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): May 5, 2022

DraftKings Inc.
(Exact name of registrant as specified in its charter)

Nevada	N/A	87-2764212
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

222 Berkeley Street, 5th Floor
Boston, MA 02116
(Address of principal executive offices) (Zip Code)

(617) 986-6744
(Registrant's telephone number, including area code)

New Duke Holdco, Inc.
(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value $0.0001 per share	DKNG	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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. ☐

Explanatory Note

On May 5, 2022 (the "Merger Effective Date"), DraftKings Holdings Inc. (formerly known as DraftKings Inc.), a Nevada corporation ("Old DraftKings"), and Golden Nugget Online Gaming, Inc., a Delaware corporation ("GNOG"), completed the previously announced merger transactions pursuant to the Agreement and Plan of Merger, dated as of August 9, 2021 (the "Merger Agreement"), by and among GNOG, Old DraftKings, DraftKings Inc. (formerly known as New Duke Holdco, Inc.), a Nevada corporation ("New DraftKings"), Duke Merger Sub, Inc., a Nevada corporation and a wholly owned subsidiary of New DraftKings ("DraftKings Merger Sub"), and Gulf Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of New DraftKings ("GNOG Merger Sub"). Effective as of 12:01 a.m. eastern time on the Merger Effective Date (the "DraftKings Merger Effective Time"), DraftKings Merger Sub merged with and into Old DraftKings (the "DraftKings Merger"), with Old DraftKings continuing as a direct subsidiary of New DraftKings. Effective as of 12:01 a.m. eastern time on the Merger Effective Date (the "GNOG Merger Effective Time" and, together with the DraftKings Merger Effective Time, the "Merger Effective Times"), (i) GNOG Merger Sub merged with and into GNOG (the "GNOG Merger" and, together with the DraftKings Merger, the "Mergers"), with GNOG continuing as a direct subsidiary of New DraftKings, and (ii) Landry's Fertitta, LLC, a Texas limited liability company ("LF LLC"), contributed its 40.5% membership interest (the "LHGN Units") in LHGN Holdco, LLC, a Delaware limited liability company and a subsidiary of GNOG ("LHGN LLC"), to New DraftKings (the "Contribution" and, together with the Mergers, the "Transactions"). As a result of the Transactions, Old DraftKings and GNOG became direct subsidiaries of New DraftKings.

This Current Report on Form 8-K (this "Current Report") establishes New DraftKings as the successor issuer to Old DraftKings and GNOG pursuant to Rule 12g-3(c) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Pursuant to Rule 12g-3(d) under the Exchange Act, the shares of Class A common stock, par value $0.0001 per share, of New DraftKings (the "New DraftKings Class A Common Stock") are deemed to be registered under Section 12(b) of the Exchange Act, and New DraftKings shall be subject to the informational requirements of the Exchange Act and the rules and regulations promulgated thereunder. New DraftKings hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act.

Item 1.01 Entry into Material Definitive Agreement.

GNOG Assignment and Assumption Agreement

In connection with the Transactions, New DraftKings entered into an assignment and assumption agreement (the "GNOG Warrant Assignment Agreement") with GNOG, Continental Stock Transfer & Trust Company ("Continental"), Computershare Trust Company, N.A. ("CTC") and Computershare Inc. (together with CTC, "Computershare"), pursuant to which (i) GNOG assigned to New DraftKings all of its rights, interests and obligations under the Warrant Agreement, dated as of May 6, 2019 (the "GNOG Warrant Agreement"), between GNOG and Continental, governing GNOG's outstanding warrants to purchase Class A common stock of GNOG (the "GNOG Warrants"), and (ii) Continental assigned all of its rights, interests and obligations under the GNOG Warrant Agreement to Computershare, in each case, on the terms and conditions set forth in the GNOG Warrant Assignment Agreement. Effective as of the GNOG Merger Effective Time, each of the outstanding GNOG Warrants became exercisable for 0.365 of a share of New DraftKings Class A Common Stock on the existing terms and conditions of such GNOG Warrants, except as described in the GNOG Warrant Assignment Agreement.

The foregoing description of the GNOG Warrant Assignment Agreement does not purport to be complete and is qualified in its entirety by the full text of the GNOG Warrant Assignment Agreement, a copy of which is attached hereto as Exhibit 4.2 and is incorporated herein by reference.

Old DraftKings Assignment and Assumption Agreement

In connection with the Transactions, New DraftKings entered into an assignment and assumption agreement (the "Old DraftKings Warrant Assignment Agreement") with Old DraftKings and Computershare, pursuant to which Old DraftKings assigned to New DraftKings all of its rights, interests and obligations under the Warrant Agreement, dated as of May 10, 2019 (the "Old DraftKings Warrant Agreement"), by and between Diamond Eagle Acquisition Corp. and Continental, as warrant agent, as assumed by Old DraftKings and assigned to Computershare by that certain Assignment and Assumption Agreement, dated as of April 23, 2020, governing Old DraftKings' outstanding warrants (the "Old DraftKings Warrants") to purchase Class A common stock, par value $0.0001 per share, of Old DraftKings (the "Old DraftKings Class A Common Stock"), on the terms and conditions set forth in the Old DraftKings Warrant Assignment Agreement. Effective as of the DraftKings Merger Effective Time, each of the outstanding Old DraftKings Warrants became exercisable for one share of New DraftKings Class A Common Stock on the existing terms and conditions of such Old DraftKings Warrants, except as described in the Old DraftKings Warrant Assignment Agreement.

The foregoing description of the Old DraftKings Warrant Assignment Agreement does not purport to be complete and is qualified in its entirety by the full text of the Old DraftKings Warrant Assignment Agreement, a copy of which is attached hereto as Exhibit 4.5 and is incorporated herein by reference.

Supplemental Indenture

On May 5, 2022, and in connection with the Transactions, Old DraftKings, New DraftKings and CTC, as trustee, entered into a supplemental indenture (the "Supplemental Indenture") to the Indenture, dated as of March 18, 2021 (the "Indenture"), between Old DraftKings and CTC, pursuant to which (i) New DraftKings agreed to fully and unconditionally guarantee all of Old DraftKings' obligations under its 0% Convertible Senior Notes due 2028 (the "Convertible Notes") and the Indenture and (ii) each Convertible Note which was outstanding as of the DraftKings Merger Effective Time and previously convertible into shares of Old DraftKings Class A Common Stock became convertible into shares of New DraftKings Class A Common Stock, pursuant to and in accordance with, the terms of the Indenture, as supplemented by the Supplemental Indenture.

The foregoing description of the Supplemental Indenture does not purport to be complete and is qualified in its entirety by the full text of the Supplemental Indenture, a copy of which is attached hereto as Exhibit 4.6 and is incorporated herein by reference.

Indemnification Agreements

Following the Merger Effective Date, New DraftKings intends to enter into indemnification agreements (the "Indemnification Agreements") with its directors and executive officers. Each Indemnification Agreement will provide for indemnification and advancements by New DraftKings of certain expenses and costs relating to claims, suits or proceedings arising from his or her service to New DraftKings or, at New DraftKings' request, service to other entities as officers or directors, in each case, to the maximum extent permitted by applicable law.

The foregoing description of the Indemnification Agreements does not purport to be complete and is qualified in its entirety by reference to the form of Indemnification Agreement, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Trademark License Agreement

As a condition to the completion of the Mergers, on May 5, 2022, GNOG's wholly-owned subsidiary, Golden Nugget Online Gaming, LLC ("GNOG LLC"), entered into an Amended and Restated Trademark License Agreement (the "Trademark License Agreement") with GNLV, LLC ("GNLV") and Fertitta Entertainment, LLC (f/k/a Golden Nugget, LLC), pursuant to which GNLV granted GNOG LLC an exclusive (even as to GNLV and its affiliates), worldwide license to use and display the "GOLDEN NUGGET" and certain other trademarks owned by GNLV and its affiliates in connection with online and mobile gaming, online and mobile race and sports wagering, and online and mobile skills gaming (the "Online Gaming Business"). GNOG LLC was also granted a limited, non-exclusive license to use and display the "GOLDEN NUGGET ONLINE GAMING" and "GNOG" trademarks and certain other trademarks reasonably related to the Online Gaming Business, in each case, solely to the extent required by third-party brick and mortar casino licensees for which GNOG LLC operates an Online Gaming Business and only as necessary to comply with applicable gaming laws and regulations. The Trademark License Agreement has an initial term of fifty (50) years, commencing on the Merger Effective Date, and the licenses provided thereunder are royalty bearing. The Trademark License Agreement terminates automatically if Crown Gaming Inc., a Delaware corporation and wholly-owned subsidiary of New DraftKings ("Crown"), elects not to renew or elects to terminate the Master Commercial Agreement, dated as of August 9, 2021, between Crown and Fertitta Entertainment, Inc., a Texas corporation and an affiliate of GNLV, in either case, in its entirety. The Trademark License Agreement may also be terminated by GNLV for certain uncured material breaches by GNOG LLC. Except for the representations or warranties in the Merger Agreement and the Trademark License Agreement, the trademarks are licensed to GNOG LLC "as is." GNLV agrees to indemnify GNOG LLC and its affiliates for losses arising out of claims that GNOG LLC's or its affiliates' use or display of the licensed marks in accordance with the Trademark License Agreement infringes or dilutes third party intellectual property rights. GNOG LLC agrees to indemnify GNLV and its affiliates for intellectual property infringement or dilution claims arising from GNOG LLC's use or display of the licensed marks in violation of the Trademark License Agreement.

The foregoing description of the Trademark License Agreement does not purport to be complete and is qualified in its entirety by the full text of the Trademark License Agreement, a copy of which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

At the DraftKings Merger Effective Time, each issued and outstanding share of Old DraftKings Class A Common Stock and each issued and outstanding share of Class B common stock, par value $0.0001 per share, of Old DraftKings (the "Old DraftKings Class B Common Stock" and, together with the Old DraftKings Class A Common Stock, the "Old DraftKings Common Stock") (other than shares of Old DraftKings Common Stock that were held in treasury by Old DraftKings not on behalf of a third party), were cancelled and converted into one validly issued, fully paid and non-assessable share of New DraftKings Class A Common Stock and Class B common stock, par value $0.0001 per share, of New DraftKings (the "New DraftKings Class B Common Stock" and, together with the New DraftKings Class A Common Stock, the "New DraftKings Common Stock"), respectively.

At the GNOG Merger Effective Time, each issued and outstanding share of Class A common stock, par value $0.001 per share, of GNOG (the "GNOG Class A Common Stock") (other than shares of GNOG Class A Common Stock held in treasury by GNOG not on behalf of a third party), was converted automatically into the right to receive 0.365 (the "Exchange Ratio") of a duly authorized, validly issued, fully paid and nonassessable share of New DraftKings Class A Common Stock and any cash paid in lieu of fractional shares of New DraftKings Class A Common Stock (collectively, the "GNOG Merger Consideration"). No fractional shares of New DraftKings Class A Common Stock were issued in connection with the GNOG Merger, and the holders of GNOG Class A Common Stock received cash in lieu of any fractional shares of New DraftKings Class A Common Stock. Given that LF LLC (the holder of all of the issued and outstanding shares of Class B common stock, par value $0.001 per share, of GNOG (the "GNOG Class B Common Stock" and, together with the GNOG Class A Common Stock, the "GNOG Common Stock")) received the Contribution Consideration (as defined below) in connection with the Contribution, which also constituted consideration in respect of its shares of GNOG Class B Common Stock, LF LLC did not receive any GNOG Merger Consideration in connection with the GNOG Merger in respect of its shares of GNOG Class B Common Stock, which were instead cancelled at the GNOG Merger Effective Time.

At the GNOG Merger Effective Time, LF LLC contributed its LHGN Units to New DraftKings in exchange for a number of shares of New DraftKings Class A Common Stock equal to that which LF LLC would have received in the GNOG Merger based on the Exchange Ratio if it had caused LHGN LLC to redeem all of its LHGN Units in exchange for shares of GNOG Class A Common Stock on a one-for-one basis immediately prior to the GNOG Merger Effective Time (the "Contribution Consideration").

As provided in the Merger Agreement, at the DraftKings Merger Effective Time, each outstanding restricted stock unit of Old DraftKings (each, an "Old DraftKings RSU") and each outstanding option to purchase Old DraftKings Common Stock (each, an "Old DraftKings Option") issued under the Old DraftKings Stock Plans (as defined below) was automatically converted into an equivalent restricted stock unit denominated in shares of New DraftKings Common Stock and an equivalent option exercisable for shares of New DraftKings Common Stock, respectively, with each otherwise having the same terms as the Old DraftKings RSUs and Old DraftKings Options, respectively, immediately prior to the DraftKings Merger Effective Time.

