

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

**FORM 8-K**

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

**Date of Report (Date of earliest event reported): December 17, 2025**

**Banzai International, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-39826**  
(Commission  
File Number)

**85-3118980**  
(I.R.S. Employer  
Identification No.)

**435 Ericksen Ave, Suite 250**  
**Bainbridge Island, Washington**  
(Address of Principal Executive Offices)

**98110**  
(Zip Code)

**Registrant's telephone number, including area code: (206) 414-1777**

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

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

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

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A common stock, par value \$0.0001 per share	BNZI	The Nasdaq Capital Market
Redeemable Warrants, each whole warrant exercisable for one share of Class A common stock at an exercise price of \$11.50	BNZIW	The Nasdaq Capital Market

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

Emerging growth company

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

### Item 1.01. Entry Into a Material Definitive Agreement.

On December 16, 2025, Banzai International, Inc., a Delaware corporation (the “**Company**”), entered into that certain Exchange Agreement (the “**Exchange Agreement**”), dated as of December 15, 2025, (the “**Effective Date**”), by and among Agile Capital Funding, LLC, a New York limited liability company (“**Collateral Agent**”) and Agile Lending, LLC, a Virginia limited liability company (“**Agile**” or “**Holder**”), on the one hand, and the Company, on the other hand (the “**Exchange**”). Pursuant to the Exchange Agreement, the Company shall exchange 232,786 shares (the “**Exchange Shares**”) of its Class A common stock, par value \$0.0001 per share (the “**Common Stock**”), having an aggregate value of \$284,000 (the “**Note Exchange Amount**”), valued at \$1.22 per share, in exchange for a reduction in an equivalent amount to the Note Exchange Amount to that certain Subordinated Secured Promissory Note to Agile in the original principal amount of \$4,000,000 (the “**Note**”), with a balance of \$1,495,375.00 as of December 11, 2025 (the “**Note Balance**”). In connection with the Exchange, the Company also entered into that certain Forbearance Agreement (“**Forbearance Agreement**,” together with the Exchange Agreement, the “**Transaction Documents**”), dated as of December 15, 2025, by and among the Company, Agile and Collateral Agent, pursuant to which Agile has agreed to forbear from exercising its remedies with respect to certain events that would be considered Events of Default under the Note, and to temporarily modify certain terms of the related loan agreement (the “**Forbearance**”), as of the closing date of the Exchange and the earlier of (i) March 30, 2026, and (ii) the date of any Forbearance Default, as defined in the Forbearance Agreement (the “**Forbearance Period**”).

As partial consideration for the Collateral Agent’s and Agile’s agreement for the Forbearance, the Company shall pay to Agile a forbearance fee of \$628,057.50, in the form of an increase in the principal due under the Note (the “**Forbearance Fee**”). The Forbearance Fee will cause the outstanding principal under the Note to be increased from the Note Balance to \$2,123,432.50 (the “**New Note Balance**”). If the Forbearance Agreement is terminated for any reason whatsoever, the principal due under the Note shall be the New Note Balance, and the Forbearance Fee shall be deemed earned by Agile and paid accordingly. The Company also agreed to pay all of Agile’s reasonable costs and expenses, in an amount not to exceed \$10,000.

Upon an Event of Default, as defined in the Forbearance Agreement, among other things, the Forbearance Period shall immediately cease, and Agile may commence foreclosure proceedings with respect to the collateral over which the Company granted Agile a security interest pursuant to the terms of the Forbearance Agreement.

The Transaction Documents contain customary representations and warranties and conditions regarding the Exchange and Forbearance.

The foregoing descriptions of the Exchange Agreement and the Forbearance Agreement are not complete and are qualified in their entirety by reference to the full text of such agreements, copies of which are filed herewith as [Exhibit 10.1](#) and [Exhibit 10.2](#), respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the securities discussed herein, nor shall there be any sale of such securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

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

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated in this Item 2.03 by reference.

### Item 3.02. Unregistered Sales of Equity Securities

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated in this Item 3.02 by reference.

### Item 5.03 Amendments to Articles of Incorporation or Bylaws.

On December 11, 2025, the Board of Directors of Banzai International, Inc. (the “**Company**”), approved, as permitted by the Bylaws, to amend the Company’s Third Amended and Restated Bylaws (the “**Bylaws**”), to reduce quorum requirements for shareholder meetings (the “**Quorum Requirement**”). As per the approval, following the 2025 Annual Shareholder Meeting to be held on January 15, 2026, Section 3.5 of the Company’s Bylaws shall be amended such that the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of 33.3% of the voting power of the then-outstanding shares of capital stock entitled to vote shall constitute a quorum for the transaction of business.

The above description of the amendment to the Bylaws is qualified in its entirety by reference to the Fourth Amended and Restated Bylaws, a copy of which is attached hereto as Exhibit 3.1.

### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#">Fourth Amended and Restated Bylaws</a>
10.1	<a href="#">Exchange Agreement</a>
10.2	<a href="#">Forbearance Agreement</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURE**

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

Dated: December 17, 2025

**BANZAI INTERNATIONAL, INC.**

By: /s/ Joseph Davy

Joseph Davy  
Chief Executive Officer

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**FOURTH AMENDED AND RESTATED  
BYLAWS  
OF  
BANZAI INTERNATIONAL, INC.**

**ARTICLE I**

**OFFICES**

**Section 1.1. Registered Office.** The registered office of the corporation in the State of Delaware shall be as set forth in the Second Amended and Restated Certificate of Incorporation of the corporation, as the same may be amended or restated from time to time (the “*Certificate of Incorporation*”).

**Section 1.2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the corporation’s Board of Directors (the “*Board of Directors*”), and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II**

**CORPORATE SEAL**

**Section 2.1. Corporate Seal.** The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, “Corporate Seal-Delaware.” Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE III**

**STOCKHOLDERS’ MEETINGS**

**Section 3.1. Place of Meetings.** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (the “*DGCL*”).

**Section 3.2. Annual Meetings.**

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation’s notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder’s notice provided for in Section 3.2(b) of these Second Amended and Restated Bylaws (the “*Bylaws*”), who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 3.2. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation’s notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the “*1934 Act*”)) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting.

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(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 3.2(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 3.2(b)(iii) of these Bylaws and must update and supplement such written notice on a timely basis as set forth in Section 3.2(c) of these Bylaws. Such stockholder's notice shall set forth or include: (A) as to each nominee such stockholder proposes to nominate at the meeting for election or re-election to the Board of Directors: (1) the name, age, business address and residence address of such nominee; (2) the principal occupation and employment of such nominee; (3) the class and number of shares of each class of capital stock of the corporation which are owned of record and beneficially by such nominee; (4) the date or dates on which such shares were acquired and the investment intent of such acquisition; (5) a completed and signed questionnaire, representation and agreement required by Section 3.2(e) of these Bylaws; and (6) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 3.2(b)(iv) of these Bylaws. The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(ii) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14(a)-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 3.2(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 3.2(b)(iii) of these Bylaws, and must update and supplement such written notice on a timely basis as set forth in Section 3.2(c) of these Bylaws. Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 3.2(b)(iv) of these Bylaws.

(iii) To be timely, the written notice required by Section 3.2(b)(i) or 3.2(b)(ii) of these Bylaws must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that, subject to the last sentence of this Section 3.2(b)(iii), in the event that no annual meeting was held during the preceding year or the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the date of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting and (ii) the 10th day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(iv) The written notice required by Section 3.2(b)(i) or 3.2(b)(ii) of these Bylaws shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "**Proponent**" and collectively, the "**Proponents**"): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 3.2(b)(i) of these Bylaws) or to propose the business that is specified in the notice (with respect to a notice under Section 3.2(b)(ii) of these Bylaws); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 3.2(b)(i) of these Bylaws) or to carry such proposal (with respect to a notice under Section 3.2(b)(ii) of these Bylaws); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous 12 month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

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For purposes of Sections 3.2 and 3.3 of these Bylaws, a “**Derivative Transaction**” means any agreement, arrangement, interest or understanding (written or oral) entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

(w) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation;

(x) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation;

(y) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes; or

(z) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation, which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(c) A stockholder providing written notice required by Section 3.2(b)(i) or (ii) of these Bylaws shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five business days prior to the meeting and, in the event of any adjournment or postponement thereof, five business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 3.2(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five business days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 3.2(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two business days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 3.2(b)(iii) of these Bylaws to the contrary, in the event that the number of directors in an Expiring Class (as defined below) is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the corporation at least 10 days before the last day a stockholder may deliver a notice of nomination in accordance with Section 3.2(b)(iii) of these Bylaws, a stockholder’s notice required by this Section 3.2 and which complies with the requirements in Section 3.2(b)(i) of these Bylaws, other than the timing requirements in Section 3.2(b)(iii) of these Bylaws, shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation. For purposes of this Section 3.2, an “**Expiring Class**” shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

