vote. Any director may be removed for cause, at any meeting of the directors notice of which shall have referred to the proposed action, by vote of a majority of the entire Board of Directors.

Section 10. Vacancies. When any vacancy occurs among the directors, a majority of the remaining members of the board of directors, according to the laws of the United States, may appoint a director to fill such vacancy at any regular meeting of the board of directors, or at a special meeting called for that purpose at which a quorum is present, or if the directors remaining in office constitute fewer than a quorum of the board of directors, by the affirmative vote of a majority of all the directors remaining in office, or by shareholders at a special meeting called for that purpose in conformance with Section 2 of Article I. At any such shareholder meeting, each shareholder entitled to vote shall have the right to multiply the number of votes he or she is entitled to cast by the number of vacancies being filled and cast the product for a single candidate or distribute the product among two or more candidates. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

ARTICLE III **Committees of the Board**

The board of directors has power over and is solely responsible for the management, supervision, and administration of the association. The board of directors may delegate its power, but none of its responsibilities, to such persons or committees as the board may determine.

The board of directors must formally ratify written policies authorized by committees of the board of directors before such policies become effective. Each committee must have one or more member(s), and who may be an officer of the association or an officer or director of any affiliate of the association, who serve at the pleasure of the board of directors. Provisions of the articles of association and these bylaws governing place of meetings, notice of meeting, quorum and voting requirements of the board of directors, apply to committees and their members as well. The creation of a committee and appointment of members to it must be approved by the board of directors.

Section 1. Loan Committee. There shall be a loan committee composed of not less than 2 directors, appointed by the board of directors annually or more often. The loan committee, on behalf of the bank, shall have power to discount and purchase bills, notes and other evidences of debt, to buy and sell bills of exchange, to examine and approve loans and discounts, to exercise authority regarding loans and discounts, and to exercise, when the board of directors is not in session, all other powers of the board of directors that may lawfully be delegated. The loan committee shall keep minutes of its meetings, and such minutes shall be submitted at the next regular meeting of the board of directors at which a quorum is present, and any action taken by the board of directors with respect thereto shall be entered in the minutes of the board of directors.

Section 2. Investment Committee. There shall be an investment committee composed of not less than 2 directors, appointed by the board of directors annually or more often. The investment committee, on behalf of the bank, shall have the power to ensure adherence to the investment policy, to recommend amendments thereto, to purchase and sell securities, to exercise authority regarding investments and to exercise, when the board of directors is not in session, all other powers of the board of directors regarding investment securities that may be lawfully delegated. The investment committee shall keep minutes of its meetings, and such minutes shall be submitted at the next regular meeting of the board of directors at which a quorum is present, and any action taken by the board of directors with respect thereto shall be entered in the minutes of the board of directors.

Section 3. Examining Committee. There shall be an examining committee composed of not less than 2 directors, exclusive of any active officers, appointed by the board of directors annually or more often. The duty of that committee shall be to examine at least once during each calendar year and within 15 months of the last examination the affairs of the association or cause suitable examinations to be made by auditors responsible only to the board of directors and to report the result of such examination in writing to the board of directors at the next regular meeting thereafter. Such report shall state whether the association is in a sound condition, and whether adequate internal controls and procedures are being maintained and shall recommend to the board of directors such changes in the manner of conducting the affairs of the association as shall be deemed advisable.

Notwithstanding the provisions of the first paragraph of this section 3, the responsibility and authority of the Examining Committee may, if authorized by law, be given over to a duly constituted audit committee of the association's parent corporation by a resolution duly adopted by the board of directors.

Section 4. Trust Audit Committee. There shall be a trust audit committee in conformance with Section 1 of Article V.

Section 5. Other Committees. The board of directors may appoint, from time to time, from its own members, compensation, special litigation and other committees of one or more persons, for such purposes and with such powers as the board of directors may determine.

However, a committee may not:

- (1) Authorize distributions of assets or dividends;
- (2) Approve action required to be approved by shareholders;
- (3) Fill vacancies on the board of directors or any of its committees;
- (5) Amend articles of association;
- (6) Adopt, amend or repeal bylaws; or
- (6) Authorize or approve issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares.