As provided in the Merger Agreement, at the GNOG Merger Effective Time:

- all outstanding restricted stock units of GNOG (each, a "GNOG RSU") that (i) were outstanding on the date of the Merger Agreement or (ii) were issued to existing GNOG employees prior to the closing of the Mergers in accordance with existing arrangements, in each case, vested, were canceled and entitled the holder thereof to receive a number of shares of New DraftKings Class A Common Stock equal to the number of shares of GNOG Common Stock subject to such GNOG RSU immediately prior to the GNOG Merger Effective Time multiplied by the Exchange Ratio, less a number of shares of New DraftKings Class A Common Stock equal to any applicable withholding taxes. All other outstanding GNOG RSUs were automatically converted into an equivalent restricted stock unit of New DraftKings that entitles the holder thereof to a number of shares of New DraftKings Class A Common Stock equal to the number of shares of GNOG Common Stock subject to such GNOG RSU immediately prior to the GNOG Merger Effective Time multiplied by the Exchange Ratio, less a number of shares of New DraftKings Class A Common Stock equal to any applicable withholding taxes; and

- each outstanding GNOG Warrant was automatically converted into an equivalent warrant of New DraftKings that allows the holder thereof to purchase a number of shares of New DraftKings Class A Common Stock equal to the number of shares of GNOG Class A Common Stock subject to such GNOG Warrant immediately prior to the GNOG Merger Effective Time multiplied by the Exchange Ratio, at an exercise price equal to the per share exercise price of such GNOG Warrant immediately prior to the GNOG Merger Effective Time divided by the Exchange Ratio.

Other than as described in Item 3.02 below, the issuance of shares of New DraftKings Class A Common Stock to stockholders of Old DraftKings and stockholders of GNOG in connection with the Transactions, as described above, was registered under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to a registration statement on Form S-4 (File No. 333-260174) (as amended, the "Registration Statement"), filed by New DraftKings with the Securities and Exchange Commission ("SEC") and declared effective on December 9, 2021. The joint information statement/prospectus of New DraftKings, Old DraftKings and GNOG (the "Joint Information Statement/Prospectus") included in the Registration Statement contains additional information about the Mergers and the related transactions. The description of New DraftKings Common Stock set forth in the Joint Information Statement/Prospectus is incorporated herein by reference.

The description of the Merger Agreement contained herein does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which is filed as Exhibit 2.1 hereto and is incorporated herein by reference. This summary is not intended to modify or supplement any factual disclosures about New DraftKings, Old DraftKings or GNOG, and should not be relied upon as disclosure about New DraftKings, Old DraftKings or GNOG without consideration of the periodic and current reports and statements that New DraftKings, Old DraftKings and/or GNOG file with the SEC. The terms of the Merger Agreement govern the contractual rights and relationships, and allocate risks, among the parties in relation to the transactions contemplated by the Merger Agreement. In particular, the representations and warranties made by the parties to each other in the Merger Agreement reflect negotiations between, and are solely for the benefit of, the parties thereto and may be limited or modified by a variety of factors, including subsequent events, information included in public filings, disclosures made during negotiations, correspondence between the parties and disclosure schedules to the Merger Agreement. Accordingly, the representations and warranties may not describe the actual state of affairs at the date they were made or at any other time, and you should not rely on them as statements of fact.

Prior to the Merger Effective Times, shares of Old DraftKings Class A Common Stock and shares of GNOG Class A Common Stock were registered pursuant to Section 12(b) of the Exchange Act, and listed on The Nasdaq Global Select Market (in the case of Old DraftKings Class A Common Stock) and The Nasdaq Global Market (in the case of GNOG Class A Common Stock) (collectively, the "Nasdaq"). As a result of the Transactions, shares of Old DraftKings Class A Common Stock and shares of GNOG Class A Common Stock will no longer be traded or listed on the Nasdaq, and will be substituted for shares of New DraftKings Class A Common Stock listed on The Nasdaq Global Select Market. As of the open of trading on May 5, 2022, shares of New DraftKings Class A Common Stock will trade on The Nasdaq Global Select Market under the ticker symbol "DKNG." Each of Old DraftKings and GNOG expects to file a Form 15 with the SEC to terminate their respective registrations under the Exchange Act in respect of the shares of Old DraftKings Class A Common Stock and the shares of GNOG Class A Common Stock, respectively, and suspend their respective reporting obligations under Sections 12(g) and 15(d) of the Exchange Act.

The information set forth in the Explanatory Note of this Current Report is incorporated by reference into this Item 2.01.

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

The information set forth in Item 1.01 of this Current Report under the heading "Supplemental Indenture" is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

In connection with the Transactions, New DraftKings issued (i) 4,484,341 shares of New DraftKings Class A Common Stock and 393,013,951 shares of New DraftKings Class B Common Stock, in each case, to Jason Robins, the chief executive officer and chairman of New DraftKings, in connection with his holdings of shares of Old DraftKings Common Stock prior to the DraftKings Merger Effective Time and (ii) 13,194,082 shares of New DraftKings Class A Common Stock to Tilman J. Fertitta and certain of his affiliates in the aggregate in connection with their holdings of shares of GNOG Common Stock prior to the GNOG Merger Effective Time.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in the Explanatory Note and in Items 2.01, 5.01 and 5.03 of this Current Report are incorporated by reference into this Item 3.03.

Item 5.01 Changes in Control of Registrant.

Prior to the DraftKings Merger Effective Time, New DraftKings was a direct wholly-owned subsidiary of Old DraftKings. Pursuant to the Merger Agreement, immediately following the DraftKings Merger Effective Time, all shares of New DraftKings Common Stock owned by Old DraftKings prior to the DraftKings Merger Effective Time were canceled without payment of consideration therefor. Following the completion of the Transactions, the shares of New DraftKings Common Stock became held by the former holders of shares of Old DraftKings Common Stock, shares of GNOG Common Stock and LHGN Units.

The information set forth in the Explanatory Note and in Items 2.01 and 5.02 of this Current Report are incorporated by reference into this Item 5.01.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Board of Directors

Effective immediately following the Merger Effective Times, the board of directors of New DraftKings (the "Board") increased in size from two to eleven directors. Effective as of Merger Effective Times, Jason Park resigned from the Board. In addition, in accordance with the terms of the Merger Agreement and effective immediately following the Merger Effective Times, each of Jason D. Robins, Harry Evans Sloan, Matthew Kalish, Woodrow H. Levin, Shalom Meckenzie, Jocelyn Moore, Ryan R. Moore, Valerie Mosley, Steven J. Murray, and Marni M. Walden, which, together with Paul Liberman, served on the board of directors of Old DraftKings immediately prior to the Merger Effective Times, were appointed to the Board to serve until the next annual meeting of stockholders and until their successors are elected and qualified. Paul Liberman will continue to serve on the Board until the next annual meeting of stockholders and until his successor is elected and qualified. The Board has determined that all of its directors, except for Messrs. Robins, Liberman, Kalish, and Meckenzie, are "independent directors" as such term is defined by the applicable rules and regulations of the SEC and the Nasdaq.

The transactions to which New DraftKings is a party in which any of New DraftKings' directors have a material interest subject to disclosure under Item 404(a) of Regulation S-K are set forth in the Joint Information Statement/Prospectus and/or the definitive proxy statement on Schedule 14A, filed by Old DraftKings with the SEC on February 28, 2022 (the "Old DraftKings Proxy Statement"). In addition, starting in 2022, from time to time, Old DraftKings has chartered, without mark-up, the private plane owned by Mr. Robins utilizing aircraft services from Jet Aviation Flight Services, Inc. for the business and personal travel of Mr. Robins and his family. Old DraftKings had no direct or indirect interest in such private plane. During the three months ended March 31, 2022, Old DraftKings incurred $0.7 million of expense for use of the aircraft under these chartering services. In March 2022, Old DraftKings entered into a one-year lease of an aircraft from an entity controlled by Mr. Robins. Pursuant to such agreement, Mr. Robins' entity leases the aircraft to Old DraftKings for $0.6 million for a one-year period. Old DraftKings covers all of the operating, maintenance, and other expenses associated with the aircraft. The audit and compensation committees of Old DraftKings' board of directors approved this arrangement based, among other things, on the requirement of the overall security program that Mr. Robins and his family fly private and their assessment that such an arrangement is more efficient and flexible and better ensures safety, confidentiality and privacy. Other than as described in this Current Report, there are no transactions to which New DraftKings is a party in which any of New DraftKings' directors have a material interest subject to disclosure under Item 404(a) of Regulation S-K.

Committee Appointments

Effective immediately following Merger Effective Times, the Board established, and appointed the following individuals to, its Audit Committee, Compensation Committee, Nominating and Corporate Governance Committee, Compliance Committee and Transaction Committee:

- Audit Committee: Stephen J. Murray (chair), Ryan R. Moore and Valerie Mosley
- Compensation Committee: Ryan R. Moore (chair), Shalom Meckenzie and Steven J. Murray
- Nominating and Corporate Governance Committee: Marni M. Walden (chair), Woodrow H. Levin, Jocelyn Moore and Valerie Mosley
- Compliance Committee: Marni M. Walden (chair), Paul Liberman and Jocelyn Moore
- Transaction Committee: Harry Evans Sloan (chair), Shalom Meckenzie, Jocelyn Moore, Steven J. Murray and Marni M. Walden

Director Compensation

The description of the compensation that will be paid by New DraftKings to its directors for their service on the Board and its committees is disclosed in the Old DraftKings Proxy Statement under "Director Compensation—Director Compensation Program".

Each director will enter into a standard indemnification agreement with New DraftKings as more fully described under the heading "Indemnification Agreements" in Item 1.01 of this Current Report.

Executive Officers

Effective as of the Merger Effective Times, each executive officer of New DraftKings ceased serving in such capacities, and the Board appointed new executive officers of New DraftKings, effective immediately following the Merger Effective Times, including:

- Jason D. Robins, Chief Executive Officer;
- Matthew Kalish, President, DraftKings North America;
- Paul Liberman, President, Global Technology and Product;
- R. Stanton Dodge, Chief Legal Officer and Secretary;
- Jason K. Park, Chief Financial Officer; and
- Erik Bradbury, Chief Accounting Officer.

Biographical information for each of Messrs. Robins, Kalish, Liberman, Dodge, Park and Bradbury are set forth in the Joint Information Statement/Prospectus.

The transactions to which New DraftKings is a party in which any of New DraftKings' officers have a material interest subject to disclosure under Item 404(a) of Regulation S-K are set forth in the Joint Information Statement/Prospectus and/or the Old DraftKings Proxy Statement. The information set forth in this Item 5.02 under the heading "Board of Directors" regarding Old DraftKings' aircraft arrangements with Mr. Robins and an entity controlled thereby is incorporated herein by reference. Other than as described in this Current Report, there are no transactions to which New DraftKings is a party in which any of New DraftKings' officers have a material interest subject to disclosure under Item 404(a) of Regulation S-K.

Employment Agreements

Effective as of the DraftKings Merger Effective Time, New DraftKings assumed Old DraftKings' employment agreements with each of Jason Robins (a copy of which was filed with the Current Report on Form 8-K filed by Old DraftKings with the SEC on April 29, 2020), Matthew Kalish (a copy of which was filed with the Current Report on Form 8-K filed by Old DraftKings with the SEC on April 29, 2020), and Paul Liberman (the material terms of which are disclosed in, and a copy of which was filed with, the Current Report on Form 8-K filed by Old DraftKings with the SEC on April 29, 2020). Additionally, effective as of the Merger Effective Times, New DraftKings assumed Old DraftKings' employment agreement with each of Jason K. Park (a copy of which was filed with the Quarterly Report on Form 10-Q filed by Old DraftKings with the SEC on August 6, 2021) and R. Stanton Dodge (the material terms of which are disclosed in, and a copy of which was filed with, the Quarterly Report on Form 10-Q filed by Old DraftKings with the SEC on August 6, 2021).

Compensatory Plans

Effective as of the Merger Effective Times, New DraftKings assumed (i) the DraftKings Inc. 2020 Incentive Award Plan (the "2020 Plan"), the DraftKings Inc. Employee Stock Purchase Plan (the "ESPP"), the DraftKings Inc. 2017 Equity Incentive Plan (the "2017 Plan"), the DraftKings Inc. 2012 Stock Option & Restricted Stock Incentive Plan (the "2012 Plan") and the SBTech (Global) Limited 2011 Global Share Option Plan (the "SBTech Plan" and, together with the 2020 Plan, the ESPP, the 2017 Plan and the 2012 Plan, the "Old DraftKings Stock Plans") and (ii) the share reserve available for future issuances under the Old DraftKings Stock Plans. New DraftKings expects to grant future awards under the 2020 Plan and the ESPP. The material terms of the 2020 Plan and the ESPP are set forth in the definitive proxy statement/prospectus included in Old DraftKings' registration statement on Form S-4, filed with the SEC on April 15, 2020, and copies of which were filed with the Current Report on Form 8-K filed by Old DraftKings with the SEC on April 29, 2020.