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(e) To be eligible to be a nominee for election or re-election as a director of the corporation pursuant to a nomination under clause (iii) of Section 3.2(a) of these Bylaws, such proposed nominee or a person on such proposed nominee's behalf must deliver (in accordance with the time periods prescribed for delivery of notice under Section 3.2(b)(iii) or 3.2(d) of these Bylaws, as applicable) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the corporation, will act or vote on any issue or question (a "**Voting Commitment**") that has not been disclosed to the corporation in the questionnaire or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the corporation, with such proposed nominee's fiduciary duties under applicable law; (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the corporation that has not been disclosed therein; (iii) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with, all applicable rules of any securities exchange upon which the corporation's securities are listed, the Certificate of Incorporation, these Bylaws, all applicable publicly disclosed corporate governance, ethics, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation generally applicable to directors (which other guidelines and policies will be provided by the Secretary upon written request), and all applicable fiduciary duties under state law; (iv) consents to being named as a nominee in the corporation's proxy statement and form of proxy for the meeting; (v) intends to serve a full term as a director of the corporation, if elected; and (vi) will provide facts, statements and other information in all communications with the corporation and its stockholders that are or will be true and correct in all material respects and that do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(f) A person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 3.2(a) of these Bylaws, or in accordance with clause (iii) of Section 3.2(a) of these Bylaws. Except as otherwise required by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 3.2(b)(iv)(D) and 3.2(b)(iv)(E) of these Bylaws, to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(g) Notwithstanding the foregoing provisions of this Section 3.2, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 3.2(a)(iii) of these Bylaws.

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(h) For purposes of Sections 3.2 and 3.3 of these Bylaws,

(i) “*public announcement*” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act; and

(ii) “*affiliates*” and “*associates*” shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the “*1933 Act*”).

### **Section 3.3. Special Meetings.**

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting. The Chairman of the Board of Directors, the Chief Executive Officer or the Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously called by any of them.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 3.2(b)(i) of these Bylaws. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation’s notice of meeting, if written notice setting forth the information required by Section 3.2(b)(i) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the 90th day prior to such meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 3.2(c) of these Bylaws. In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder’s notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 3.3, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 3.3. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation’s proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 3.3(c) of these Bylaws.

**Section 3.4. Notice of Meetings.** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice at the meeting, and, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the corporation. If sent via electronic transmission, notice is deemed given as of the sending time recorded at the time of transmission. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, and does so object, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

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**Section 3.5. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of 33.3% of the voting power of the then-outstanding shares of capital stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the voting power of the then-outstanding shares of capital stock represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the stock present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute or by applicable stock exchange rules, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation, applicable stock exchange rules or these Bylaws, a majority of the voting power of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute, applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of the voting power of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

**Section 3.6. Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the voting power of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting, though less than a quorum. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 3.7. Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 3.9 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three years from its date of creation unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

**Section 3.8. Joint Owners of Stock.** If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one votes, his or her act binds all; (b) if more than one votes, the act of the majority so voting binds all; or (c) if more than one votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of clause (c) of this Section 3.8 shall be a majority or even-split in interest.

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**Section 3.9. List of Stockholders.** The Secretary shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder.

Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

**Section 3.10. Organization.**

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, the President, or, if the President is absent, if applicable, the Lead Independent Director (as defined below), or, if the Lead Independent Director is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the chairman of the meeting, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate, or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

**ARTICLE IV**

**DIRECTORS**

**Section 4.1. Number and Term of Office.** The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

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**Section 4.2. Powers.** The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**Section 4.3. Classes of Directors.** Subject to the rights of the holders of any series of preferred stock to elect additional directors under specified circumstances, the directors shall be divided into three classes designated as Class I, Class II, and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the adoption of these Bylaws, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the adoption of these Bylaws, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the adoption of these Bylaws, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this Section 4.3, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 4.4. Vacancies.** Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of preferred stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, *provided, however,* that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal, or resignation of any director.

**Section 4.5. Resignation.** Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer or the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the resignation shall be deemed effective at the time of delivery to the Chairman of the Board, the Chief Executive Officer, or the Secretary. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified.

**Section 4.6. Removal.**

(a) Subject to the rights of any series of preferred stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause.

(b) Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least 66 2/3% of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors, voting together as a single class.

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#### **Section 4.7. Meetings.**

**(a) Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

**(b) Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer, or a majority of the authorized number of directors.

**(c) Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

**(d) Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph, or telex, or by electronic mail or other electronic means, during normal business hours, at least 24 hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, charges prepaid, at least three days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, and does so object, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**(e) Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

#### **Section 4.8. Quorum and Voting.**

**(a)** Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 11.1 of these Bylaws for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

**(b)** At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

**Section 4.9. Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

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**Section 4.10. Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**Section 4.11. Committees.**

**(a) Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending, or repealing any Bylaw of the corporation.

**(b) Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

**(c) Term.** The Board of Directors, subject to any requirements of any outstanding series of preferred stock and the provisions of subsections (a) or (b) of this Section 4.11, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

**(d) Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 4.11 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. Unless the Board of Directors shall otherwise provide, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article IV of these Bylaws.

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**Section 4.12. Duties of Chairman of the Board of Directors.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**Section 4.13. Lead Independent Director.** The Chairman of the Board of Directors, or if the Chairman is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director (“*Lead Independent Director*”) to serve until replaced by the Board of Directors. The Lead Independent Director will, with the Chairman of the Board of Directors, establish the agenda for regular Board meetings and serve as chairman of Board of Directors meetings in the absence of the Chairman of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and perform such other duties as may be established or delegated by the Chairman of the Board of Directors.

**Section 4.14. Organization.** At every meeting of the Board of Directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer or director directed to do so by the Chairman, shall act as secretary of the meeting.

## ARTICLE V

### OFFICERS

**Section 5.1. Officers Designated.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors. The officers of the corporation need not be stockholders of the corporation.

#### **Section 5.2. Tenure and Duties of Officers.**

**(a) General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, or until such officer’s earlier death, resignation, or removal. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

**(b) Duties of Chief Executive Officer.** The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director) unless the Chairman of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

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**(c) Duties of President.** The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors (if a director), the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**(d) Duties of Vice Presidents.** The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

**(e) Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**(f) Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**(g) Duties of Treasurer.** Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**(h) Duties of Other Officers.** Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the corporation the power to choose such other officers and to prescribe their respective duties and powers.

**Section 5.3. Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

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**Section 5.4. Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**Section 5.5. Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

### EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 6.1. Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 6.2. Voting of Securities Owned by the Corporation.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE VII

### SHARES OF STOCK

**Section 7.1. Form and Execution of Certificates.** The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock of the corporation, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, the Chief Executive Officer, or the President or any Vice President and by the Chief Financial Officer, Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him or her in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

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**Section 7.2. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate, or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**Section 7.3. Transfers.**

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**Section 7.4. Fixing Record Dates.**

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 7.5. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

**ARTICLE VIII**

**OTHER SECURITIES OF THE CORPORATION**

**Section 8.1. Execution of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 7.1 of these Bylaws), may be signed by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture, or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

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## ARTICLE IX

### DIVIDENDS

**Section 9.1. Declaration of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

**Section 9.2. Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE X

### FISCAL YEAR

**Section 10.1. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

## ARTICLE XI

### INDEMNIFICATION

**Section 11.1. Indemnification of Directors, Officers, Employees and Other Agents.**

**(a) Directors and Officers.** The corporation shall indemnify its directors and officers to the extent not prohibited by the DGCL or any other applicable law; *provided, however*; that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further*; that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

**(b) Employees and Other Agents.** The corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person (except for officers) or other persons as the Board of Directors shall determine.

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**(c) Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an “*undertaking*”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “*final adjudication*”) that such indemnitee is not entitled to be indemnified for such expenses under this Section 11.1 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 11.1, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**(d) Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Section 11.1 shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Section 11.1 to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within 90 days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his or her conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because the director or officer has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 11.1 or otherwise shall be on the corporation.

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**(e) Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

**(f) Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or officer, or, if applicable, employee or other agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

**(g) Insurance.** To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 11.1.

**(h) Amendments.** Any repeal or modification of this Section 11.1 shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**(i) Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Section 11.1 that shall not have been invalidated, or by any other applicable law. If this Section 11.1 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under any other applicable law.