Section 6. Committee Members' Fees. Committee members may receive a fee for their services as committee members and traveling and other out-of-pocket expenses incurred in attending any meeting of a committee of which they are a member. The fee may be a fixed sum to be paid for attending each meeting or a fixed sum to be paid quarterly, or semiannually, irrespective of the number of meetings attended or not attended. The amount of the fee and the basis on which it shall be paid shall be determined by the board of directors.

ARTICLE IV
Officers and Employees

Section 1. Officers. The board of directors shall annually, at the Annual Reorganization Meeting of the board of directors following the annual meeting of the shareholders, appoint or elect a Chairperson of the Board, a Chief Executive Officer and a President, and one or more Vice Presidents, a Corporate Secretary, a Treasurer, a General Auditor, and such other officers as it may determine. At the Annual Reorganization Meeting, the board of directors shall also elect or reelect all of the officers of the association to hold office until the next Annual Reorganization Meeting. In the interim between Annual Reorganization Meetings, the board of directors may also elect or appoint a Chief Executive Officer, a President or such additional officers to the rank of Vice President, including (without limitation as to title or number) one or more Administrative Vice Presidents, Group Vice Presidents, Senior Vice Presidents and Executive Vice Presidents, and any other officer positions as they deem necessary and appropriate. The Chief Executive Officer of M&T Bank, the head of the Human Resources Department of M&T Bank, and any one executive Vice Chairman of M&T Bank, acting jointly, may appoint one or more officers to the rank of Executive Vice President or Senior Vice President. The head of the Human Resources Department of M&T Bank or his or her designee or designees, may appoint other officers up to the rank of Group Vice President, including (without limitation as to title or number) one or more Administrative Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and Assistant Auditors, and any other officer positions as they deem necessary and appropriate. Each such person elected or appointed by the board of directors, the Chief Executive Officer of M&T Bank, the head of the Human Resources Department of M&T Bank, and an executive Vice Chairman of M&T Bank, acting jointly, or the head of the Human Resources Department of M&T Bank or his or her designee or designees, in between Annual Reorganization Meetings shall hold office until the next Annual Reorganization Meeting unless otherwise determined by the board of directors or such authorized officers.

Section 2. Chairperson of the Board. The board of directors shall appoint one of its members to be the chairperson of the board to serve at its pleasure. Such person shall preside at all meetings of the board of directors. The chairperson of the board shall supervise the carrying out of the policies adopted or approved by the board of directors; shall have general executive powers, as well as the specific powers conferred by these bylaws; and shall also have and may exercise such further powers and duties as from time to time may be conferred upon or assigned by the board of directors.

Section 3. President. The board of directors shall appoint one of its members to be the president of the association. In the absence of the chairperson, the president shall preside at any meeting of the board of directors. The president shall have general executive powers and shall have and may exercise any and all other powers and duties pertaining by law, regulation, or practice to the office of president, or imposed by these bylaws. The president shall also have and may exercise such further powers and duties as from time to time may be conferred or assigned by the board of directors.

Section 4. Vice President. The board of directors may appoint one or more vice presidents. Each vice president shall have such powers and duties as may be assigned by the board of directors. One vice president shall be designated by the board of directors, in the absence of the president, to perform all the duties of the president.

Section 5. Secretary. The board of directors shall appoint a secretary, treasurer, or other designated officer who shall be secretary of the board of directors and of the association and who shall keep accurate minutes of all meetings. The secretary shall attend to the giving of all notices required by

these bylaws; shall be custodian of the corporate seal, records, documents and papers of the association; shall provide for the keeping of proper records of all transactions of the association; shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice to the office of treasurer, or imposed by these bylaws; and shall also perform such other duties as may be assigned from time to time, by the board of directors.

Section 6. Other Officers. The board of directors may appoint one or more assistant vice presidents, one or more trust officers, one or more assistant secretaries, one or more assistant treasurers, one or more managers and assistant managers of branches and such other officers and attorneys in fact as from time to time may appear to the board of directors to be required or desirable to transact the business of the association. Such officers shall respectively exercise such powers and perform such duties as pertain to their several offices, or as may be conferred upon or assigned to them by the board of directors, the chairperson of the board, or the president. The board of directors may authorize an officer to appoint one or more officers or assistant officers.

Section 7. Tenure of Office. The president and all other officers shall hold office for the current year for which the board of directors was elected, unless they shall resign, become disqualified, or be removed; and any vacancy occurring in the office of president shall be filled promptly by the board of directors.