Additional information required by Items 5.02(c), (d) and (e) is included in the Joint Information Statement/Prospectus and the Old DraftKings Proxy Statement.

Item 5.03 Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Effective as of the Merger Effective Times, in connection with the completion of the Transactions and in accordance with the Merger Agreement, New DraftKings amended and restated its articles of incorporation and its bylaws to reflect the changes contemplated by the Merger Agreement and described in the Joint Information Statement/Prospectus.

The foregoing descriptions of the amended and restated articles of incorporation of New DraftKings and the amended and restated bylaws of New DraftKings do not purport to be complete and are qualified in their entirety by reference to the amended and restated articles of incorporation of New DraftKings and the amended and restated bylaws of New DraftKings, filed as Exhibit 3.1 and Exhibit 3.2, respectively, to this Current Report and incorporated by reference into this Item 5.03.

The information set forth in the Explanatory Note of this Current Report is incorporated by reference into this Item 5.03.

Item 7.01 Regulation FD Disclosure.

On May 5, 2022, New DraftKings issued a press release in connection with the completion of the Transactions. A copy of the press release is attached hereto as Exhibit 99.1.

The information included in this Item 7.01 of this Current Report, including Exhibit 99.1 attached hereto, is being furnished. As such, the information (including Exhibit 99.1) contained herein shall not be deemed to be "filed" for the purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that Section, nor shall it be incorporated by reference into a filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

d) Exhibits.

Exhibit No.	Description
2.1*	Agreement and Plan of Merger, dated as of August 9, 2021, by and among Old DraftKings, New DraftKings, GNOG, DraftKings Merger Sub and GNOG Merger Sub (incorporated by reference to Exhibit 2.1 to Old DraftKings' Current Report on Form 8-K, filed with the SEC on August 10, 2021)
3.1	Amended and Restated Articles of Incorporation of New DraftKings
3.2	Amended and Restated Bylaws of New DraftKings
4.1	Warrant Agreement, dated May 6, 2019, by and between GNOG and Continental, as warrant agent (incorporated by reference to Exhibit 4.1 of GNOG's Current Report on Form 8-K, filed with the SEC on May 9, 2019)
4.2	Assignment and Assumption Agreement, dated as of May 5, 2022, by and among New DraftKings, GNOG, Continental and Computershare
4.3	Warrant Agreement, dated May 10, 2019, by and between Diamond Eagle Acquisition Corp. and Continental, as warrant agent (incorporated by reference to Exhibit 4.1 of Diamond Eagle Acquisition Corp.'s Current Report on Form 8-K filed on May 14, 2019)
4.4	Assignment and Assumption Agreement, dated April 23, 2020, by and among Old DraftKings, Diamond Eagle Acquisition Corp., Continental and Computershare (incorporated by reference to Exhibit 4.4 of Old DraftKings' Current Report on Form 8-K, filed with the SEC on April 29, 2020)
4.5	Assignment and Assumption Agreement, dated as of May 5, 2022, by and among New DraftKings, Old DraftKings and Computershare
4.6	Supplemental Indenture, dated as of May 5, 2022, by and among New DraftKings, Old DraftKings and CTC, as trustee
10.1	Form of Indemnification Agreement.
10.2+	Amended and Restated Trademark License Agreement, dated as of May 5, 2022, by and among GNOG LLC, GNLV and Fertitta Entertainment, LLC (f/k/a Golden Nugget, LLC)
99.1	Press Release, dated May 5, 2022
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Annexes, schedules and/or exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. New DraftKings agrees to furnish supplementally a copy of any omitted schedule or similar attachment to the SEC upon request.
+ Certain confidential information – identified by bracketed asterisks "[***]" – has been omitted from this exhibit pursuant to Item 601(b)(10) of Regulation S-K. New DraftKings agrees to furnish supplementally a copy of an unredacted copy to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, New DraftKings has duly caused this Current Report to be signed on its behalf by the undersigned hereunto duly authorized.

DraftKings Inc.

Dated: May 5, 2022

By: /s/ R. Stanton Dodge
Name: R. Stanton Dodge
Title: Chief Legal Officer and Secretary

DocuSign Envelope ID: 3CA26CC6-BE50-484B-A131-6744A343C404

Filed in the Office of	Business Number
Barbara K. Cegavske	E16654302021-6
Secretary of State	Filing Number
State Of Nevada	20222300757
	Filed On
	5/4/2022 2:25:00 PM
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	2

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Profit Corporation:

Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:

Name of entity as on file with the Nevada Secretary of State:
New Duke Holdco, Inc.

Entity or Nevada Business Identification Number (NVID): NV20212194606

2. Restated or Amended and Restated Articles:
(Select one)

(If amending and restating only, complete section 1,2 3, 5 and 6)

☐ Certificate to Accompany Restated Articles or Amended and Restated Articles

☐ Restated Articles - No amendments; articles are restated only and are signed by an officer of the corporation who has been authorized to execute the certificate by resolution of the board of directors adopted on: _____
The certificate correctly sets forth the text of the articles or certificate as amended to the date of the certificate.

☐ Amended and Restated Articles

* Restated or Amended and Restated Articles must be included with this filing type.

3. Type of Amendment Filing Being Completed:
(Select only one box)

(If amending, complete section 1, 3, 5 and 6.)

☐ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.380 - Before Issuance of Stock)

The undersigned declare that they constitute at least two-thirds of the following:

(Check only one box) ☐ incorporators ☐ board of directors

The undersigned affirmatively declare that to the date of this certificate, no stock of the corporation has been issued

☒ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: Majority

☐ Officer's Statement (foreign qualified entities only) -

Name in home state, if using a modified name in Nevada: _____

Jurisdiction of formation: _____

Changes to takes the following effect:

☐ The entity name has been amended.
☐ The purpose of the entity has been amended.
☐ The authorized shares have been amended.
☐ Other: (specify changes)

☐ Dissolution
☐ Merger
☐ Conversion

* Officer's Statement must be submitted with either a certified copy of or a certificate evidencing the filing of any document, amendatory or otherwise, relating to the original articles in the place of the corporations creation.

This form must be accompanied by appropriate fees.

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

4. Effective Date and Time: (Optional)

Date: 5/4/2022 PDT (5/5/2022 EDT) Time: 9:01 p.m. PDT (12:01 a.m.EDT)

(must not be later than 90 days after the certificate is filed)

5. Information Being Changed: (Domestic corporations only)

Changes to takes the following effect:

- [x] The entity name has been amended.
- [ ] The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
- [ ] The purpose of the entity has been amended.
- [ ] The authorized shares have been amended.
- [ ] The directors, managers or general partners have been amended.
- [ ] IRS tax language has been added.
- [ ] Articles have been added.
- [ ] Articles have been deleted.
- [ ] Other.

The articles have been amended as follows: (provide article numbers, if available)

Article I: The name of the corporation is DraftKings Inc. (the "Corporation")

(attach additional page(s) if necessary)

6. Signature: (Required)

X DocuSigned by: Faisal Yaser — Assistant Secretary

Signature of Officer or Authorized Signer — Title

X _____

Signature of Officer or Authorized Signer — Title

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:
(attach additional page(s) if necessary)

This form must be accompanied by appropriate fees.

DocuSign Envelope ID: 3CA26CC6-BE50-484B-A131-6744A343C404

Filed in the Office of	Business Number
Barbara K. Cegavske	E16654302021-6
Secretary of State	Filing Number
State Of Nevada	20222299931
	Filed On
	5/4/2022 11:43:00 AM
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BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
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Profit Corporation:

Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)

Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)

Officer's Statement (PURSUANT TO NRS 80.030)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:

Name of entity as on file with the Nevada Secretary of State:

New Duke Holdco, Inc.

Entity or Nevada Business Identification Number (NVID): NV20212194606

2. Restated or Amended and Restated Articles:
(Select one)

(If amending and restating only, complete section 1,2 3, 5 and 6)

☒ Certificate to Accompany Restated Articles or Amended and Restated Articles

☐ Restated Articles - No amendments; articles are restated only and are signed by an officer of the corporation who has been authorized to execute the certificate by resolution of the board of directors adopted on: _____
The certificate correctly sets forth the text of the articles or certificate as amended to the date of the certificate.

☒ Amended and Restated Articles

* Restated or Amended and Restated Articles must be included with this filing type.

3. Type of Amendment Filing Being Completed:
(Select only one box)

(If amending, complete section 1, 3, 5 and 6.)

☐ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.380 - Before Issuance of Stock)

The undersigned declare that they constitute at least two-thirds of the following:

(Check only one box) ☐ incorporators ☐ board of directors

The undersigned affirmatively declare that to the date of this certificate, no stock of the corporation has been issued

☒ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: Majority

☐ Officer's Statement (foreign qualified entities only) -

Name in home state, if using a modified name in Nevada: _____

Jurisdiction of formation: _____

Changes to takes the following effect:

☐ The entity name has been amended. ☐ Dissolution
☐ The purpose of the entity has been amended. ☐ Merger
☐ The authorized shares have been amended. ☐ Conversion
☐ Other: (specify changes)

* Officer's Statement must be submitted with either a certified copy of or a certificate evidencing the filing of any document, amendatory or otherwise, relating to the original articles in the place of the corporations creation.

This form must be accompanied by appropriate fees.

BARBARA K. CEGAVSKE
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Officer's Statement (PURSUANT TO NRS 80.030)

4. Effective Date and Time: (Optional)

Date: 05/04/2022 Time: 2:00 p.m. PDT (5:00 p.m. EDT)

(must not be later than 90 days after the certificate is filed)

5. Information Being Changed: (Domestic corporations only)

Changes to takes the following effect:

- ☐ The entity name has been amended.
- ☐ The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
- ☒ The purpose of the entity has been amended.
- ☒ The authorized shares have been amended.
- ☒ The directors, managers or general partners have been amended.
- ☐ IRS tax language has been added.
- ☒ Articles have been added.
- ☒ Articles have been deleted.
- ☒ Other.

The articles have been amended as follows: (provide article numbers, if available)

Articles II through XI have been amended and restated in their entirety.

(attach additional page(s) if necessary)

6. Signature: (Required)

X DocuSigned by: Faisal Hasan — Assistant Secretary
Signature of Officer or Authorized Signer — Title

X _____
Signature of Officer or Authorized Signer — Title

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:
(attach additional page(s) if necessary)

This form must be accompanied by appropriate fees.

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
NEW DUKE HOLDCO, INC.

New Duke Holdco, Inc., a corporation organized and existing under the laws of the State of Nevada (the "***Corporation***"), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is "*New Duke Holdco, Inc.*".

2. The original articles of incorporation of the Corporation was filed with the Secretary of State of the State of Nevada on August 6, 2021, under the name of New Duke Holdco, Inc. (the "Articles of Incorporation").

3. These Amended and Restated Articles of Incorporation of the Corporation, which restates, integrates and further amends the provisions of the Articles of Incorporation of this Corporation (as heretofore amended and/or restated), has been duly adopted by the Corporation's Board of Directors (as defined below) in accordance with NRS 78.315, NRS 78.380, and NRS 78.403 with and by written consent without a meeting in accordance with Nevada Revised Statutes.

4. The Articles of Incorporation are hereby amended and restated in its entirety to read as follows:

ARTICLE I
NAME

The name of the corporation is DraftKings Inc. (the "Corporation").

ARTICLE II
REGISTERED OFFICE AND AGENT

The address of the Corporation's registered office in the State of Nevada is 112 North Curry Street, Carson City, NV 87903. The name of the Corporation's resident agent at that address is Corporation Service Company. Either the registered office or the registered agent may be changed in the manner permitted by law.

ARTICLE III
PURPOSE

The purpose for which the Corporation is organized is to engage in any lawful acts and activities for which corporations may be organized under the laws of the State of Nevada and to exercise any powers permitted to corporations under the laws of the State of Nevada.

ARTICLE IV
CAPITAL STOCK

Section 1. Capital Stock

(a) Authorized Capital Stock. The total number of shares of capital stock which the Corporation is authorized to issue is 2,100,000,000 shares, of which 900,000,000 shares shall be shares of Class A common stock, par value $0.0001 per share (the "Class A Common Stock"), 900,000,000 shares shall be shares of Class B common stock, par value $0.0001 per share (the "Class B Common Stock", and together with the Class A Common Stock, the "Common Stock"), and 300,000,000 shares shall be shares of preferred stock, par value $0.0001 per share (the "Preferred Stock").

(b) Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock and each class of Common Stock may, without a class vote, be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding capital stock, voting together as a single class, unless a separate vote of any such holders is required pursuant to the terms of any certificate of designations for a series of Preferred Stock, irrespective of the provisions of Sections 78.2055 and 78.207 of the Nevada Revised Statutes (the "NRS") or any successor provision thereof.