**(j) Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

**(i)** The term "*proceeding*" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration, and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

**(ii)** The term "*expenses*" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

**(iii)** The term the "*corporation*" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 45 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

**(iv)** References to a "*director,*" "*officer,*" "*employee,*" or "*agent*" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust, or other enterprise.

**(v)** References to "*other enterprises*" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "*servicing at the request of the corporation*" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "*not opposed to the best interests of the corporation*" as referred to in this Section 11.1.

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## ARTICLE XII

### NOTICES

#### Section 12.1. Notices.

**(a) Notice to Stockholders.** Written notice to stockholders of stockholder meetings shall be given as provided in Section 3.4 of these Bylaws. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by U.S. mail or nationally recognized overnight courier, or by facsimile, telegraph or telex, or by electronic mail or other electronic means.

**(b) Notice to Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), or as otherwise provided in these Bylaws, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

**(c) Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

**(d) Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**(e) Notice to Person With Whom Communication is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**(f) Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

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## ARTICLE XIII

### AMENDMENTS

**Section 13.1. Amendments.** Subject to the limitations set forth in Section 11.1(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend, or repeal the Bylaws of the corporation. Any adoption, amendment, or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

## ARTICLE XIV

### LOANS TO OFFICERS OR EMPLOYEES

**Section 14.1. Loans to Officers or Employees.** Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit, or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

## ARTICLE XV

### MISCELLANEOUS

#### Section 15.1. Forum.

(a) Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom shall be the sole and exclusive forum for the following claims or causes of action under Delaware statutory or common law: (A) any derivative claim or cause of action brought on behalf of the corporation; (B) any claim or cause of action for breach of a fiduciary duty owed by any current or former director, officer or other employee of the corporation, to the corporation or the corporation's stockholders; (C) any claim or cause of action against the corporation or any current or former director, officer or other employee of the corporation, arising out of or pursuant to any provision of the DGCL, the Certificate of Incorporation or the Bylaws of the corporation (as each may be amended from time to time); (D) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the Bylaws of the corporation (as each may be amended from time to time, including any right, obligation, or remedy thereunder); (E) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (F) any claim or cause of action against the corporation or any current or former director, officer or other employee of the corporation, governed by the internal-affairs doctrine or otherwise related to the corporation's internal affairs, in all cases to the fullest extent permitted by law and subject to the court having personal jurisdiction over the indispensable parties named as defendants. This Section 15.1 of Article XV shall not apply to claims or causes of action brought to enforce a duty or liability created by the 1933 Act or the 1934 Act or any other claim for which the federal courts have exclusive jurisdiction.

(b) Unless the corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the 1933 Act, including all causes of action asserted against any defendant named in such complaint. For the avoidance of doubt, this provision is intended to benefit and may be enforced by the corporation, its officers and directors, the underwriters for any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

Dated: December 16, 2025

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**EXCHANGE AGREEMENT**

**THIS EXCHANGE AGREEMENT** (the “**Agreement**”) is entered into as of December 15, 2025, (the “**Effective Date**”), by and among Agile Capital Funding, LLC, a New York limited liability company (“**Collateral Agent**”) and Agile Lending, LLC, a Virginia limited liability company (“**Agile**” or “**Holder**”), on the one hand, and Banzai International, Inc., a Delaware corporation (the “**Parent**”), and all subsidiaries of the Parent (collectively with the Parent, the “**Company**”), on the other hand. The Company, Collateral Agent, and Agile are sometimes herein referred to as, the “**Parties**,” and each, sometimes, a “**Party**”, on the other hand.

**RECITALS**

**WHEREAS**, on March 31, 2025, the Parties entered into that certain Subordinated Business Loan and Security Agreement (the “**Loan Agreement**”), pursuant to which the Company issued that certain Subordinated Secured Promissory Note to Agile in the original principal amount of \$4,000,000 (the “**Note**”), with the remaining principal and accrued and unpaid interest as of December 11, 2025 was One Million Four Hundred Ninety Five Thousand Three Hundred Seventy Five and 00/100 Dollars (\$1,495,375.00);

**WHEREAS**, on December 15, 2025, the Parties entered into that certain forbearance agreement (the “**Forbearance Agreement**”), pursuant to which Agile agreed to forbear from exercising its rights and remedies available due to any default of the Loan Agreement and the Note by the Company, in exchange for the outstanding balance due under the Note being increased to Two Million One Hundred Twenty Three Thousand Four Hundred Thirty Two and 50/100 Dollars (\$2,123,432.50)(the “**Note Balance**”);

**WHEREAS**, the Company desires to exchange 232,786 shares (the “**Exchange Shares**”) of the Parent’s common stock, par value \$0.0001 per share (the “**Common Stock**”), having an aggregate value of \$284,000 (the “**Note Exchange Amount**”), valued \$1.22, in exchange for a reduction in the Note Balance of an equivalent amount to the Note Exchange Amount;

**WHEREAS**, the Parties agree that the Loan Agreement, and term loan associated therewith, along with any Advances made thereunder, represented a “security”, as that term is commonly defined under the applicable rules and regulations of the Securities Act of 1933, as amended from time-to-time (the “**Securities Act**”);

**WHEREAS**, the Note may be amended or modified, with a written instrument signed by the Parties;

**WHEREAS**, the transactions envisioned hereunder will be affected in compliance with, and will otherwise satisfy, all requirements of Section 3(a)(9) of the Securities Act; and

**WHEREAS**, the Parties now desire to enter into this Agreement to effectuate the exchange of the Note Exchange Amount for the Exchange Shares as detailed hereinbelow.

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

**1. Exchange; Rule 144; Costs and Expenses; Closing.**

(a) Exchange. On the terms and subject to the conditions set forth in this Agreement, at the closing (“**Closing**”), (i) Agile will cancel the Company’s obligations in an amount equal to the Note Exchange Amount, and (ii) in exchange for the cancellation of a portion of the Note Balance equal to the Note Exchange Amount, the Company will issue to Agile, free and clear of all liens, pledges, encumbrances, changes, restrictions or known claims of any kind, nature or description, other than restrictions imposed by or arising under federal or state securities laws, and Agile will acquire and accept from the Company, the Exchange Shares (the “**Exchange**”). The Exchange is being made in reliance on the exemption from securities registration provided by Section 3(a)(9) of the Securities Act, and the Company agrees not to take any position to the contrary.

(b) Rule 144; Costs and Expenses. the Company will assist Agile with utilization of Rule 144 for the Exchange Shares. the Company will cover all costs and fees incurred by Agile (including reasonable attorneys’ fees) with respect to the issuance of the Exchange Shares, including, without limitation, providing the requisite legal opinions, as delivered by counsel of Agile’s choosing, necessary to effectuate the restrictive legend removal and the DWAC of common shares to the brokerage accounts designated by Agile, and any transfer agent fees associated with the removal of the restrictive legends contained in any certificates or book-entry statements. The Company acknowledges and agrees that, as of December 15, 2025, the requisite six-month hold period under Rule 144 has been met.

(c) Closing. The consummation of the Exchange shall occur in accordance with the provisions of Section 4(d)(i), below.

**2. Representations and Warranties of Agile.** Agile hereby represents and warrants to the Company, all of which representations and warranties are true, complete, and correct in all respects as of the date hereof and as of the Delivery Date (as defined below), as follows:

(a) Organization and Qualification. Agile is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Virginia. Agile is duly licensed or qualified and in good standing (or equivalent status as applicable) in each jurisdiction in which the assets owned or leased by it or the character of its activities require it to be licensed or qualified or in good standing (or equivalent status as applicable), except where the failure to be so licensed or qualified, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect.

(b) Authorization; No Restrictions, Consents or Approvals. Agile has the requisite power and authority to enter into and perform its obligations under this Agreement and to cancel its interest in, and to, a portion of the Note Balance equal to the Note Exchange Amount as of the Delivery Date. This Agreement has been duly executed by Agile and constitutes the legal, valid, binding and enforceable obligation of Agile, enforceable against Agile in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor’s rights and remedies or by other equitable principles of general application (including any limitation of equitable remedies). The execution and delivery of this Agreement and the consummation by Agile of the transactions contemplated herein do not and will not (A) conflict with or violate any of the terms of the articles of organization and operating agreement of Agile or any applicable law relating to Agile, or (B) conflict with, or result in or constitute a default under or breach or violation of or grounds for termination of, any license, permit or other governmental authorization to which Agile is a party or by which Agile may be bound, or result in the violation by Agile of any laws to which Agile may be subject, in each case in a manner which would prevent the execution or delivery of this Agreement by Agile or would adversely affect the transactions contemplated herein. No authorization, consent or approval of, notice to, or filing with, any public body or governmental authority or any other person is necessary or required in connection with the execution and delivery by Agile of this Agreement or the performance by Agile of its obligations hereunder.