Section 8. Resignation. An officer may resign at any time by delivering notice to the association. A resignation is effective when the notice is given unless the notice specifies a later effective date.

ARTICLE V

Fiduciary Activities

Section 1. Trust Audit Committee. There shall be a Trust Audit Committee composed of not less than 2 directors, appointed by the board of directors, which shall, at least once during each calendar year make suitable audits of the association's fiduciary activities or cause suitable audits to be made by auditors responsible only to the board, and at such time shall ascertain whether fiduciary powers have been administered according to law, Part 9 of the Regulations of the Comptroller of the Currency, and sound fiduciary principles. Such committee: (1) must not include any officers of the bank or an affiliate who participate significantly in the administration of the bank's fiduciary activities; and (2) must consist of a majority of members who are not also members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the bank.

Notwithstanding the provisions of the first paragraph of this section 1, the responsibility and authority of the Trust Audit Committee may, if authorized by law, be given over to a duly constituted audit committee of the association's parent corporation by a resolution duly adopted by the board of directors.

Section 2. Fiduciary Files. There shall be maintained by the association all fiduciary records necessary to assure that its fiduciary responsibilities have been properly undertaken and discharged.

Section 3. Trust Investments. Funds held in a fiduciary capacity shall be invested according to the instrument establishing the fiduciary relationship and applicable law. Where such instrument does not specify the character and class of investments to be made, but does vest in the association investment discretion, funds held pursuant to such instrument shall be invested in investments in which corporate fiduciaries may invest under applicable law.

ARTICLE VI
Stock and Stock Certificates

Section 1. Transfers. Shares of stock shall be transferable on the books of the association, and a transfer book shall be kept in which all transfers of stock shall be recorded. Every person becoming a shareholder by such transfer shall in proportion to such shareholder's shares, succeed to all rights of the prior holder of such shares. The board of directors may impose conditions upon the transfer of the stock reasonably calculated to simplify the work of the association with respect to stock transfers, voting at shareholder meetings and related matters and to protect it against fraudulent transfers.

Section 2. Stock Certificates. Certificates of stock shall bear the signature of the president (which may be engraved, printed or impressed) and shall be signed manually or by facsimile process by the secretary, assistant secretary, treasurer, assistant treasurer, or any other officer appointed by the board of directors for that purpose, to be known as an authorized officer, and the seal of the association shall be engraved thereon. Each certificate shall recite on its face that the stock represented thereby is transferable only upon the books of the association properly endorsed.

The board of directors may adopt or use procedures for replacing lost, stolen, or destroyed stock certificates as permitted by law.

The association may establish a procedure through which the beneficial owner of shares that are registered in the name of a nominee may be recognized by the association as the shareholder. The procedure may set forth:

- (1) The types of nominees to which it applies;
- (2) The rights or privileges that the association recognizes in a beneficial owner;
- (3) How the nominee may request the association to recognize the beneficial owner as the shareholder;
- (4) The information that must be provided when the procedure is selected;
- (5) The period over which the association will continue to recognize the beneficial owner as the shareholder;
- (6) Other aspects of the rights and duties created.

ARTICLE VII
Corporate Seal

Section 1. Seal. The seal of the association shall be in such form as may be determined from time to time by the board of directors. The president, the treasurer, the secretary or any assistant treasurer or assistant secretary, or other officer thereunto designated by the board of directors shall have authority to affix the corporate seal to any document requiring such seal and to attest the same. The seal on any corporate obligation for the payment of money may be facsimile.

ARTICLE VIII
Miscellaneous Provisions

Section 1. Fiscal Year. The fiscal year of the association shall be the calendar year.

Section 2. Execution of Instruments. All agreements, indentures, mortgages, deeds, conveyances, transfers, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, proxies and other instruments or documents may be signed, executed, acknowledged, verified, delivered or accepted on behalf of the association by the chairperson of the board, or the president, or any vice president, or the secretary, or the treasurer, or, if in connection with the exercise of fiduciary powers of the association, by any of those offices or by any trust officer. Any such instruments may also be executed, acknowledged, verified, delivered or accepted on behalf of the association in such other manner and by such other officers as the board of directors may from time to time direct. The provisions of this section 2 are supplementary to any other provision of these bylaws.

Section 3. Records. The articles of association, the bylaws and the proceedings of all meetings of the shareholders, the board of directors, and standing committees of the board of directors shall be recorded in appropriate minute books provided for that purpose. The minutes of each meeting shall be signed by the secretary, treasurer or other officer appointed to act as secretary of the meeting.