(c) Facts or Events Ascertainable outside of Articles of Incorporation. Any of the voting powers, designations, preferences, limitations, restrictions and relative rights of any class or series of stock of the Corporation may be made dependent upon any fact or event which may be ascertained outside these amended and restated articles of incorporation of the Corporation (as amended, restated, amended and restated, or otherwise modified, these "Amended and Restated Articles") if the manner in which a fact or event may operate upon the voting powers, designations, preferences, limitations, restrictions and relative rights is stated in these Amended and Restated Articles (including any duly filed certificate of designation relating thereto), all to the full extent permitted by the NRS.

(d) No Cumulative Voting. Holders of a class or series of capital stock of the Corporation shall not be entitled to cumulate their votes in any election of directors in which they are entitled to vote and shall not, unless specifically provided in a certificate of designations for such class or series, be entitled to any preemptive rights to acquire shares of any class or series of capital stock of the Corporation.

Section 2. Preferred Stock.

The board of directors of the Corporation (the "Board of Directors" or the "Board") is hereby authorized to provide, by resolution or resolutions adopted by such Board of Directors and a certificate of designations filed pursuant to Section 78.1955 of the NRS, for the issuance of Preferred Stock from time to time in one or more classes and/or series, to establish the number of shares of each such class or series, and to fix the voting powers, designations, preferences, limitations, restrictions, relative rights and distinguishing designation of each such class or series, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, of any of the shares of each such class or series, all to the full extent permitted by Chapter 78 of the NRS, or any successor law(s) of the State of Nevada. Without limiting the generality of the foregoing, the Board of Directors is authorized to provide that shares of a class or series of Preferred Stock:

(a) are entitled to cumulative, partially cumulative or noncumulative dividends or other distributions payable in cash, capital stock or indebtedness of the Corporation or other property, at such times and in such amounts as are set forth in the certificate of designations establishing such class or series or as are determined in a manner specified in such certificate of designations;

(b) are entitled to a preference with respect to payment of dividends over one or more other classes and/or series of capital stock of the Corporation;

(c) are entitled to a preference with respect to any distribution of assets of the Corporation its liquidation, dissolution or winding up over one or more other classes and/or series of capital stock of the Corporation in such amount as is set forth in the certificate of designations establishing such class or series or as is determined in a manner specified in such certificate of designations;

(d) are redeemable or exchangeable at the option of the Corporation and/or on a mandatory basis for cash, capital stock or indebtedness of the Corporation or other property, at such times or upon the occurrence of such events, and at such prices, as are set forth in the resolutions of the Board of Directors establishing such class or series or as are determined in a manner specified in such certificate of designations;

(e) are entitled to the benefits of such sinking fund, if any, as is required to be established by the Corporation for the redemption and/or purchase of such shares by the resolutions of the Board of Directors establishing such class or series;

(f) are convertible at the option of the holders thereof into shares of any other class or series of capital stock of the Corporation, at such times or upon the occurrence of such events, and upon such terms, as are set forth in the resolutions of the Board of Directors establishing such class or series or as are determined in a manner specified in such certificate of designations;

(g) are exchangeable at the option of the holders thereof for cash, capital stock or indebtedness of the Corporation or other property, at such times or upon the occurrence of such events, and at such prices, as are set forth in the resolutions of the Board of Directors establishing such class or series or as are determined in a manner specified in such certificate of designations;

(h) are entitled to such voting rights, if any, as are specified in the resolutions of the Board of Directors establishing such class or series (including, without limiting the generality of the foregoing, the right to elect one or more directors voting alone as a single class or series or together with one or more other classes and/or series of Preferred Stock, if so specified by such certificate of designations) at all times or upon the occurrence of specified events; and

(i) are subject to restrictions on the issuance of additional shares of Preferred Stock of such class or series or of any other class or series, or on the reissuance of shares of Preferred Stock of such class or series or of any other class or series, or on increases or decreases in the number of authorized shares of Preferred Stock of such class or series or of any other class or series.

Section 3. Common Stock. The holders of shares of Common Stock shall have such rights as are set forth in the NRS and, to the extent permitted thereunder, such additional rights as are set forth below:

(a) Voting. Except as otherwise expressly provided by these Amended and Restated Articles or as provided by law, the holders of shares of Class A Common Stock and Class B Common Stock shall (i) at all times vote together as a single class on all matters (including the election of directors) submitted to a vote or for the consent (if action by written consent of the stockholders is not prohibited at such time under these Amended and Restated Articles) of the stockholders of the Corporation; (ii) be entitled to notice of any stockholders' meeting in accordance with the amended and restated bylaws of the Corporation (as amended, restated, amended and restated, or otherwise modified, the "Bylaws"); and (iii) be entitled to vote upon such matters and in such manner as may be provided by applicable law. Except as otherwise expressly provided herein or required by applicable law, each holder of Class A Common Stock shall have the right to one (1) vote per share of Class A Common Stock held of record by such holder and each holder of Class B Common Stock shall have the right to ten (10) votes per share of Class B Common Stock held of record by such holder. Notwithstanding any other provision of these Amended and Restated Articles to the contrary, so long as both shares of Class A Common Stock are outstanding and shares of Class B Common Stock are outstanding, the Corporation shall not amend, alter or repeal any provision of these Amended and Restated Articles so as to adversely affect the relative rights, preferences, qualifications, limitations or restrictions of either such class of Common Stock, as compared to those of the other class of Common Stock, without the affirmative vote of the holders of a majority of the voting power of the outstanding shares of each class of Common Stock whose relative rights, preferences, qualifications, limitations or restrictions are adversely affected.

(b) Class B Common Stock.

(i) Issuance of Additional Shares. From and after the effective time of these Amended and Restated Articles (the "Effective Time"), additional shares of Class B Common Stock may be issued only to, and registered in the name of, (A) Jason Robins (the "Founder") and (B) any entities, directly or indirectly, wholly-owned by (or in the case of a trust solely for the benefit of) the Founder (including all subsequent successors, assigns and permitted transferees) (collectively, "Permitted Class B Owners").

(ii) Mandatory Cancellation of Class B Common Stock. All outstanding shares of Class B Common Stock shall (A) automatically and without further action on the part of the Corporation or any holder of Class B Common Stock be canceled for no consideration, and the Corporation will take all actions necessary to retire such shares and such shares shall not be re-issued by the Corporation in the event that shares of Class A Common Stock that are then held by the Permitted Class B Owners (including without limitation all shares of Class A Common Stock that are the subject of unvested stock options or other equity awards awarded to the Founder) represent less than 33% of the Base Class A Shares (as defined below); and (B) be subject to cancelation by the Corporation (without consideration) one year after the date that both of the following conditions (the "Trigger Conditions") apply (the "Founder Termination Anniversary Date"):

(1) the earliest to occur of (a) the Founder's employment as Chief Executive Officer being terminated for Cause (as defined below) or due to death or Permanent Disability (as defined below) and (b) the Founder resigns (other than for Good Reason (as defined below)) as the Chief Executive Officer of the Corporation; and

(2) either (a) the Founder no longer serves as a member of the Board of Directors or (b) the Founder serves as a member of the Board of Directors, but his service to the Corporation is not his primary business occupation;

provided, however, that if the Founder is reinstated as the Chief Executive Officer of the Corporation or is reelected or appointed to serve as a member of the Board of Directors prior to the Founder Termination Anniversary Date (each, a "Reset Event"), then the shares of Class B Common Stock shall not be cancelled pursuant to this clause (B) unless and until the one-year anniversary of the date that both Trigger Conditions are subsequently met (such date, the "Next Founder Termination Anniversary Date"); provided, further, that in the event of a subsequent Reset Event, the Next Founder Termination Anniversary Date will extend until the one-year anniversary of the date that both Trigger Conditions are subsequently met without a Reset Event occurring prior to such anniversary.

For purposes of this Section 3,

"Base Class A Shares" shall mean the number of shares of Class A Common Stock held by the Permitted Class B Owners equal to (i) the number of issued and outstanding shares of Class A Common Stock held by the Permitted Class B Owners as of immediately following the Effective Time, plus (ii) all shares of Class A Common Stock that are the subject of unvested stock options or other equity awards awarded to the Founder as of immediately following the Effective Time ("Founder Awards"), less (iii) any shares of Class A Common Stock that are subject to Founder Awards that have performance-based vesting conditions that subsequently fail to vest; provided, however, that in the event of any transfer of shares of Class A Common Stock held by the Permitted Class B Owners pursuant to divorce settlement, order or decree or domestic relations settlement, order or decree, if any, the amount of Base Class A Shares determined under this definition shall be reduced by fifty percent (50%) immediately prior to such transfer.

A termination for "Cause" shall occur thirty (30) days after written notice by the Corporation to the Founder of a termination for Cause if the Founder shall have failed to cure or remedy such matter, if curable, within such thirty (30) day period. In the event that the basis for Cause is not curable, then such thirty (30) day cure period shall not be required, and such termination shall be effective on the date the Corporation delivers notice of such termination for Cause. "Cause" shall mean the Corporation's termination of the Founder's employment with the Corporation or any of its subsidiaries as a result of: (i) fraud, embezzlement or any willful act of material dishonesty by the Founder in connection with or relating to the Founder's employment with the Corporation or any of its subsidiaries; (ii) theft or misappropriation of property, information or other assets by the Founder in connection with the Founder's employment with the Corporation or any of its subsidiaries which results in or could reasonably be expected to result in material loss, damage or injury to the Corporation and its subsidiaries, their goodwill, business or reputation; (iii) the Founder's conviction, guilty plea, no contest plea, or similar plea for any felony or any crime that results in or could reasonably be expected to result in material loss, damage or injury to the Corporation and its subsidiaries, their goodwill, business or reputation; (iv) the Founder's use of alcohol or drugs while working that materially interferes with the ability of Founder to perform the Founder's material duties hereunder; (v) the Founder's material breach of a material Corporation policy, or material breach of a Corporation policy that results in or could reasonably be expected to result in material loss, damage or injury to the Corporation and its subsidiaries, their goodwill, business or reputation; (vi) the Founder's material breach of any of his obligations under the employment agreement between the Founder and the Corporation, as in effect from time to time (the "Founder Employment Agreement"); or (vii) the Founder's repeated insubordination, or refusal (other than as a result of a Permanent Disability or physical or mental illness) to carry out or follow specific reasonable and lawful instructions, duties or assignments given by the Board of Directors which are consistent with Founder's position with the Corporation; *provided*, that, for clauses (i) – (vii) above, the Corporation delivers written notice to Founder of the condition giving rise to Cause within ninety (90) days after its initial occurrence. For avoidance of doubt, the Founder being deemed an Unsuitable Person shall not independently constitute Cause (but any circumstances giving rise to the Founder being deemed an Unsuitable Person shall constitute Cause to the extent such circumstances are grounds provided in clauses (i) – (vii) above).

A resignation for "Good Reason" shall occur thirty (30) days after written notice by the Founder to the Corporation of an alleged condition giving rise to a resignation for Good Reason if the Corporation shall have failed to cure or remedy such matter, if curable, within such thirty (30) day period. In the event that the basis for Good Reason is not curable, then such thirty (30) day cure period shall not be required, and such resignation shall be effective on the date the Founder delivers such notice. "Good Reason" shall mean the occurrence of any of the following events, without the express written consent of the Founder: (i) the Corporation's material breach of any of its obligations under the Founder Employment Agreement; (ii) any material adverse change in the Founder's duties or authority or responsibilities, or the assignment of duties or responsibilities to the Founder materially inconsistent with his position; (iii) the Founder no longer serving as the Chief Executive Officer of the Corporation; (iv) reduction in the Founder's annual base salary or annual target bonuses / incentives (other than across-the-board reductions affecting similarly situated senior executives of the Corporation or any of its subsidiaries); (v) the Corporation requires Founder to relocate to a facility or location that increases Founder's one-way commute by more than thirty-five (35) miles from the location at which Founder was working immediately prior to the required relocation; or (vi) the failure of a successor to the Corporation to assume the Corporation's obligations under this Agreement; *provided*, that, for clauses (i) – (vi) above, Founder has given written notice to the Corporation of the condition giving rise to Good Reason within ninety (90) days after its initial occurrence.

"Permanent Disability" shall mean a permanent and total disability such that the Founder is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which would reasonably be expected to result in death within twelve (12) months or which has lasted or would reasonably be expected to last for a continuous period of not less than twelve (12) months as determined by a licensed medical practitioner.

(c) Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding class or series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends, the holders of Class A Common Stock shall be entitled, on a per share basis, to such dividends and other distributions of cash, property, shares of capital stock or rights to acquire shares of capital stock of the Corporation as may be declared by the Board of Directors from time to time with respect to Common Stock out of assets or funds of the Corporation legally available therefor. Dividends shall not be declared or paid on the Class B Common Stock and holders of Class B Common Stock shall have no entitlement in respect of dividends thereon.