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(c) Investment Representations. Agile: (i) understands that the Exchange Shares have not been registered under the Securities Act or any other applicable securities laws, and that the Exchange Shares are being offered pursuant to an exemption from the registration requirements of the Securities Act afforded by Section 3(a)(9) of the Securities Act; (ii) is an “accredited investor” within the meaning of Rule 501(a) of the Securities Act; (iii) understands that the Exchange Shares may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act and any other applicable securities laws or pursuant to an exemption therefrom, and in each case in compliance with the conditions set forth in this Agreement; and (iv) acknowledges and agrees that the book-entry issuance of the Exchange Shares by the Company’s transfer agent shall bear a legend substantially in the following form:

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.”

(d) No Broker Fees. Agile has not incurred and will not incur any liability for finder’s fees, brokerage commissions or similar payments in connection with the transactions herein contemplated, including but not limited to receipt of the Exchange Shares.

**3. Representations and Warranties of the Company.** The Company hereby represents and warrants to Agile, all of which representations and warranties are true, complete, and correct in all respects as of the date hereof and as of the Delivery Date, as follows:

(a) Organization and Qualification. The Parent, and each of its subsidiaries, is a corporation and/or company duly organized, validly existing and in good standing under the laws of the State of Delaware and each of them has the corporate power and authority to own, lease or operate its assets and properties and to conduct its business as now being conducted. The Parent, and each of its subsidiaries, is duly licensed or qualified and in good standing (or equivalent status as applicable) in each jurisdiction in which the assets owned or leased by it or the character of its activities require it to be licensed or qualified or in good standing (or equivalent status as applicable), except where the failure to be so licensed or qualified, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect.

(b) Authorization; No Restrictions, Consents or Approvals. The Parent, and each of its subsidiaries, has the requisite corporate power and authority to enter into and perform such parties requisite obligations under this Agreement and to issue the Exchange Shares in accordance with the terms hereof. The execution, delivery and performance by the Company of this Agreement and the consummation by it of the transactions contemplated herein have been duly and validly authorized by all necessary corporate action, and no further consent or authorization of the Company, any of the Company’s Board of Directors or its stockholders is required. Once executed, this Agreement will constitute a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership or similar laws relating to, or affecting generally the enforcement of, creditor’s rights and remedies or by other equitable principles of general application (including any limitation of equitable remedies).

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(c) Capitalization. The authorized capital stock of the Company, inclusive of common and preferred classes, and the shares thereof issued and outstanding were as set forth in the Commission Documents as of the dates reflected therein. There are no agreements or arrangements under which the Company is obligated to register the sale of any securities under the Securities Act, except as set forth in the Commission Documents. No securities of the Company are entitled to preemptive rights and there are no outstanding debt securities and no contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of the capital stock of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, any shares of capital stock of the Company other than those issued or granted in the ordinary course of business pursuant to the Company's equity incentive and/or compensatory plans or arrangements or as disclosed in the Commission Documents. Except for customary transfer restrictions contained in agreements entered into by the Company to sell restricted securities, or with respect to equity securities issued pursuant to compensatory plans or arrangements, the Company is not a party to, and it has no knowledge of, any agreement restricting the voting or transfer of any shares of the capital stock of the Company. There are no securities or instruments containing anti-dilution or similar provisions that will be triggered by this Agreement or the consummation of the transactions described herein or therein, except as disclosed in the Commission Documents. The Company has filed with the Commission true and correct copies of the Company's Certificate of Incorporation as in effect on the Delivery Date (the "**Charter**"), and the Company's Bylaws as in effect on the Delivery Date (the "**Bylaws**").

(d) Issuance of Shares. The Common Stock to be issued under this Agreement has been duly authorized by all necessary corporate action on the part of the Company. The Common Stock shall be validly issued and outstanding, fully paid and non-assessable and free from all liens, charges, taxes, security interests, encumbrances, rights of first refusal, preemptive or similar rights and other encumbrances with respect to the issue thereof, and Agile shall be entitled to all rights accorded to a holder of unregistered shares of Common Stock.

(e) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby and thereby do not and shall not (i) result in a violation of any provision of the Company's Charter or Bylaws, (ii) conflict with or constitute a material default (or an event which, with notice or lapse of time or both, would become a material default) under, or give rise to any rights of termination, amendment, acceleration or cancellation of, any agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company or any of its subsidiaries is a party or is bound, (iii) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, judgment or decree applicable to the Parent or any of its subsidiaries (including federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market). Except as specifically contemplated by this Agreement or as may be required under any federal or applicable state securities laws and applicable rules of the Nasdaq Capital Market, the Company is not required under any federal, state or local rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under this Agreement, or to issue the Common Stock to Agile in accordance with the terms hereof (other than such consents, authorizations, orders, filings or registrations as have been obtained or made prior to the Delivery Date).

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(f) Commission Documents, Financial Statements; Disclosure Controls and Procedures; Internal Controls Over Financial Reporting.

(i) The Company has timely filed (giving effect to permissible extensions in accordance with Rule 12b-25 under the Exchange Act) all filings required to be filed with or furnished to the Commission by the Company under the Securities Act or the Exchange Act, including those required to be filed with or furnished to the Commission under Section 13(a) or Section 15(d) of the Exchange Act. As of the date of this Agreement, no subsidiary of the Company is required to file or furnish any report, schedule, registration, form, statement, information or other document with the Commission. As of its filing date, each Commission Document filed with or furnished to the Commission prior to the date hereof and as of the Delivery Date complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and other federal, state and local laws, rules and regulations applicable to it, and, as of its filing date (or, if amended or superseded by a filing prior to the date hereof and the Delivery Date, on the date of such amended or superseded filing). The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Securities Act or the Exchange Act.

(ii) The consolidated financial statements of the Company included or incorporated by reference in the Commission Documents, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and its then consolidated Subsidiaries as of the dates indicated, and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and its then consolidated Subsidiaries for the periods specified (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate) and have been prepared in compliance with the published requirements of the Securities Act and the Exchange Act, as applicable, and in conformity with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis (except (i) for such adjustments to accounting standards and practices as are noted therein and (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) during the periods involved. The summary consolidated financial data included or incorporated by reference in the Commission Documents present fairly the information shown therein and have been compiled on a basis consistent with that of the financial statements included or incorporated by reference in the Commission Documents, as of and at the dates indicated. The pro forma condensed combined financial statements and the pro forma combined financial statements and any other pro forma financial statements or data included or incorporated by reference in the Commission Documents comply with the requirements of Regulation S-X of the Securities Act, including, without limitation, Article 11 thereof, and the assumptions used in the preparation of such pro forma financial statements and data are reasonable, the pro forma adjustments used therein are appropriate to give effect to the circumstances referred to therein and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements and data. There are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Commission Documents that are not included or incorporated by reference as required. The Company and its Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations or any "variable interest entities" as that term is used in Accounting Standards Codification Paragraph 810-10-25-20), not described in Commission Documents which are required to be described in the Commission Documents. All disclosures contained or incorporated by reference in the Commission Documents, if any, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable.

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(iii) The Company has timely filed all certifications and statements the Company is required to file under (A) Rule 13a-14 or Rule 15d-14 under the Exchange Act or (B) 18 U.S.C. Section 1350 (Section 906 of the Sarbanes-Oxley Act of 2002) with respect to all Commission Documents with respect to which the Company is required to file such certifications and statements thereunder.

(g) No Material Adverse Effect; Absence of Certain Changes. Except as disclosed in the Commission Documents, since the date of the most recent audited financial statements of the Company included or incorporated by reference in the Commission Documents, (a) there has not occurred any Material Adverse Effect, or any development that would result in a Material Adverse Effect, and (b) the Company and its Subsidiaries have conducted their respective businesses in the ordinary course of business consistent with past practice in all material respects.

(h) No Material Defaults. Neither the Parent nor any subsidiary has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would have a Material Adverse Effect.