Section 4. Corporate Governance Procedures. To the extent not inconsistent with federal banking statutes and regulations, or safe and sound banking practices, the association may follow the Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter) with respect to matters of corporate governance procedures.

Section 5. Indemnification. For purposes of this Section 5 of Article VIII, the term "institution-affiliated party" shall mean any institution-affiliated party of the association as such term is defined in 12 U.S.C. 1813(u).

Any institution-affiliated party (or his or her heirs, executors or administrators) may be indemnified or reimbursed by the association for reasonable expenses actually incurred in connection with any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, governmental, administrative or investigative, in accordance with and to the fullest extent permitted by law, as such law now or hereafter exists; provided, however, that when an administrative proceeding or action instituted by a federal banking agency results in a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association, then the association shall require the repayment of all legal fees and expenses advanced pursuant to the next succeeding paragraph and may not indemnify such institution-affiliated parties (or their heirs, executors or administrators) for expenses, including expenses for legal fees, penalties or other payments incurred. The association shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by an institution-affiliated party (or by his or her heirs, executors or administrators) only if such action or proceeding (or part thereof) was authorized by the board of directors.

Expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding under 12 U.S.C. 164 or 1818 may be paid by the association in advance of the final disposition of such action or proceeding upon (a) a determination by the board of directors acting by a quorum consisting of directors who are not parties to such action or

proceeding that the institution-affiliated party (or his or her heirs, executors or administrators) has a reasonable basis for prevailing on the merits, (b) a determination that the indemnified individual (or his or her heirs, executors or administrators) will have the financial capacity to reimburse the bank in the event he or she does not prevail, (c) a determination that the payment of expenses and fees by the association will not adversely affect the safety and soundness of the association, and (d) receipt of an undertaking by or on behalf of such institution-affiliated party (or by his or her heirs, executors or administrators) to repay such advancement in the event of a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association. In all other instances, expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding as to which indemnification may be given under these articles of association may be paid by the association in advance of the final disposition of such action or proceeding upon (a) receipt of an undertaking by or on behalf of such institution-affiliated party (or by or on behalf of his or her heirs, executors or administrators) to repay such advancement in the event that such institution-affiliated party (or his or her heirs, executors or administrators) is ultimately found not to be entitled to indemnification as authorized by these bylaws and (b) approval by the board of directors acting by a quorum consisting of directors who are not parties to such action or proceeding or, if such a quorum is not obtainable, then approval by stockholders. To the extent permitted by law, the board of directors or, if applicable, the stockholders, shall not be required to find that the institution-affiliated party has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding.

In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Section 5 of Article VIII have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Section 5 of Article VIII have been met. If legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in these articles of association (a) shall be available with respect to events occurring prior to the adoption of these bylaws, (b) shall continue to exist after any restrictive amendment of these bylaws with respect to events occurring prior to such amendment, (c) may be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, or on the basis of applicable law in effect at the time such rights are claimed, and (d) are in the nature of contract rights which may be enforced in any court of competent jurisdiction as if the association and the institution-affiliated party (or his or her heirs, executors or administrators) for whom such rights are sought were parties to a separate written agreement.

The rights of indemnification and to the advancement of expenses provided in these bylaws shall not, to the extent permitted under applicable law, be deemed exclusive of any other rights to which any such institution-affiliated party (or his or her heirs, executors or administrators) may now or hereafter be otherwise entitled whether contained in the association's articles of association, these bylaws, a resolution of stockholders, a resolution of the board of directors, or an agreement providing such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in these bylaws shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any such institution-affiliated party (or of his or her heirs, executors or administrators) in any such action or proceeding to have assessed or allowed in his or her favor, against the association or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

If this Section 5 of Article VIII or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Section 5 of Article VIII shall remain fully enforceable.

The association may, upon affirmative vote of a majority of its board of directors, purchase insurance to indemnify its institution-affiliated parties to the extent that such indemnification is allowed in these bylaws; provided, however, that no such insurance shall include coverage for a final order assessing civil money penalties against such persons by a bank regulatory agency. Such insurance may, but need not, be for the benefit of all institution-affiliated parties.

ARTICLE IX
Inspection and Amendments

Section 1. Inspection. A copy of the bylaws of the association, with all amendments, shall at all times be kept in a convenient place at the main office of the association, and shall be open for inspection to all shareholders during banking hours.