(d) Liquidation, Dissolution, etc. In the event of a voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, the holders of Class A Common Stock shall be entitled, pro rata on a per share basis, to all assets of the Corporation of whatever kind available for distribution to the holders of Common Stock, subject to the designations, preferences, limitations, restrictions and relative rights of any other class or series of Preferred Stock. In the event of a voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, the holders of Class B Common Stock shall not be entitled to any assets of the Corporation of whatever kind available until distribution has first been made to all holders of Class A Common Stock. For purposes of this paragraph, unless otherwise provided with respect to any then outstanding series of Preferred Stock, the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the assets of the Corporation or a consolidation or merger of the Corporation with one or more other corporations (whether or not the Corporation is the corporation surviving such consolidation or merger) shall not be deemed to be a liquidation, dissolution or winding up, either voluntary or involuntary.

(e) Subdivision or Combination. If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Stock, the outstanding shares of the other class of Common Stock will be subdivided or combined in the same manner.

(f) No Preemptive or Subscription Rights. No holder of shares of Common Stock shall be entitled to preemptive or subscription rights.

Section 4. Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons (provided that shares of Class B Common Stock may be issued only to, and registered in the name of, the Permitted Class B Owners), and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issuance or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase all or any part of any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

Section 5. Transfers of Class B Common Stock.

(a) A holder of Class B Common Stock may not Transfer (as defined below) shares of Class B Common Stock, other than (i) to a Permitted Class B Owner or (ii) upon divorce, as required by settlement, order or decree, or as required by a domestic relations settlement, order or decree (in each case, a "Permitted Transfer"); provided that in each case, the Founder shall be deemed to retain the sole voting power to vote such transferred Class B Common Stock.

For purposes of this Section 5, "Transfer" of a share of Class B Common Stock shall mean, any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition, whether direct or indirect, of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law (including by merger, consolidation or otherwise), including, without limitation, a transfer of a share of Class B Common Stock to a broker or other nominee (regardless of whether there is a corresponding change in beneficial ownership), or the transfer of, or entering into a binding agreement with respect to, Voting Control (as defined below) over such share by proxy or otherwise (other than proxy(ies), voting instruction(s) or voting agreement(s) solicited on behalf of the Board of Directors). Notwithstanding the foregoing, the pledge of shares of Class B Common Stock by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction for so long as such stockholder continues to exercise Voting Control over such pledged shares; provided, however, that a foreclosure on such shares or other similar action by the pledgee shall constitute a "Transfer" unless such foreclosure or similar action independently qualifies as a "Permitted Transfer" at such time shall not be considered a "Transfer" within the meaning of this Article IV.

A "Transfer" shall also be deemed to have occurred with respect to a share of Class B Common Stock beneficially held by the transferor, if there occurs any act or circumstance that causes such transfer to not be a Permitted Transfer.

For purposes of this Section 5, "Voting Control" shall mean, with respect to a share of Class B Common Stock, the power (whether exclusive or shared) to vote or direct the voting of such share by proxy, voting agreement or otherwise.

(b) Any purported transfer of shares of Class B Common Stock in violation of this Section 5 shall be null and void. If, notwithstanding the limitations set out in this Section 5, a person shall voluntarily or involuntarily, purportedly become or attempt to become, the purported owner (the "Purported Owner") of shares of Class B Common Stock in violation of these limitations, then the Purported Owner shall not obtain any rights in and to such shares of Class B Common Stock and the purported transfer shall not be recognized by the Corporation's transfer agent.

(c) Upon a determination by the Board of Directors that a person has attempted or is attempting to acquire shares of Class B Common Stock, or has purportedly transferred or acquired shares of Class B Common Stock, in each case in violation of the limitations set out in this Section 5, the Board of Directors may take such action as it deems advisable to refuse to give effect to such attempted or purported transfer or acquisition on the books and records of the Corporation, including without limitation, to institute proceedings to enjoin any such attempted or purported transfer or acquisition, or reverse any entries or records reflecting such attempted or purported transfer or acquisition.

(d) The Board of Directors shall have all powers necessary to implement the limitations set out in this Section 5, including without limitation, the power to prohibit transfer of any shares of Class B Common Stock in violation thereof.

(e) All certificates or book-entries representing shares of Class B Common Stock shall bear a legend substantially in the following form (or in such other form as the Board of Directors may determine):

> THE SECURITIES REPRESENTED BY THIS [CERTIFICATE][BOOK-ENTRY] ARE SUBJECT TO THE RESTRICTIONS (INCLUDING RESTRICTIONS ON TRANSFER) SET FORTH IN THE AMENDED AND RESTATED ARTICLES OF INCORPORATION (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND SHALL BE PROVIDED FREE OF CHARGE TO ANY STOCKHOLDER MAKING A REQUEST THEREFOR.

Section 6. Rights and Options. The Corporation has the authority to create and issue rights, warrants and options entitling the holders thereof to acquire from the Corporation any shares of its capital stock of any class or classes, with such rights, warrants and options to be evidenced by or in instrument(s) approved by the Board of Directors. The Board of Directors is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants or options; provided, however, that the consideration to be received for any shares of capital stock issuable upon exercise thereof may not be less than the par value thereof.

ARTICLE V
BOARD OF DIRECTORS

Section 1. Powers of the Board. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Number of Directors. Subject to the rights, if any, of the holders of any outstanding class or series of Preferred Stock with respect to the election of directors, the number of directors of the Corporation shall be fixed, and may be altered from time to time, exclusively by resolution of the Board of Directors; provided that from and after the time that a Founder beneficially owns less than a majority of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote at an annual or special meeting duly noticed and called in accordance with these Amended and Restated Articles (the "Voting Stock"), such number of directors may be modified by the affirmative vote of the holders of at least two-thirds of the voting power of the Voting Stock.

Section 3. Removal; Vacancies. Subject to the rights, if any, of the holders of any class or series of Preferred Stock then outstanding and the terms and conditions of the Stockholders Agreement, dated as of April 23, 2020, by and among the Corporation and the stockholders named therein (the "Stockholders Agreement"), any individual director, or all of them, may be removed from the Board of Directors by a vote of stockholders representing not less than two-thirds of the voting power of the Voting Stock.

Except as otherwise required by law and subject to the rights, if any, of the holders of any class or series of Preferred Stock then outstanding and the terms and conditions of the Stockholders Agreement, vacancies in the Board of Directors and newly created directorships resulting from any increase in the authorized number of directors or from any other cause shall be filled by, and only by, a majority of the directors then in office, even though less than a quorum. Any director appointed to fill a vacancy or a newly created directorship shall hold office until the next annual meeting of stockholders and his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 4. Bylaws. The Board of Directors is expressly authorized to make, alter or repeal the Bylaws. Notwithstanding the foregoing, the Bylaws may be rescinded, altered, amended or repealed in any respect by the affirmative vote of the holders of (a) a majority of the voting power of the Voting Stock while the Corporation is under Founder Control and (b) at least two-thirds of the voting power of the Voting Stock from and after the time that the Corporation ceases to be under Founder Control.

For the purposes of these Amended and Restated Articles, "Founder Control" means that shares representing a majority of the voting power of the Voting Stock is beneficially owned by the Founder.

Section 5. Elections of Directors. Elections of directors need not be by written ballot except and to the extent provided in the Bylaws.

ARTICLE VI
MATTERS RELATING TO STOCKHOLDERS

Section 1. Action by Written Consent. Subject to the rights, if any, of the holders of any class or series of Preferred Stock then outstanding, any action required or permitted to be taken by the stockholders of the Corporation may be effected by an action by written consent in lieu of a meeting with the approval of the holders of outstanding capital stock having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares of capital stock entitled to vote thereon were present and voted; provided that from and after the time that a Founder beneficially owns less than a majority of the voting power of the Voting Stock, no action which is required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken by written consent without a meeting. Any alteration, amendment or repeal of this Section 1, Article VI shall require the affirmative vote of (a) a majority of the voting power of the Voting Stock while the Corporation is under Founder Control and (b) at least two-thirds of the voting power of the Voting Stock from and after the time that the Corporation ceases to be under Founder Control.

Section 2. Special Meeting of Stockholders. Subject to the rights, if any, of the holders of any class or series of Preferred Stock then outstanding, special meetings of stockholders of the Corporation may be called at any time (a) by the chairperson of the Board of Directors or by the chief executive officer of the Corporation upon direction of the Board of Directors pursuant to a resolution adopted by a majority of the entire Board of Directors or by the holders of a majority of the voting power of the Voting Stock while the Corporation is under Founder Control and (b) at such time that the Corporation is not under Founder Control, only by the chairperson of the Board of Directors or by the chief executive officer of the Corporation upon direction of the Board of Directors pursuant to a resolution adopted by a majority of the entire Board of Directors, and may not be called by any other person or persons.

Section 3. Meeting Location. Meetings of stockholders may be held within or outside the State of Nevada, as the Bylaws may provide. The books of the Corporation may be kept outside the State of Nevada at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws.

ARTICLE VII
LIABILITY

The Corporation is authorized to indemnify and to advance expenses to each current, former or prospective director, officer, employee or agent of the Corporation to the fullest extent permitted by Sections 78.7502 and 78.751 of the NRS, or any successor provision of Nevada law allowing greater indemnification or advancement of expenses. To the fullest extent permitted by Section 78.138 of the NRS or any successor provision of Nevada law, no director or officer shall be personally liable to the Corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his or her capacity as a director or officer. No amendment to, or modification or repeal of, this Article VII shall adversely affect any right or protection of a director or of any officer, employee or agent of the Corporation existing hereunder with respect to any act or omission occurring prior to such amendment, modification or repeal.

ARTICLE VIII
TRANSACTIONS WITH STOCKHOLDERS, DIRECTORS AND OFFICERS

Section 1. Control Share Acquisition Exemption. The Corporation shall not be governed by the control share acquisition provisions of Nevada law, Sections 78.378 through 78.3793 of the NRS or any successor provision, until immediately following the time at which the Founder ceases to beneficially own shares of Common Stock representing at least 15% of the voting power of the Voting Stock, and the Corporation shall thereafter be governed by Sections 78.378 through 78.3793 of the NRS, if and for so long as, Sections 78.378 through 78.3793 of the NRS shall apply to the Corporation.

Section 2. Combinations With Interested Stockholders. The Corporation shall not be governed by the provisions of Sections 78.411 through 78.444 of the NRS, or any successor provision, until immediately following the time at which the Founder ceases to beneficially own shares of Common Stock representing at least 15% of the voting power of the Voting Stock, and the Corporation shall thereafter be governed by Sections 78.411 through 78.444 of the NRS, if and for so long as, Sections 78.411 through 78.444 of the NRS shall apply to the Corporation.

ARTICLE IX
EXCLUSIVE FORUM

Unless the Corporation consents in writing to the selection of an alternative forum, the Eighth Judicial District Court of Clark County, Nevada, shall, to the fullest extent permitted by law, be the exclusive forum for any or all actions, suits, proceedings, whether civil, administrative or investigative or that asserts any claim or counterclaim (each, an "Action"), (a) brought in the name or right of the Corporation or on its behalf; (b) asserting a claim for breach of any fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders; (c) arising or asserting a claim pursuant to any provision of NRS Chapters 78 or 92A or any provision of these Amended and Restated Articles or the Bylaws; (d) to interpret, apply, enforce or determine the validity of these Amended and Restated Articles or the Bylaws; or (e) asserting a claim governed by the internal affairs doctrine. In the event that the Eighth Judicial District Court of Clark County, Nevada does not have jurisdiction over any such Action, then any other state district court located in the State of Nevada shall be the exclusive forum for such Action. In the event that no state district court in the State of Nevada has jurisdiction over any such Action, then a federal court located within the State of Nevada shall be the exclusive forum for such Action. Any person or entity that acquires any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to all of the provisions of this Article IX.

To the extent that any such claims may be based upon federal law claims, Section 27 of the Exchange Act of 1934, as amended, or the rules and regulations thereunder (the "Exchange Act") establishes exclusive jurisdiction with the federal courts over all suits brought to enforce any duty or liability created by the Exchange Act.

ARTICLE X
AMENDMENT

Notwithstanding any other provisions of these Amended and Restated Articles or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Voting Stock required by law or by the Bylaws or by these Amended and Restated Articles (or by any certificate of designations hereto), any alteration, amendment or repeal of Articles V, VI, VII, VIII, IX, X, XI or XII shall require the affirmative vote of (a) a majority of the voting power of the Voting Stock while the Corporation is under Founder Control and (b) at least two-thirds of the voting power of the Voting Stock from and after the time that the Corporation ceases to be under Founder Control.

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in these Amended and Restated Articles but only in the manner now or hereafter prescribed in these Amended and Restated Articles, the Bylaws or the NRS, and all rights herein conferred upon stockholders are granted subject to such reservation.