(i) Material Contracts. Neither the Company nor any of its Subsidiaries is in material breach of or default in any respect under the terms of any material contract and, to the knowledge of the Company, as of the date hereof, no other party to any material contract is in material breach of or default under the terms of any material contract. Each material contract is in full force and effect and is a valid and binding obligation of the Company or the Subsidiary of the Company that is party thereto and, to the knowledge of the Company, is a valid and binding obligation of each other party thereto. The Company has not received any written notice of the intention of any other party to a material contract to terminate for default, convenience or otherwise, or not renew, any material contract.

(j) Solvency. The Company has not taken any steps, and does not currently expect to take any steps, to seek protection pursuant to Title 11 of the United States Code or any similar federal or state bankruptcy law or law for the relief of debtors, nor does the Company have any knowledge that its creditors intend to initiate involuntary bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under Title 11 of the United States Code or any other federal or state bankruptcy law or any law for the relief of debtors.

(k) Actions Pending. There are no legal or governmental proceedings pending or, to the knowledge of the Company, threatened to which the Company is a party or to which any of the properties of the Company is subject other than proceedings that would have a Material Adverse Effect on the Company and its subsidiaries, individually or in the aggregate, and there are no statutes, regulations, contracts or other documents that are required to be described in any of the Commission Documents or to be filed as exhibits to any of the Commission Documents that are not described or filed as required.

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(l) Compliance with Law. Neither the Parent nor any of its subsidiaries have received written notice that the Company is not conducting its business in compliance with all laws, rules and regulations of the jurisdictions in which the Parent or any of its subsidiaries is conducting business that are applicable to the Parent or any of its subsidiaries, or any of their respective businesses or properties, except where such non-compliance with such laws, rules and regulations would not result in a Material Adverse Effect.

(m) Certain Fees. Neither the Company nor any Subsidiary has incurred or will incur any liability for any finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated.

(n) Disclosure. The Company confirms that neither it nor any other person acting on its behalf has provided Agile or the Collateral Agent or any of its agents, advisors or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information concerning the Company or any of its subsidiaries.

(o) Listing and Maintenance Requirements; DTC Eligibility. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company is not in receipt of an outstanding notice from the Trading Market to the effect that the Company is not in compliance with the listing or maintenance requirements of the Trading Market. The Common Stock is eligible for participation in the DTC book entry system and have shares on deposit at DTC for transfer electronically to third parties via DTC through the Direct Registration System ("DRS") or Deposit/Withdrawal at Custodian ("DWAC") delivery system. The Company has not received notice from DTC to the effect that a suspension of, or restriction on, accepting additional deposits of the Common Stock, electronic trading or book-entry services by DTC with respect to the Common Stock are being imposed or is contemplated.

(p) No Broker Fees. The Company has not incurred and will not incur any liability for finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated, including but not limited to the issuance of the Exchange Shares.

(q) No Reliance. The Company has not relied on and is not relying on any representations, warranties or other assurances regarding Agile other than the representations and warranties expressly set forth in this Agreement.

(r) No Other Consideration. (a) Agile is neither obligated nor required to contribute, and will not contribute, any cash or other property, other than the reduction of the Note Balance by an amount equal to the Note Exchange Amount in exchange for the Exchange Shares; and (b) the Company is not obligated to pay, and will not pay, any commission or any other remuneration of any kind in connection with the solicitation for the Exchange and the issuance of the Exchange Shares.

(s) Independent Legal Counsel. The Company warrants, represents, and agrees that in executing this Agreement, it does so with full knowledge of the Company's rights, and that the Company has received, or has had the opportunity to receive, independent legal, tax, and business advice as to these rights. The Company has executed this Agreement as the result of arm's length negotiations conducted by and among the Parties and their respective counsel or advisors, and free of any fraud, duress, or undue influence

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#### 4. Closing.

(a) Conditions to Agile's Obligations. With respect to the Closing, the obligations of Agile under this Agreement, (including, without limitation, the obligation to cancel that amount of the Note Balance equal to the Note Exchange Amount) shall be subject to satisfaction of the following conditions, unless waived by Agile: (i) Agile and the Company shall have performed in all material respects all agreements, and satisfied in all material respects all conditions on its part to be performed or satisfied hereunder, at or prior to the Delivery Date; (ii) all of the representations and warranties of the Company herein shall have been true and correct in all material respects on and as of the date hereof and the Delivery Date; (iii) the Company shall have executed and delivered to Agile all documents necessary to issue the Exchange Shares to Agile, as contemplated by this Agreement (including those documents described in Section 4(d)); and (iv) the Company shall have obtained or made, as applicable, all consents, authorizations and approvals from, and all declarations, filings and registrations required to consummate the transactions contemplated by this Agreement, including all items required under the Charter and Bylaws of the Company.

(b) Conditions to the Company's Obligations. With respect to the Closing, the obligations of the Company under this Agreement, (including, without limitation, the obligation to issue the Exchange Shares) shall be subject to satisfaction of the following conditions, unless waived by the Company: (i) Agile shall have performed in all respects all agreements, and satisfied in all respects all conditions on their part to be performed or satisfied hereunder, at or prior to the Delivery Date;

(ii) all of the representations and warranties of Agile herein shall have been true and correct in all material respects on and as of the date hereof and the Delivery Date; (iii) Agile shall have executed and delivered to the Company all documents necessary to reduce that amount of the Note Balance equal to the Note Exchange Amount, as contemplated by this Agreement (including those documents described in Section 4(d)); and (iv) Agile shall have obtained or made, as applicable, all consents, authorizations and approvals from, and all declarations, filings and registrations required to consummate the transactions contemplated by this Agreement, including all items required under the articles of organization and operating agreement of Agile.

(c) Reserved.

(d) Closing Documents.

(i) The following shall apply with respect to the Closing of the Exchange:

(1) On the third (3<sup>rd</sup>) Business Day after the satisfaction of the conditions set forth in Section 4(a) and Section 4(b), above (the "**Delivery Date**"), (i) the Note No. 2 shall be cancelled in full and of further legal force and effect.

(2) On the Delivery Date, the Company shall deliver to Agile, (i) evidence that the Common Stock have been issued in book-entry form with the Company's transfer agent, Issuer Direct, (ii) copies of resolutions adopted by the board of directors of the Company and certified by an executive officer of the Company authorizing the execution of this Agreement and delivery of, and performance of the Company's obligations under this Agreement, including but not limited to the issuance of the Common Stock; and (iii) a legal opinion of the Company's counsel, the form and substance of which opinion shall be reasonably satisfactory to Agile, regarding, without limitation, validity of the the issuance of the Exchange Shares and the availability of the tacking of holding periods pursuant to Rule 144.

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5. **Survival of Representations and Warranties and Covenants.** All of the representations, warranties and covenants of Agile and the Company contained in this Agreement shall survive the Closing until the latest date permitted by applicable law. The sections of this Agreement that by their nature are intended to survive the Closing will survive under the latest date permitted by applicable law.
6. **Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to such terms as set forth below.
- (a) “**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Person, as such terms are used in and construed under Rule 144 of the Securities Act.
- (b) “**Business Day**” means any day other than (i) Saturday or Sunday and (ii) any other day on which commercial banks in New York, New York are authorized or required by applicable law to close.
- (c) “**Commission Documents**” shall mean those documents filed by the Company with the Securities and Exchange Commission. For purposes of this Agreement, all references to a registration statement (on any form), or prospectus, or to any amendment or supplement thereto, or any other document filed by the Company pursuant to the Securities Act or the Exchange Act, shall be deemed to include the most recent copy of any such document filed with the Commission through its Electronic Data Gathering Analysis and Retrieval System, or if applicable, the Interactive Data Electronic Applications system used by the Securities and Exchange Commission (collectively, “**EDGAR**”).
- (d) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.
- (e) “**Material Adverse Effect**” means (i) any condition, occurrence, state of facts or event having, or insofar as reasonably can be foreseen would likely have, any material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated hereby,
- (ii) any condition, occurrence, state of facts or event having, or insofar as reasonably can be foreseen would likely have, any effect on the business, operations, properties or financial condition of the Company that is material and adverse to the Company and its Subsidiaries, taken as a whole, and/or
- (iii) any condition, occurrence, state of facts or event that would, or insofar as reasonably can be foreseen would likely, prohibit or otherwise materially interfere with or delay the ability of the Company to perform any of its obligations under this Agreement.
- (f) “**Securities Act**” shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.
- (g) “**subsidiary**” shall mean any corporation or other entity of which at least a majority of the securities or other ownership interest having ordinary voting power for the election of directors or other persons performing similar functions are at the time owned directly or indirectly by the Company and/or any of its other Subsidiaries.
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**7. General Provisions.**

(a) Governing Law. This Agreement is to be construed in accordance with and governed by the internal laws of the State of New York without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the parties. Each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each Party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such Party at the address set forth in Section 7(d) and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(b) Severability. If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way, and the parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

(c) Waiver. The waiver by either party of a breach of or default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement. Further, any failure or delay on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder shall not operate as a waiver of any such right or remedy or preclude other or further exercise thereof or of any other right or remedy.