Section 2. Amendments. The bylaws of the association may be amended, altered or repealed, at any regular meeting of the board of directors, by a vote of a majority of the total number of the directors except as provided below, and provided that the following language accompany any such change.

I, _____, certify that: (1) I am the duly constituted (secretary or treasurer) of _____ and secretary of its board of directors, and as such officer am the official custodian of its records; (2) the foregoing bylaws are the bylaws of the association, and all of them are now lawfully in force and effect.

I have hereunto affixed my official signature on this _____ day of _____.

(Secretary or Treasurer)

The association's shareholders may amend or repeal the bylaws even though the bylaws also may be amended or repealed by the board of directors.

EXHIBIT 6

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust, National Association hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST, NATIONAL ASSOCIATION

Dated: May 9, 2022

By: /s/ Karen Ferry

Name: Karen Ferry

Title: Vice President

EXHIBIT 7**REPORT OF CONDITION****WILMINGTON TRUST, NATIONAL ASSOCIATION**

As of the close of business on December 31, 2021

ASSETS	Thousands of Dollars
Cash and balances due from depository institutions:	11,805,778
Securities:	5,946
Federal funds sold and securities purchased under agreement to resell:	0
Loans and leases held for sale:	0
Loans and leases net of unearned income, allowance:	85,022
Premises and fixed asset	26,542
Other real estate owned:	348
Investments in unconsolidated subsidiaries and associated companies:	0
Direct and indirect investments in real estate ventures:	0
Intangible assets:	81
Other assets:	66,919
Total Assets:	11,990,636

LIABILITIES	Thousands of Dollars
Deposits	11,117,354
Federal funds purchased and securities sold under agreements to repurchase	0
Other borrowed money:	0
Other Liabilities:	94,033
Total Liabilities	11,211,387

EQUITY CAPITAL	Thousands of Dollars
Common Stock	1,000
Surplus	523,768
Retained Earnings	254,601
Accumulated other comprehensive income	(120)
Total Equity Capital	779,249
Total Liabilities and Equity Capital	11,990,636

Calculation of Filing Fee Tables

Form S-3
(Form Type)Clover Health Investments, Corp.
(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)	(3)	(3)	—	—				
	Equity	Class A Common Stock	—	(1)(2)	(3)	(3)	—	—				
	Equity	Preferred Stock	—	(1)(2)	(3)	(3)	—	—				
	Other	Warrants	—	(1)	(3)	(3)	—	—				
	Unallocated (Universal) Shelf	—	457(o)	(1)(2)	(3)	\$300,000,000	0.0000927	\$27,810 (4)				
Fees Previously Paid	—	—	—	—	—	—	—	—				
Carry Forward Securities												
Carry Forward Securities	—	—	—	—	—	—	—	—	—	—	—	—
	Total Offering Amounts					\$300,000,000		\$27,810				
	Total Fees Previously Paid							—				
	Total Fee Offsets							—				
	Net Fee Due							\$27,810				

- (1) There are being registered hereunder an indeterminate number or amount, as the case may be, of the securities of each identified class as may from time to time be offered and sold at indeterminate prices, which together shall have a maximum aggregate offering price not to exceed \$300,000,000. Any securities registered hereunder may be sold separately or in combination with the other securities registered hereunder. The securities registered also include an indeterminate number or amount, as the case may be, of securities as may be issued in exchange for, or upon conversion or exercise of, as the case may be, the securities registered hereunder or pursuant to the anti-dilution provisions of any such securities. If any debt securities are issued at an original issue discount, then the principal amount of such debt securities shall be in such greater amount as shall result in an aggregate initial offering price not to exceed \$300,000,000, less the aggregate dollar amount of all securities previously issued hereunder.

- (2) Pursuant to Rule 416 under the Securities Act, the shares being registered hereunder include such indeterminate number of shares of Class A common stock and shares of preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (3) The proposed maximum aggregate offering price per class of security will be determined from time to time by the Registrant in connection with the issuance by the Registrant of the securities registered hereunder and is not specified as to each class of security pursuant to Instruction 2.A.iii.b of the Instructions to the Calculation of Filing Fee Tables and Related Disclosure of Form S-3.
- (4) Calculated pursuant to Rule 457(o) under the Securities Act.