ARTICLE XI
CORPORATE OPPORTUNITIES

In anticipation that the Corporation and the Founder may engage in the same or similar business activities or lines of business and have an interest in the same areas of corporate opportunities, and in recognition of the benefits to be derived by the Corporation through its continued contractual, corporate and business relations with the Founder (including service of the Founder as a director of the Corporation), the provisions of this Article XI are set forth to regulate and define the conduct of certain affairs of the Corporation as they may involve the Founder, and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith. To the fullest extent permitted by law, any person or entity that acquires any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI. Neither the alteration, amendment, addition to or repeal of this Article XI, nor the adoption of any provision of these Amended and Restated Articles (including any certificate of designations relating to any series of Preferred Stock) inconsistent with this Article XI, shall eliminate or reduce the effect of this Article XI in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article XI, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption.

Section 1. Right to Compete. To the fullest extent permitted by the laws of the State of Nevada, (a) the Corporation hereby renounces all interest and expectancy that it otherwise would be entitled to have in, and all rights to be offered an opportunity to participate in, any business opportunity that from time to time may be presented to (i) the Board of Directors or any director, (ii) any stockholder, officer or agent of the Corporation, or (iii) any Affiliate of any person or entity identified in the preceding clauses (i) or (ii), but in each case excluding any such person in his or her capacity as an employee of the Corporation or its subsidiaries; (b) no holder of Class A Common Stock or Class B Common Stock and no director that is not an employee of the Corporation or its subsidiaries will have any duty to refrain from (i) engaging in a corporate opportunity in the same or similar lines of business in which the Corporation or its subsidiaries from time to time is engaged or proposes to engage or (ii) otherwise competing, directly or indirectly, with the Corporation or any of its subsidiaries; and (c) if any holder of Class A Common Stock or Class B Common Stock or any director that is not an employee of the Corporation or its subsidiaries acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity both for such holder of Class A Common Stock or Class B Common Stock or such director or any of their respective Affiliates, on the one hand, and for the Corporation or its subsidiaries, on the other hand, such holder of Class A Common Stock or Class B Common Stock or director shall have no duty to communicate or offer such transaction or business opportunity to the Corporation or its subsidiaries and such holder of Class A Common Stock or Class B Common Stock or director may take any and all such transactions or opportunities for itself or offer such transactions or opportunities to any other person or entity. The preceding sentence of this Section 1, Article XI shall not apply to any potential transaction or business opportunity that is expressly offered to a director, who is not an employee of the Corporation or its subsidiaries, solely in his or her capacity as a director.

Section 2. Corporate Opportunities. To the fullest extent permitted by the laws of the State of Nevada, no potential transaction or business opportunity may be deemed to be a potential corporate opportunity of the Corporation or its subsidiaries unless (a) the Corporation and its subsidiaries would be permitted to undertake such transaction or opportunity in accordance with these Amended and Restated Articles, (b) the Corporation and its subsidiaries at such time have sufficient financial resources to undertake such transaction or opportunity and (c) such transaction or opportunity would be in the same or similar line of business in which the Corporation and its subsidiaries are then engaged or a line of business that is reasonably related to, or a reasonable extension of, such line of business.

Section 3. Liability. No holder of Class A Common Stock or Class B Common Stock and no director that is not an employee of the Corporation or its subsidiaries will be liable to the Corporation or its subsidiaries or stockholders for breach of any duty (contractual or otherwise) by reason of any activities or omissions of the types referred to in this Article XI.

ARTICLE XII
UNSUITABLE PERSONS

Section 1. Finding of Unsuitability.

(a) The Equity Interests owned or controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person (as applicable) shall be subject to mandatory sale and transfer on the terms and conditions set forth herein on the Transfer Date to either the Corporation or one or more Third Party Transferees and in such number and class(es)/series of Equity Interests as determined by the Board of Directors in good faith (following consultation with reputable outside gaming regulatory counsel) pursuant to a resolution adopted by the unanimous affirmative vote of all of the disinterested members of the Board of Directors; provided that any such sale or transfer shall occur subject to the following and shall not occur (and a Transfer Notice shall not be sent, and the Transfer Date shall be extended accordingly) until the later to occur of: (i) delivery to such Person of a copy of a resolution duly adopted by the unanimous affirmative vote of all of the disinterested members of the Board of Directors at a meeting thereof called and held for the purpose (after providing reasonable notice to such Person and a reasonable opportunity for such Person, together with the counsel of such Person, to be heard before the Board of Directors at such meeting and to provide documents and written arguments to the Board of Directors a reasonable length of time in advance of such meeting), finding that the Board of Directors has determined in good faith (following consultation with reputable outside gaming regulatory counsel) that (A) such Person is an Unsuitable Person, and (B) it is necessary for such Person or an Affiliate of such Person (as applicable) to sell and transfer such number and class(es)/series of Equity Interests in order for the Corporation or any Affiliated Company to: (1) obtain, renew, maintain or prevent the loss, rejection, rescission, suspension, revocation or non-renewal of a material Gaming License; (2) comply in any material respect with a material Gaming Law; (3) ensure that any material Gaming License held or desired in good faith to be held by the Corporation or any Affiliated Company, or the Corporation's or any Affiliated Company's application for, right to the use of, entitlement to, or ability to obtain or retain, any material Gaming License held or desired in good faith to be held by the Corporation or any Affiliated Company, is not precluded, delayed, impeded, impaired, threatened or jeopardized in any material respect; or (4) prevent the imposition of any materially burdensome terms or conditions on any material Gaming License held or desired in good faith to be held by the Corporation or any Affiliated Company, and specifying the reasoning for such determinations in reasonable detail, and (ii) conclusion of the arbitration process described below (if applicable); provided, further, that in the event that such Person reasonably believes that any of the above-described determinations by the Board of Directors were not made in good faith and such disagreement cannot be settled amicably by such Person and the Corporation, such disagreement with respect to whether the Board of Director's determination(s) were made in good faith shall be finally, exclusively and conclusively settled by mandatory arbitration conducted expeditiously in accordance with the American Arbitration Association ("AAA") rules, by a single independent arbitrator (to be chosen by mutual agreement of the Unsuitable Person and the Corporation, and if the parties are unable to agree, to be chosen as provided in the AAA rules) in an arbitration process that shall take place in Boston, Massachusetts, with each party bearing its own legal fees and expenses, unless otherwise determined by the arbitrator. For the avoidance of doubt, the only question before the arbitrator shall be whether such determinations were made by the Board of Directors in good faith. For the further avoidance of doubt, at the initial meeting described above with respect to whether a Person is an Unsuitable Person, the Board of Directors may defer making any such determination in order to conduct further investigation into the matter, but in connection with any future meeting of the Board of Directors regarding the matter, such Person shall be provided with reasonable notice and a reasonable opportunity for such Person, together with the counsel of such Person, to be heard before the Board of Directors at such meeting and to provide documents and written arguments to the Board of Directors a reasonable length of time in advance of such meeting. Following (x) the Board of Directors determining in good faith (following consultation with reputable outside gaming regulatory counsel) and in accordance with the foregoing (including such determination being made pursuant to a resolution of the Board of Directors adopted by a unanimous affirmative vote of all of the disinterested members of the Board of Directors), that such Person is an Unsuitable Person and it is necessary for such Person or an Affiliate of such Person (as applicable) to sell and transfer a certain number and class(es)/series of Equity Interests for any of the reasons set forth above, and (y) if applicable, the arbitrator determining that such determinations were made in good faith by the Board of Directors, the Corporation shall deliver a Transfer Notice to the Unsuitable Person or its Affiliate(s) (as applicable) and shall purchase and/or cause one or more Third Party Transferees to purchase such number and class(es)/series of Equity Interests determined in good faith by the Board of Directors in accordance with the foregoing and specified in the Transfer Notice on the Transfer Date and for the Purchase Price set forth in the Transfer Notice (which Purchase Price shall be determined in accordance with the definition of Purchase Price in Article I); provided that an Unsuitable Person or its Affiliate(s) (as applicable) shall be permitted, during the forty five (45)-day period commencing on the date of the Transfer Notice (or before a Transfer Notice is formally delivered), to effect and close a disposition of the number and class(es)/series of Equity Interests specified in the Transfer Notice (or a portion of them) to a Person that the Board of Directors determines in good faith (following consultation with reputable outside gaming regulatory counsel) is not an Unsuitable Person, on terms agreed between the Unsuitable Person and such Person (an "Alternate Private Transaction"), it being agreed that in the event that the Board of Directors fails to make a determination in good faith that such Person is not an Unsuitable Person within fifteen (15) days from the date on which the Corporation was presented in writing with the identity of such Person and materials reasonably sufficient to make such determination, then the Unsuitable Person shall be entitled to consummate the Alternate Private Transaction with such Person. In the case of a sale and transfer to the Corporation, from and after the Transfer Date and subject only to the right to receive the Purchase Price for such Equity Interests, such Equity Interests shall, be deemed no longer outstanding and such Unsuitable Person or any Affiliate of such Unsuitable Person shall cease to be a stockholder with respect to such Equity Interests, and all rights of such Unsuitable Person or any Affiliate of such Unsuitable Person therein, other than the right to receive the Purchase Price, shall cease.

(b) In the case of an Alternate Private Transaction or a transfer to one or more Third Party Transferees otherwise determined by the Board of Directors above, from and after the earlier to occur of: (i) the Transfer Date, in the case of a transfer to one or more such Third Party Transferees, or (ii) consummation of an Alternate Private Transaction, subject only to the right to receive the Purchase Price for such Unsuitable Person's Equity Securities, all rights and entitlements of the Unsuitable Person or any such Affiliates of an Unsuitable Person as a stockholder of the Corporation shall be terminated, including, without limitation, any such Person shall from such date no longer be entitled to: (i) receive any dividend, payment, distribution or interest with regard to the applicable Equity Interests which has been declared following such date or of which the due payment date according to the applicable declaration is following such date, other than the right to receive the Purchase Price, or (ii) to exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right (including, without limitation, observer and information rights) conferred by the underlying Equity Interests.

(c) The closing of a sale and transfer contemplated by clauses (a) and (b) above in this Article XII, other than an Alternate Private Transaction (the "Closing") shall take place at the principal executive offices of the Corporation or via electronic exchange of documents on the Transfer Date. At the Closing: (i) the Corporation or Third Party Transferee(s) (as applicable), shall deliver the aggregate applicable Purchase Price for the Equity Interests being purchased by each of the foregoing by wire transfer of immediately available funds to the account specified in writing by the Unsuitable Person or an Affiliate of such Unsuitable Person (as applicable) in the case of Third Party Transferees, by unsecured promissory note in the case of the Corporation, or combination of both in the case of the Corporation in such proportion as the Corporation may determine in its sole and absolute discretion and (ii) the Unsuitable Person or Affiliate of such Unsuitable Person (as applicable) shall deliver to the Corporation or each such Third Party Transferee (if applicable), such stock powers, assignment instruments and other agreement as are necessary or appropriate to fully convey all right, title and interest in and to the Equity Interests being purchased by each of the foregoing, free and clear of all liens and other encumbrances (other than restrictions on transfer under these Amended and Restated Articles, the Bylaws, the Stockholders Agreement and applicable federal and state securities laws) and to evidence the subordination of any promissory note if and only to the extent required by any debt obligations of the Corporation (and to the minimum extent required pursuant to such subordination arrangement). Such stock powers, assignment instruments and other agreements shall be in a form reasonably acceptable to the Corporation and shall include no representations and warranties other than such representations and warranties as to title and ownership of the Equity Interests being sold, due authorization, execution and delivery of relevant documents by the Unsuitable Person or any such Affiliates of such Unsuitable Person (as applicable), and the enforceability of relevant obligations of such party under the relevant documents). Under any promissory note, an amount equal to one-third of the principal amount and the interest accrued thereon shall be due and payable no later than three (3) months following the Transfer Date, and the remaining principal amount of any such promissory note together with any unpaid interest accrued thereon shall be due and payable no later than one (1) year following the Transfer Date; provided that in the event that the Corporation does not have funds available to make the first payment, the Corporation and the Unsuitable Party agree to negotiate an alternate payment structure (including, without limitation, whether or not the promissory note or payment obligation should be secured by assets of the Corporation) in good faith (except that in the event that the Corporation and the Unsuitable Person are unable to reach an amicable solution as to such alternate payment structure, the original payment schedule and terms set out in first part of this sentence shall remain in force, and the applicable amounts under the promissory note shall be due and payable in accordance with the payment schedule set out above). The unpaid principal of any such promissory note shall bear interest at the rate of five percent (5%) per annum, and such promissory note shall contain such other reasonable and customary terms and conditions as the Corporation reasonably determines necessary or advisable, provided that they do not include any unduly burdensome or unreasonably adverse terms to the Unsuitable Person or Affiliate of such Unsuitable Person (as applicable), it being agreed that such terms may include, without limitation, prepayment at the maker's option at any time without premium (other than the interest agreed herein) or penalty and subordination if and only to the extent required by any debt obligations of the Corporation (and to the minimum extent required pursuant to such subordination arrangement). The sale and transfer of the applicable Equity Interests shall be effected at the Closing upon delivery of the Purchase Price described in this Section 1(c) without regard to the provision by the Unsuitable Person or Affiliate of such Unsuitable Person (as applicable) of the stock powers, assignment instruments and other agreements described above (and subject to their terms described above) and the Corporation may in its sole and absolute discretion execute and deliver such instruments or other documents described above necessary to effect such transfer under such terms (including, without limitation, any stock powers, assignment instruments and other agreements) and deemed by the Corporation in its sole and absolute discretion (acting in good faith) to be necessary or advisable in its name or in the name and on behalf of the Unsuitable Person or any Affiliate of such Unsuitable Person (as applicable) to effect the sale and transfer; provided, however, that the Unsuitable Person or Affiliate of such Unsuitable Person (as applicable) shall continue to have the obligation to the Corporation and the Third Party Transferees, as applicable, to provide such stock powers, assignment instruments and other agreements.