(d) Notices. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party may specify in writing pursuant to this Section 7(d). Such notice shall be deemed given: (i) if delivered personally, upon delivery as evidenced by delivery records; (ii) if sent by email, upon confirmation of receipt;

(iii) if sent by certified or registered mail, postage prepaid, five (5) days after the date of mailing; of

(iv) if sent by nationally recognized express courier, one (1) Business Day after date of delivery with such courier.

If to Agile/Collateral Agent:

Agile Capital Funding, LLC  
Email:

If to the Company:

Banzai International, Inc.  
Attention:  
Email:

(e) No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights or benefits upon any person other than the parties hereto, and no other person shall have any rights or remedies hereunder.

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(f) Public Announcements. The Parties acknowledge and agree that this Agreement and the terms hereof will be required for inclusion in a current report on Form 8-K to be filed by the Company with the Securities and Exchange Commission no later than the business day immediately following the Effective Date.

(g) Interpretation. For purposes of this Agreement, the following rules of interpretation shall apply, except to the extent otherwise expressly provided or the context otherwise requires:

(i) any reference to "\$" shall mean U.S. dollars;

(ii) references to "Exhibit," "Annex," "Appendix," "Article," "Section" or "Sections" in this Agreement refer to the corresponding exhibit, annex, article, section or sections, respectively, of this Agreement;

(iii) all exhibits, appendices, and annexes attached hereto or referred to herein, are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any exhibit, appendix, annex but not otherwise respectively defined therein shall be defined as set forth in this Agreement;

(iv) the headings and captions of each exhibit, appendix, annex, article and section in this Agreement, are provided for convenience only and shall not affect the construction or interpretation of this Agreement;

(v) any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa;

(vi) the words such as "herein," "hereof," "hereunder" and "herewith" in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear;

(vii) the word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or related items or matters immediately following it.

(h) Entire Agreement; Provision Not Construed Against Drafting Party. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. This Agreement is the result of negotiations by and between the Parties; is the product of the work and efforts of all Parties; and, shall be deemed to have been drafted by all Parties. Each Party has had the opportunity to be represented by independent legal counsel of its choice. In the event of a dispute, no Party shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

(i) Counterparts. This Agreement may be executed in one or more counterparts (including fax, electronic mail and DocuSign counterparts) each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

*[Signature page follows]*

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

AGILE LENDING, LLC

By: \_\_\_\_\_  
Name:  
Title:

AGILE CAPITAL FUNDING, LLC

By: \_\_\_\_\_  
Name:  
Title:

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BANZAI INTERNATIONAL, INC.

By: \_\_\_\_\_

Name:

Title:

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**FORBEARANCE AGREEMENT**

This Forbearance Agreement (“**Agreement**”), dated as of December 15, 2025, is made by and among Banzai International, Inc., a Delaware corporation (the “**Borrower**”), Agile Lending, LLC, a Virginia limited liability Company (“**Lender**”), and Agile Capital Funding, LLC, a New York Limited Liability Company (the “**Agent**”).

**RECITALS**

WHEREAS, Borrower, Agent, and Lender are parties to a certain Business Loan and Security Agreement dated as of March 31, 2025 (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with its provisions, the “**Loan Agreement**”) pursuant to which, among other things, (i) Lenders made a loan to Borrower (the “**Loan**”), as evidenced by that certain Subordinated Secured Promissory Note issued by Borrower to Lender in the original principal amount of \$4,000,000 (the “**Note**”); and (ii) as security for all of the indebtedness and obligations due to Lender under the Loan Agreement, including, without limitation, those arising from the Note (collectively, the “**Obligations**”), Borrower granted to Lender a security interest in the Collateral. Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Loan Agreement;

WHEREAS, the outstanding principal balance owed by Borrower to Lenders under the Loan is \$1,495,375 (the “**Note Balance**”);

WHEREAS, Borrower will not make payments on the Note Balance that will become due and payable during the Forbearance Period, which would, if unpaid, constitute Events of Default under the Loan Agreement and Note (the “**Projected Events of Default**”, and the ensuing potential default, the “**Projected Default**”). For the avoidance of doubt, Borrower is not currently in default under the Loan Documents;

WHEREAS, Borrower has requested that the Lender agree to forbear from exercising its remedies with respect to the Projected Events of Default and to temporarily modify certain terms of the Loan Agreement, and the Lender, subject to the terms and conditions contained herein, is willing to forbear from exercising such rights and remedies, and such temporary modifications, for a limited period of time, to be effective as of the Effective Date (unless otherwise expressly provided herein), provided that Borrower complies with the terms and conditions of this Agreement; and

WHEREAS, Borrower and the Lender each acknowledge that the terms of this Agreement reflect the parties’ forbearance and constitutes a modification to, and not a novation or extinguishment of, the Loan Agreement and the other Loan Documents and except as expressly modified herein, all terms, conditions, rights and obligations as set out in the Loan Documents are hereby reaffirmed and shall otherwise remain in full force and effect as originally written and agreed.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Borrower Acknowledgments. Borrower acknowledges and agrees that:

1.1 Recitals. The foregoing recitals are confirmed by the Borrower as true and correct and are incorporated herein by reference. The recitals are a substantive, contractual part of this Agreement.

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1.2 1.2 Ratification of Loan Documents. The Loan Agreement, the Note, and all other agreements, instruments, and other documents executed in connection with or relating to the Obligations or the Collateral (the “**Loan Documents**”) are legal, valid, binding, and enforceable against Borrower in accordance with their terms, and shall continue and carry forward until all obligations under the Loan Documents are paid and performed in full. The terms of the Loan Documents remain unchanged, except in regard to the Potential Events of Default. The Borrower hereby expressly reaffirms, agrees and covenants to comply during the Forbearance Period with all of the terms and provisions of the Loan Agreement, except to the extent expressly permitted otherwise herein.

1.3 1.3 Obligations. The Obligations, including any part thereof under the Loan Documents, are not subject to any setoff, deduction, claim, counterclaim, or defenses of any kind or character whatsoever. The Borrower acknowledges and agrees that the Obligations include, and the Borrower owes to Lender, all of Lender’s reasonable expenses, costs and fees, including reasonable attorneys’ fees actually incurred in the enforcement of the Loan Documents and drafting and negotiation of this Agreement. Lenders have valid, enforceable, and perfected security interests in and liens on the Collateral, as to which there are no setoffs, deductions, claims, counterclaims, or defenses of any kind or character whatsoever, and that this Agreement shall in no manner vitiate, affect or impair the Loan Documents, and that such security interests in and liens on the Collateral shall not in any manner be waived, released, altered or modified.

1.4 1.4 No Waiver of Defaults. Neither this Agreement, nor any actions taken in accordance with this Agreement or the Loan Documents shall be construed as a waiver of or consent to the Projected Defaults or any other existing or future defaults under the Loan Documents, as to which Agent’s and Lenders’ rights shall remain reserved.

1.5 1.5 Preservation of Rights and Remedies. Upon expiration of the Forbearance Period (as defined in Section 2.1), all of Agent’s and Lenders’ rights and remedies under the Loan Documents and at law and in equity shall be available without restriction or modification, as if the forbearance had not occurred.

1.6 1.6 Lender Conduct. Lenders have fully and timely performed all of their obligations and duties in compliance with the Loan Documents and applicable law, and have acted reasonably, in good faith, and appropriately under the circumstances.

1.7 1.7 Request to Forbear. Borrower has requested Agent’s and Lenders’ forbearance as provided herein, which shall inure to their direct and substantial benefit.

## 2. Lender Forbearance.

2.1 2.1 Forbearance Period. Subject to compliance by Borrower with the terms and conditions of this Agreement, Agent and Lenders hereby agree to forbear from exercising their rights and remedies against Borrower under the Loan Documents with respect to the Projected Events of Default during the period (the “**Forbearance Period**”) commencing on the Effective Date (as defined in Section 3) and ending on the earlier to occur of (i) March 30, 2026, and (ii) the date that any Forbearance Default (as defined in Section 8) occurs. Lenders’ forbearance, as provided herein, shall immediately and automatically cease without notice or further action on the earlier to occur of (i) or (ii) (the “**Termination Date**”). On and from the Termination Date, Lender may, in their sole discretion, exercise any and all remedies available to them under the Loan Documents by reason of the occurrence of any Events of Default thereunder or the occurrence of the Projected Events of Default.

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2.2 Extension of Forbearance Period. In the sole discretion of Lender and without obligation, after the Termination Date, Lender may renew or extend the Forbearance Period, or grant additional forbearance periods.

2.3 Scope and Nature of Forbearance; Reservation of Rights. The forbearance shall be limited solely to the exercise of remedies arising under the Loan Documents, applicable law, or otherwise as a result of the Projected Events of Default, and the Lender shall not be deemed to have waived the Projected Events of Default or any remedies it may have with respect to any other existing breach or Default occurring thereunder during the Forbearance Period, or any breach of this Agreement. The Borrower hereby acknowledges that the Lender's obligations under this Agreement are in the nature of a conditional forbearance only, and that the Lender has not made any agreement or commitment to modify or extend the Loan Documents beyond the Forbearance Period, and that, upon the termination of the Forbearance Period, the Lender shall have the immediate right to exercise all remedies under the Loan Documents. In accordance with the terms of this Agreement, the Lender hereby reserves all rights and remedies available to it.

3. Conditions Precedent. This Agreement shall not become effective unless and until the date (the "**Effective Date**") that each of the following conditions shall have been satisfied in Agent's sole discretion, unless waived in writing by Agent:

3.1 Delivery of Certain Documents. Borrower shall deliver or cause to be delivered the following documents, each in substance and form acceptable to Agent:

(a) a copy of this Agreement, duly executed by Borrower;

(b) a certificate dated the date hereof, signed by the Secretary of Borrower, containing certified copies of (i) Borrower's current certificate of incorporation and bylaws, as amended and/or restated the case may be; (ii) resolutions duly adopted by the board of directors of Borrower authorizing the execution and delivery of this Agreement and all documents required to be delivered in connection herewith, and all transactions contemplated herein; (iii) a statement containing the true and correct names, titles, and signatures of Borrower authorized to sign such documents and authorize such transactions;

(c) such other documents as Agent or Lender may request with respect to any matter relevant to this Agreement or the transactions contemplated hereby.

3.2 Forbearance Fee. As partial consideration for Agent's and Lenders' agreement to forbear as set forth herein, Borrower shall pay to Agile a forbearance fee of \$628,057.50, in the form of an increase in the principal due under the Note (the "**Forbearance Fee**"). Borrower agrees and acknowledges that the Forbearance Fee will cause the outstanding principal under the Note to be increased from the Note Balance to \$2,123,432.50 (the "**New Note Balance**"). For the avoidance of doubt, in the event this Agreement is terminated for any reason whatsoever, the principal due under the Note shall be the New Note Balance, and the Forbearance Fee shall be deemed earned by Lender, and paid by Borrower, as of the Effective Date.

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3.3 Professional Fees and Other Expenses. As partial consideration for Agent's and Lenders' agreement to forbear as set forth herein, Borrower shall have paid all of Agent's reasonable costs and expenses (including attorneys' fees) incurred in connection with the preparation and negotiation of this Agreement in an amount not to exceed \$10,000.

4. Representations and Warranties. Borrower represents and warrants that all representations and warranties relating to it contained in the Loan Documents are true and correct as of the Effective Date, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date. Borrower further represents and warrants to Agent and Lender as follows:

4.1 Authorization; Enforceability; No Violation. The execution, delivery, and performance of this Agreement are within its corporate power and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and legally binding Agreement enforceable against Borrower in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, and similar laws affecting creditors' rights generally and to general principles of equity. The execution, delivery, and performance of this Agreement do not and will not (i) violate any law, regulation, or court order to which Borrower is subject; (ii) conflict with Borrower's organizational documents; or (iii) result in the creation or imposition of any lien, security interest, or encumbrance on any property of Borrower, or any of its subsidiaries, whether now owned or hereafter acquired, other than liens in favor of Lenders.

4.2 No Litigation; No change. No action, suit, litigation, investigation, or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Borrower, threatened by or against or affecting Borrower or against any of its property or assets with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby. There has been no material adverse change in the business, operations, assets, or financial or other condition of the Borrower and its subsidiaries, either individually or taken as a whole.

4.3 Accuracy of Information. All information provided by Borrower or any of its respective agents, is true, correct, and complete in all material respects, as of the date provided and does not contain any untrue statements of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading.

4.4 Advice of Counsel. Borrower has freely and voluntarily entered into this Agreement with the advice of legal counsel of their choosing, or have knowingly waived the right to do so.

5. Covenants. In addition, in order to induce Agent and Lenders to forbear from the exercise of their rights and remedies as set forth above, Borrower hereby covenants and agrees that at all times during the Forbearance Period, unless Agent and Lender otherwise consents in writing, as follows:

5.1 Compliance with Loan Documents. Borrower shall continue to perform and observe all covenants, terms, and conditions, and other obligations contained in all of the Loan Documents (as expressly modified herein) and this Agreement, except with respect to the Existing Defaults.

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5.2 Sale of Assets. Borrower shall not sell, convey, transfer, assign, lease, abandon, or otherwise dispose of any of its assets, tangible or intangible (including but not limited to sale, assignment, discount, or other disposition of accounts, contract rights, chattel paper, or general intangibles with or without recourse), without Agent's prior written consent. If Agent grants its written consent, Borrower shall cause buyer or other transferee to pay all proceeds of such disposition directly to Agent for application to the Obligations.

5.3 Perfection of Lenders' Liens. Borrower shall execute and deliver to Agent such documents and take such actions as Agent deems necessary or advisable to perfect or protect the Lenders' security interests, mortgages, or liens granted by Borrower to Lenders.

5.4 Obligations to Third Parties. Borrower shall (i) continue to pay, discharge, or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of its liabilities and obligations arising in the ordinary course of business during the Forbearance Period, and (ii) without duplication of (i), not default on any of its obligations to any third party.

5.5 Notice of Adverse Claims. If Borrower shall become aware that any person or entity is asserting any lien, encumbrance, security interest, or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution, or similar process or any claim of control) against any of them or any of their property (each, an "**Adverse Claim**"), they shall promptly notify Agent in writing thereof, and provide to Agent all documentation and other information it may request regarding such Adverse Claim.

5.6 Further Assurances. Promptly upon the request of Agent, Borrower shall take any and all actions of any kind or nature whatsoever, and execute and deliver additional documents, that relate to this Agreement and the transactions contemplated herein.

## 6. Release of Claims and Waiver of Defenses.

6.1 Release. In consideration of, among other things, Lender's and Agent's execution and delivery of this Agreement, Borrower, on behalf of itself and its successors, assigns, parents, subsidiaries, affiliates, officers, directors, employees, agents, and attorneys (collectively, "**Releasors**") hereby forever waives, releases and discharges, to the fullest extent permitted by law, each Releasee (as hereinafter defined) from any and all claims (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever (collectively, the "**Claims**"), that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity, against Lender, and each of its affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys and other representatives of each of the foregoing (collectively, the "**Releasees**"), based in whole or in part on facts, whether or not now known, existing on or before the Forbearance Effective Date, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Loan Documents or transactions contemplated thereby or any actions or omissions in connection therewith, (ii) any aspect of the dealings or relationships between or among the Borrower, on the one hand, and Lender and/or the Agent, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof, or (iii) any aspect of the dealings or relationships between or among any or all of the equity holders of the Borrower, on the one hand, and Lender, on the other hand.

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6.2 Acknowledgment of Scope of Release. In connection with such releases, Borrower acknowledge that they are aware that they or their attorneys or others may hereafter discover claims or facts presently unknown or unsuspected in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Claims being released pursuant to Section 6.1 hereof. Nevertheless, it is the intention of the Borrower in executing this Agreement to fully, finally, and forever settle and release all matters and all claims relating thereto, which exist, hereafter may exist or might have existed (whether or not previously or currently asserted in any action) constituting Claims released pursuant to Section 6.1 hereof.

6.3 Covenant Not to Sue. Borrower, on behalf of itself and the Releasors, agrees not to sue any Releasee or in any way assist any other Person in suing any Releasee with respect to any Claim released herein. The Release Provision may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the release contained herein.