(d) To the extent that a sale and transfer to one or more Third Party Transferees is determined to be invalid or unenforceable for any reason, the Corporation shall be permitted to redeem or repurchase the Equity Interests owned or controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person (as applicable) for the price and under the terms contemplated by this Article XII promptly following any such determination.

Section 2. Indemnification. Any Unsuitable Person and any Affiliate of an Unsuitable Person that owns or controls Equity Interests shall indemnify and hold harmless the Corporation and its Affiliated Companies for any and all losses, costs and expenses, including, without limitation, attorneys' costs, fees and expenses reasonably incurred by the Corporation and its Affiliated Companies as a result of, or arising out of, such Unsuitable Person's or Affiliate's continuing ownership or control of Equity Interests following the Transfer Date in breach of this Article XII, the neglect, refusal or other failure to comply in any material respect with the provisions of this Article XII, or failure to divest itself of any Equity Interests when and in the specific manner required by the Gaming Laws or this Article XII and by acceptance of its Equity Interests any such Unsuitable Person or Affiliate of an Unsuitable Person shall be deemed to have agreed to so indemnify the Corporation.

Section 3. Non-Exclusivity of Rights. The right of the Corporation to purchase or cause to be purchased Equity Interests pursuant to this Article XII shall not be exclusive of any other rights the Corporation may have or hereafter acquire under any agreement, provision of these Amended and Restated Articles or the Bylaws or otherwise. Notwithstanding the provisions of this Article XII, the Corporation, the Unsuitable Person and any of its Affiliates shall have the right to propose that the parties, immediately upon or following the delivery of the Transfer Notice, enter into an agreement or other arrangement (including, without limitation, based on any agreement that may be reached between the applicable Gaming Authority and an Unsuitable Person or its Affiliates in this regard), including, without limitation, a divestiture trust or divestiture plan, which will reduce or terminate an Unsuitable Person's or its Affiliate's ownership or control of all or a portion of its Equity Interests over time and, in the event such an agreement or arrangement is reached, the terms of such agreement or arrangement as agreed by the Corporation, such Unsuitable Person and any Affiliates of such Unsuitable Person (including, without limitation, as to the purchase price at which the Equity Interests can be sold) shall apply and prevail over the terms of this Article XII.

Section 4. Further Actions. Nothing contained in this Article XII shall limit the authority of the Corporation to take such other action, to the extent permitted by law, as it deems necessary or advisable (following consultation with reputable outside gaming regulatory counsel) to protect the Corporation or its Affiliated Companies from the denial or threatened denial, loss or threatened loss or material delayed issuance or threatened material delayed issuance of any material Gaming License of the Corporation or any of its Affiliated Companies, provided that any forced disposal of Equity Interests shall be effected only in accordance with the terms of this Article XII. In addition, the Corporation may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations, and procedures of the Corporation to the extent they are not inconsistent with the express provisions of this Article XII for the purpose of determining whether any Person is an Unsuitable Person and for the orderly application, administration and implementation of the provisions of this Article XII; provided that the provisions of any such bylaws, regulations and procedures shall not be more adverse in any material respect to the Stockholders (as defined in the Stockholders Agreement) than the provisions of this Article XII. Such procedures and regulations shall be kept on file with the Secretary of the Corporation, the secretary of its Affiliated Companies and with the transfer agent, if any, of the Corporation and any Affiliated Companies, and shall be made available for inspection and, upon reasonable request, mailed to any record holder of Equity Interests. The Board of Directors shall have exclusive authority and power to administer this Article XII and to exercise all rights and powers specifically granted to the Board of Directors or the Corporation, or as may be necessary or advisable in the administration of this Article XII. Subject to the arbitration provisions set forth in Section 1(a) of this Article XII, all such actions which are done or made by the Board of Directors in compliance with the provisions of this Article XII and applicable law shall be final, conclusive and binding on the Corporation and all other Persons; provided, however, the Board of Directors may delegate all or any portion of its duties and powers under this Article XII to a committee of the Board of Directors as it deems necessary or advisable.

Section 5. Legend. The restrictions set forth in this Article XII shall be noted conspicuously on any certificate evidencing Equity Interests in accordance with applicable law in such manner as may be determined by the Corporation in its sole and absolute discretion.

Section 6. Compliance with Gaming Laws. All Persons owning or controlling Equity Interests shall comply with all applicable Gaming Laws which apply to them in their capacity as owners or controllers of the Equity Interests, including, without limitation, any provisions of such Gaming Laws that require such Persons to file applications for Gaming Licenses with, and provide information to, the applicable Gaming Authorities in respect of Gaming Licenses held or desired to be held by the Corporation or any Affiliated Companies, subject to any rights that such Persons may have under such Gaming Laws to seek waivers or similar relief from the applicable Gaming Authorities with respect to such requirements to file applications and provide information. Any transfer of Equity Interests may be subject to the prior approval of the Gaming Authorities and/or the Corporation, and any purported transfer thereof in violation of such requirements shall be void ab initio.

Section 7. Definitions. The purposes of this Article XII, the following definitions apply.

"Affiliate" with respect to any Person, has the meaning ascribed to such term under Rule 12b-2 promulgated by the U.S. Securities and Exchange Commission under the Exchange Act.

"Affiliated Companies" means those partnerships, corporations, limited liability companies, trusts or other entities directly or indirectly controlled by the Corporation including, without limitation, any subsidiary of the Corporation, or intermediary company (as those or similar terms are defined under the Gaming Laws of any applicable Gaming Jurisdictions) controlled by the Corporation, in each case that is registered or licensed under applicable Gaming Laws.

"Equity Interest" means Common Stock or any other equity securities of the Corporation, or securities exchangeable or exercisable for, or convertible into, such other equity securities of the Corporation.

"Gaming" or "Gaming Activities" means the conduct of gaming and gambling activities, race books and sports pools, or the use of gaming devices, equipment and supplies in the operation of a casino, gambling simulcasting facility, card club or other similar enterprise, including, without limitation, slot machines, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems, mobile gaming systems, inter-casino linked systems and related and associated equipment, supplies and systems.

"Gaming Authorities" means all international, national, foreign, domestic, federal, state, provincial, regional, local, tribal, municipal and other regulatory and licensing bodies, instrumentalities, departments, commissions, authorities, boards, officials, tribunals and agencies with authority over or responsibility for the regulation of Gaming within any Gaming Jurisdiction.

"Gaming Jurisdictions" means all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are or may be lawfully conducted, and in which or from which the Corporation or any of its Affiliated Companies conducts, or reasonably expects to conduct, Gaming Activities which are subject to Gaming Laws.

"Gaming Laws" means all laws, statutes and ordinances pursuant to which any Gaming Authority possesses regulatory, permit and licensing authority over the conduct of Gaming Activities in which the Corporation or any of its Affiliated Companies engages, or the ownership or control of an Interest in any such entity that conducts Gaming Activities, in any Gaming Jurisdiction, all orders, decrees, rules and regulations promulgated thereunder, all written and unwritten policies of the Gaming Authorities with respect to the foregoing and all written and unwritten interpretations by the Gaming Authorities of such laws, statutes, ordinances, orders, decrees, rules, regulations and policies.

"Gaming Licenses" shall mean all licenses, permits, certifications, approvals, orders, authorizations, registrations, findings of suitability, franchises, exemptions, waivers, concessions and entitlements issued by any Gaming Authority necessary for or relating to the conduct of Gaming Activities by the Corporation or any Affiliated Company or the ownership or control by any Person of an Interest in any of the foregoing entities, to the extent that it conducts or reasonably expects in good faith to conduct Gaming Activities.

"Interest" means the capital stock or other securities of the Corporation or any Affiliated Company or any other interest or financial or other stake therein, including, without limitation, the Equity Interests.

"Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including, without limitation, a government or political subdivision or an agency or instrumentality thereof.

"Purchase Price" means the fair value of the applicable Equity Interests based on the per share value of such Equity Interests as determined by the Board of Directors in good faith (it being agreed that in the case of shares of Class A Common Stock or shares of Preferred Stock of the Corporation that are listed on a national securities exchange, such fair value per share shall be the average of the Volume Weighted Average Share Price of such shares for the twenty (20) consecutive trading days preceding the date on which the Transfer Notice in respect of such Equity Interests is delivered by the Corporation to the Unsuitable Person or Affiliate of such Unsuitable Person (as applicable), if such information is available).

"Third Party Transferees" means one or more third parties determined in accordance with the procedures set forth in Section 1(a) of Article XII of these Amended and Restated Articles to purchase some or all of the Equity Interests to be sold and transferred in accordance with a Transfer Notice and the terms of these Amended and Restated Articles.

"Transfer Date" means the date specified in the Transfer Notice as the date on which the Equity Interests owned or controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person (as applicable) are to be sold and transferred to the Corporation or one or more Third Party Transferees in accordance with Article XII of these Amended and Restated Articles, which date shall be no less forty-six (46) days and no later than seventy-five (75) days after the date of the Transfer Notice.

"Transfer Notice" means a notice of transfer delivered by the Corporation to an Unsuitable Person or an Affiliate of an Unsuitable Person (as applicable) if the Board of Directors deems it necessary or advisable, to cause such Unsuitable Person's or Affiliate's (as applicable) Equity Interests to be sold and transferred pursuant to Article XII of these Amended and Restated Articles. Each Transfer Notice shall set forth (i) the Transfer Date, (ii) the number and class/series of Equity Interests to be sold and transferred, (iii) the Purchase Price with respect to each class/series of such Equity Interests which will be determined in accordance with the terms of Article XII of these Amended and Restated Articles, (iv) the place where any certificates for such Equity Interests shall be surrendered, and (v) any other reasonable requirements of surrender of the Equity Interests imposed in good faith by the Corporation, including, without limitation, how certificates representing such Equity Interests are to be endorsed, if at all.

"Unsuitable Person" means a Person who (i) fails or refuses to file an application (or fails or refuses, as an alternative, to otherwise formally request from the relevant Gaming Authority a waiver or similar relief from filing such application) within thirty (30) days (or such shorter period imposed by any Gaming Authority, including any extensions of that period granted by the relevant Gaming Authority, but in no event more than such original thirty (30) days) after having been requested in writing and in good faith to file an application by the Corporation (based on consultation with reputable outside gaming regulatory counsel), or has withdrawn or requested the withdrawal of a pending application (other than for technical reasons with the intent to promptly file an amended application following such withdrawal), to be found suitable by any Gaming Authority or for any Gaming License, in each case, when such finding of suitability or Gaming License is required by Gaming Laws or Gaming Authorities for the purpose of obtaining a material Gaming License for, or compliance with material Gaming Laws by, the Corporation or any Affiliated Company, (ii) is denied or disqualified from eligibility for any material Gaming License by any Gaming Authority, (iii) is determined by a Gaming Authority in any material Gaming Jurisdiction to be unsuitable to own or control any Equity Interests, or be Affiliated, associated or involved with a Person engaged in Gaming Activities, (iv) is determined by a Gaming Authority to have caused in whole or in part any material Gaming License of the Corporation or any Affiliated Company to be lost, rejected, rescinded, suspended, revoked or not renewed by any Gaming Authority, or to have caused in whole or in part the Corporation or any Affiliated Company to be threatened in writing by any Gaming Authority with the loss, rejection, rescission, suspension, revocation or non-renewal of any material Gaming License (in each of (ii) through (iv) above, only if such denial, disqualification or determination by a Gaming Authority is final and non-appealable), or (v) is reasonably likely to (A) preclude or materially delay, impede, impair, threaten or jeopardize (1) any material Gaming License held or desired in good faith to be held by the Corporation or any Affiliated Company or (2) the Corporation's or any Affiliated Company's application for, right to the use of, entitlement to, or ability to obtain or retain, any material Gaming License held or desired in good faith to be held by the Corporation or any Affiliated Company, or (B) cause or otherwise be reasonably likely to result in the imposition of any materially burdensome terms or conditions on any material Gaming License held or desired in good faith to be held by the Corporation or any Affiliated Company.