6.4 Borrower acknowledges, warrants and represents to the Releasees that:

(a) Borrower has read and understands the effect of Section 6.1 and Section 6.2 (the “**Release Provision**”). Borrower has had the assistance of independent counsel of its own choice, or has had the opportunity to retain such independent counsel, in reviewing, discussing, and considering all the terms of the Release Provision; and if counsel was retained, counsel for Borrower has read and considered the Release Provision and advised Borrower to execute the same. Before execution of this Agreement, Borrower has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of the Release Provision;

(b) Borrower is not acting in reliance on any representation, understanding, or agreement not expressly set forth herein. Borrower acknowledges that the Releasees have not made any representation with respect to the Release Provision except as expressly set forth herein;

(c) Borrower has executed this Agreement and the Release Provision thereof as its free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of any Person; and

(d) Borrower is the sole owner of the Claims released by the Release Provision, and Borrower has not heretofore conveyed or assigned any interest in any such Claims to any other Person.

6.5 It is the express intent of the Borrower, on behalf of itself and the Releasors that the release and discharge set forth in the Release Provision be construed as broadly as possible in favor of the Releasees so as to foreclose forever the assertion by the Releasors of any claims released hereby against Releasees. If any term, provision, covenant, or condition of the Release Provision is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of the provisions shall remain in full force and effect.

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7. Indemnification. Borrower hereby expressly acknowledges, agrees, and reaffirms their indemnification obligations to Lender and the other Indemnified Parties as set forth in Section 12.2 of the Loan Agreement. Borrower further acknowledges, agrees, and reaffirms that all such indemnification obligations set forth in Section 12.2 of the Loan Agreement shall survive the expiration of the Forbearance Period and the termination of this Agreement, the Loan Agreement, the other Loan Documents, and the payment in full of the Obligations. Notwithstanding the foregoing, such indemnity shall not be available to the extent that such claims, damages, losses, liabilities, or related expenses result solely from a Lender's or other Indemnified Party's gross negligence or willful misconduct.

8. Events of Default. The occurrence of one or more of the following shall constitute a "**Forbearance Default**" under this Agreement:

8.1 The occurrence of the Termination Date.

8.2 Borrower shall fail to abide by or observe any term, condition, covenant, or other provision contained in this Agreement or any document related to or executed in connection with this Agreement.

8.3 A default or event of default shall occur under any Loan Document or any document related to or executed in connection with this Agreement or any of the Loan Documents (other than the Projected Events of Default).

8.4 Borrower:

(a) becomes insolvent;

(b) is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due;

(c) (i) commences any case, proceeding, or other action under any existing or future Requirement of Law relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking (A) to have an order for relief entered with respect to it, or (B) to adjudicate it as bankrupt or insolvent, or (C) reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (D) appointment of a receiver, trustee, custodian, conservator, or other similar official for it or for all or any substantial part of its assets, or (ii) makes a general assignment for the benefit of its creditors;

(d) has commenced against it in a court of competent jurisdiction any case, proceeding, or other action of a nature referred to in clause (c) above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged, unstayed, or unbonded for thirty (30) days; or

(e) ceases to conduct business in the ordinary course.

8.5 A tax lien, warrant, or levy is imposed on Borrower or any Collateral.

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8.6 Borrower or any of its respective creditors commences a case, proceeding, or other action against Lender relating to any of the Obligations, Collateral, Loan Documents, this Agreement, or any action or omission by Lenders or their agents in connection with any of the foregoing.

8.7 Any other creditor of Borrower commences an action against Borrower seeking to collect any debt, obligation, or liability in an amount in excess of \$25,000.

8.8 Any representation or warranty of Borrower made herein shall be false, misleading, or incorrect in any material respect when made.

8.9 Borrower takes an action, or any event or condition occurs or exists, which Agent reasonably believes in good faith is inconsistent in any material respect with any provision of this Agreement, or impairs, or is likely to impair, the prospect of payment or performance by Borrower of its obligations under this Agreement or any of the Loan Documents.

9. Remedies. Immediately upon the occurrence of a Forbearance Default:

9.1 The Forbearance Period shall immediately and automatically cease without notice or further action without notice to, or action by, any party.

9.2 Agent and Lender shall be entitled to exercise any or all of their rights and remedies under the Loan Documents, this Agreement, or any stipulations or other documents executed in connection with or related to this Agreement or any of the Loan Documents, or applicable law, including, without limitation, the appointment of a receiver.

9.3 Borrower shall cooperate with Agent's repossession of all personal property Collateral, which Borrower shall immediately surrender to Agent upon Agent's request, at the time and place designated by Agent.

9.4 Agent and Lenders may, in their sole discretion, commence foreclosure actions with respect to the real property Collateral and replevin actions with respect to any of the other Collateral, and enforce any foreclosure stipulations.

9.5 Agent may set off or apply to the payment of any or all of the Obligations, any deposit balances, any or all of the Collateral or proceeds thereof, or other money now or hereafter owed Lenders by Borrower.

10. Miscellaneous.

10.1 Notices. Any notices with respect to this Agreement shall be given in the manner provided for in Section 10 of the Loan Agreement.

10.2 Integration; Modification of Agreement. This Agreement and the Loan Documents embody the entire understanding between the parties hereto and supersede all prior agreements and understandings (whether written or oral) relating to the subject matter hereof and thereof. The terms of this Agreement may not be waived, modified, altered, or amended except by agreement in writing signed by all the parties hereto. This Agreement shall not be construed against the drafter hereof.

10.3 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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10.4 Full Force and Effect. The Loan Documents shall remain unchanged, in full force and effect and continue to govern and control the relationship between the parties hereto, except to the extent they are inconsistent with, superseded, or expressly modified herein. To the extent of any inconsistency, amendment, or superseding provision, this Agreement shall govern and control.

10.5 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns, provided that the Borrower's rights under this Agreement are not assignable. Agent and Lenders may assign their rights and interests in this Agreement, the Loan Documents, and all documents executed in connection with or related to this Agreement or the Loan Documents, at any time without the consent of or notice to Borrower.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia without regard to conflict of laws principles thereof.

10.7 No Waiver. No failure to exercise and no delay in exercising, on the part of the Agent or Lenders any right, remedy, power, or privilege hereunder or under the Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Further, Agent's acceptance of payment on account of the Obligations or other performance by Borrower after the occurrence of an Event of Default shall not be construed as a waiver of such Event of Default, any other Event of Default, or any of Agent's or Lenders' rights or remedies.

10.8 Cumulative Rights. The rights, remedies, powers, and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers, and privileges provided by law.

10.9 Application of Payments. Agent may apply any and all payments it receives from Borrower or any other party, and any proceeds of any Collateral, to such portion of the Obligations as Agent shall determine in its sole discretion.

10.10 Recommendation of Counsel. Borrower acknowledges that Agent has recommended that they each consult with counsel prior to execution of this Agreement and represent that they either have done so or have knowingly waived the right to do so despite the express recommendation of Agent.

10.11 Consent to Jurisdiction; Venue; Service of Process.

(a) **Consent to Jurisdiction**. Borrower hereby irrevocably and unconditionally consents to jurisdiction set forth in Section 11.2 of the Loan Agreement.

(b) **Waiver of Venue**. Borrower hereby waives any objection it may now or hereafter have to the laying of venue in such court and irrevocably waives, to the fullest extent permitted by applicable law, the defense of forum non conveniens to the maintenance of such action or proceeding in any such court.

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(c) **Service of Process.** Borrower hereby irrevocably consents to the service of process by certified or registered mail sent to the address provided for notices in Section 10.1 and agree that nothing herein will affect the right of Agent to serve process in any other manner permitted by applicable law.

10.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT OR ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY. EACH PARTY HERETO (A) CERTIFIES THAT NO AGENT, ATTORNEY, REPRESENTATIVE, OR ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF LITIGATION, AND (B) ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT.

10.13 Reimbursement of Costs and Expenses. Borrower agrees to pay all costs, fees, and expenses of Agent and any Lender (including attorneys' fees), expended or incurred by Agent or such Lender in connection with the negotiation, preparation, administration, and enforcement of this Agreement, the Loan Documents, the Obligations, any of the Collateral and all fees, costs, and expenses incurred in connection with any bankruptcy or insolvency proceeding (including, without limitation, any adversary proceeding, contested matter, or motion brought by Agent or any other person). Without in any way limiting the foregoing, Borrower hereby reaffirms its agreement under the applicable Loan Documents to pay or reimburse Agent and Lenders for certain costs and expenses incurred by Agent and Lenders.

10.14 Headings. The section headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

10.15 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

AGILE LENDING, LLC

By: \_\_\_\_\_  
Name:  
Title:

AGILE CAPITAL FUNDING, LLC

By: \_\_\_\_\_  
Name:  
Title:

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BANZAI INTERNATIONAL, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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