"Volume Weighted Average Share Price" means the volume-weighted average share price of the Class A Common Stock (or, if applicable, share price of Preferred Stock of the Corporation) as displayed on the Corporation's page on Bloomberg (or any successor service) in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such trading day.

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

OF

DRAFTKINGS INC.
(FORMERLY KNOWN AS NEW DUKE HOLDCO, INC.)

(the "Corporation")

ARTICLE I

Stockholders

1. Annual Meeting. The annual meeting of stockholders of the Corporation for the election of directors to succeed directors whose terms expire and for the transaction of such other business as may properly come before such meeting shall be held each year at the place, date and time determined by the board of directors of the Corporation (the "Board of Directors" or the "Board"). The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

2. Special Meetings. Special meetings of the stockholders of the Corporation may be called only in the manner set forth in the amended and restated articles of incorporation of the Corporation (as amended, restated, amended and restated, or otherwise modified, the "Articles of Incorporation"). The notice for every special meeting shall state the place (if any), date, hour and purposes of the meeting. Except as otherwise required by law, only the purposes specified in the notice of the special meeting shall be considered or dealt with at such special meeting. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board.

3. Place of Meeting. Meetings of stockholders may be held at such place, either within or without the State of Nevada, as may be designated in the notice of meeting. 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 communications, including by webcast, in accordance with applicable law. The Board of Directors may also, in its sole discretion, determine that stockholders and proxy holders may attend and participate by means of remote communications in a stockholder meeting held at a designated place. As to any meeting where attendance and participation by remote communications authorized by the Board of Directors in its sole discretion (including any meeting held solely by remote communications), and subject to such guidelines and procedures as the Board of Directors may adopt for any meeting, stockholders and proxy holders not physically present at such meeting of the stockholders shall be entitled to: (i) participate in any meeting of the stockholders; and (ii) be deemed present in person and vote at such meeting of the stockholders whether such meeting is to be held at a designated place or solely by means of remote communications, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communications is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communications, a record of such vote or other action shall be maintained by the Corporation.

4. Notice of Meetings. Except as otherwise provided by law or the Articles of Incorporation, written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of such meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes of the meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the Nevada Revised Statutes (the "NRS")) by the stockholder to whom the notice is given, and such notice shall be deemed to be given at the time, if delivered by electronic mail when directed to an electronic mail address at which the stockholder has consented to receive notice, and if delivered by any other form of electronic transmission when directed to the stockholder. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived (i) in writing signed by the person entitled to notice thereof or (ii) by electronic transmission made by the person entitled to notice, either before or after such meeting. Notice will be waived by any stockholder by his or her attendance thereat in person, by remote communications, or by proxy, except when the stockholder attends a 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. 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. For purposes of these amended and restated bylaws of the Corporation (as amended, restated, amended and restated, or otherwise modified, these "Bylaws"), "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

5. Quorum. The holders of a majority of the voting power of all shares of the Corporation's capital stock issued, outstanding and entitled to vote at a meeting, present in person, by means of remote communications, or represented by proxy, shall constitute a quorum. If, on any issue, voting by the holders of classes or series is required by Chapter 78 or 92A of the NRS, the Articles of Incorporation or these Bylaws, the holders of at least a majority of the voting power, present in person, by means of remote communications, or represented by proxy, within each such class or series is necessary to constitute a quorum of each such class or series. For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the outstanding shares of such class or classes, present in person, by means of remote communications, or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. Two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting. The stockholders present at a duly constituted meeting may continue to transact business until adjournment notwithstanding the withdrawal of enough stockholders to reduce the voting shares below a quorum.

6. Adjournments. Any meeting may be adjourned from time to time by the chairperson of the Board of Directors (the "Chairperson") or by the vote of the holders of a majority of the votes properly cast upon the question, whether or not a quorum is present, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time, place, if any, thereof, and the means of remote communications, 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 sixty (60) 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.

7. Organization.

(a) Meetings of stockholders shall be presided over by the Chairperson of the Board of Directors, if any, or in the absence of the Chairperson of the Board by the vice chairperson of the Board (the "Vice Chairperson"), if any, or in the absence of the Vice Chairperson of the Board by the chief executive officer of the Corporation (the "Chief Executive Officer") or the president of the Corporation (the "President"), or in the absence of the Chief Executive Officer and President by a vice president of the Corporation (a "Vice President"), or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The secretary of the Corporation (the "Secretary") or, in the absence of the Secretary, an assistant secretary of the Corporation (an "Assistant Secretary") shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

(b) The order of business at each such meeting shall be as determined by the chairperson of the meeting. The chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls, for each item on which a vote is to be taken.

(c) The chairperson of the meeting may appoint one or more inspectors of elections. The inspector or inspectors may (i) ascertain the number of shares outstanding and the voting power of each; (ii) determine the number of shares represented at a meeting and the validity of proxies or ballots; (iii) count all votes and ballots; (iv) determine any challenges made to any determination made by the inspector(s); and (v) certify the determination of the number of shares represented at the meeting and the count of all votes and ballots.

8. Voting and Proxies.

(a) Unless otherwise provided in Chapter 78 of the NRS, the Articles of Incorporation, or the resolution providing for the issuance of preferred stock or series of common stock adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of the Articles of Incorporation (if any such authority is so vested), each stockholder of record, or such stockholder's duly authorized proxy, shall be entitled to one (1) vote for each share of voting stock standing registered in such stockholder's name at the close of business on the record date. So long as the Articles of Incorporation provide for more or less than one vote for any share on any matter, every reference in these Bylaws to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

(b) All matters at any meeting at which a quorum is present, except the election of directors, shall be decided by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the subject matter in question, unless otherwise expressly provided by express provision of the Articles of Incorporation, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter. The election of directors shall be decided by the affirmative vote of the holders of at least a plurality of the votes of the outstanding shares of common stock present in person or represented by proxy at the meeting and entitled to vote in an election of directors, unless otherwise expressly provided by the Articles of Incorporation. The stockholders do not have the right to cumulate their votes for the election of directors. The Corporation shall not directly or indirectly vote any share of its own stock; provided, however, that the Corporation may vote shares which it holds in a fiduciary capacity to the extent permitted by law.

(c) Stockholders may vote either in person or by written proxy or express directly or by written proxy their consent or dissent to a corporate action taken without a meeting. Each such proxy shall be valid until its expiration or revocation in a manner permitted by the laws of the State of Nevada. A proxy may be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient to support an irrevocable power. 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, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation. Proxies shall be filed with the secretary of the meeting, or of any adjournment thereof. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting.

9. Stockholder Lists. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder; provided that such list shall not be required to contain the electronic mail address or other electronic contact information of any 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 ten (10) days prior to the meeting, either (i) 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 (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of electronic communication or if attendance at and participation in the meeting is permitted by means of remote communications, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on or a reasonably acceptable electronic network, and the information required to access such list shall be provided with the notice of the meeting.

10. Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals.

(a) The matters to be considered and brought before any annual or special meeting of stockholders of the Corporation shall be limited to only such matters, including the nomination and election of directors, as shall be brought properly before such meeting in compliance with the procedures set forth in this Section 10 of Article I and the Stockholders Agreement, dated as of April 23, 2020, by and among the Corporation and the stockholders named therein (the "Stockholders Agreement").

(b) For any matter to be brought properly before the annual meeting of stockholders, the matter must be (i) specified in the notice of the annual meeting given by or at the direction of the Board of Directors (or a committee thereof), (ii) otherwise brought before the annual meeting by or at the direction of the Board of Directors (or a committee thereof) or (iii) brought before the annual meeting by a stockholder who is a stockholder of record of the Corporation on the date the notice provided for in this Section 10 of Article I is delivered to the Secretary of the Corporation, who is entitled to vote at the annual meeting and who complies with the procedures set forth in this Section 10 of Article I.

In addition to any other requirements under applicable law and these Bylaws, even if such matter is already the subject of any notice to the stockholders or public announcement by the Board of Directors, written notice (the "Stockholder Notice") of any nomination or other proposal must be timely and any proposal, other than a nomination, must constitute a proper matter for stockholder action.

To be timely, the Stockholder Notice must be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not less than 90 nor more than 120 days prior to the first anniversary date of the annual meeting for the preceding year (which, for purposes of the Corporation's first annual meeting of stockholders after its shares of common stock are first publicly traded, shall be deemed to have occurred on April 28, 2021); provided, however, that if (and only if) the annual meeting is not scheduled to be held within a period that commences 30 days before such anniversary date and ends within 60 days after such anniversary date (an annual meeting date outside such period being referred to herein as an "Other Meeting Date"), the Stockholder Notice shall be given in the manner provided herein by the close of business on the later of (i) the date 90 days prior to such Other Meeting Date or (ii) the tenth day following the date such Other Meeting Date is first publicly announced or disclosed.

A Stockholder Notice must contain the following information:

(i) whether the stockholder is providing the notice at the request of a beneficial holder of shares, whether the stockholder, any such beneficial holder or any nominee has any agreement, arrangement or understanding with, or has received any financial assistance, funding or other consideration from, any other person with respect to the investment by the stockholder or such beneficial holder in the Corporation or the matter the Stockholder Notice relates to, and the details thereof, including the name of such other person (the stockholder, any beneficial holder on whose behalf the notice is being delivered, any nominees listed in the notice and any persons with whom such agreement, arrangement or understanding exists or from whom such assistance has been obtained are hereinafter collectively referred to as "Interested Persons");

(ii) the name and address of all Interested Persons;

(iii) a complete listing of the record and beneficial ownership positions (including number or amount) of all equity securities and debt instruments, whether held in the form of loans or capital market instruments, of the Corporation or any of its subsidiaries held by all Interested Persons;

(iv) whether and the extent to which any hedging, derivative or other transaction is in place or has been entered into within the prior six months preceding the date of delivery of the Stockholder Notice by or for the benefit of any Interested Person with respect to the Corporation or its subsidiaries or any of their respective securities, debt instruments or credit ratings, the effect or intent of which transaction is to give rise to gain or loss as a result of changes in the trading price of such securities or debt instruments or changes in the credit ratings for the Corporation, its subsidiaries or any of their respective securities or debt instruments (or, more generally, changes in the perceived creditworthiness of the Corporation or its subsidiaries), or to increase or decrease the voting power of such Interested Person, and if so, a summary of the material terms thereof;

(v) a representation that the stockholder is a holder of record of stock of the Corporation that would be entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose the matter set forth in the Stockholder Notice;

(vi) a representation whether any Interested Person, will be or is part of a group that will (x) deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee or (y) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination;

(vii) a certification regarding whether the Interested Persons have complied with all applicable federal, state and other legal requirements in connection with the acquisition of shares of capital stock or other securities of the Corporation; and

(viii) any other information relating to such Interested Persons required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder.

As used herein, "beneficially owned" has the meaning provided in Rules 13d-3 and 13d-5 under the Exchange Act. The Stockholder Notice shall be supplemented and updated from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct (x) as of the record date for determining the stockholders entitled to notice of the meeting and (y) as of the date that is 15 days prior to the meeting or any adjournment or postponement thereof, provided that if the record date for determining the stockholders entitled to vote at the meeting is less than 15 days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date.

Any Stockholder Notice relating to the nomination of directors must also contain:

(i) the information regarding each nominee required by paragraphs (a), (e) and (f) of Item 401 of Regulation S-K adopted by the Securities and Exchange Commission (or the corresponding provisions of any successor regulation);

(ii) each nominee's signed consent to serve as a director of the Corporation if elected; and

(iii) whether each nominee is eligible for consideration as an independent director under the relevant standards contemplated by Item 407(a) of Regulation S-K (or the corresponding provisions of any successor regulation).

The Corporation may also require any proposed nominee to furnish such other information, including completion of the Corporation's directors questionnaire, as it may reasonably require to determine whether the nominee would be considered "independent" as a director or as a member of the audit committee of the Board of Directors under the various rules and standards applicable to the Corporation.

Any Stockholder Notice with respect to a matter other than the nomination of directors must contain (i) the text of the proposal to be presented, including the text of any resolutions to be proposed for consideration by stockholders (and, in the event that such proposal is to amend these Bylaws, the language of the proposed amendment) and (ii) a brief written statement of the reasons why such stockholder favors the proposal, including any material interest in such proposal of any Interested Person.

Notwithstanding anything in this Section 10(b) of Article I to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and either all of the nominees for director or the size of the increased Board of Directors is not publicly announced or disclosed by the Corporation at least 100 days prior to the first anniversary of the preceding year's annual meeting (which, for purposes of the Corporation's first annual meeting of stockholders after its shares of common stock are first publicly traded, shall be deemed to have occurred on April 28, 2021), a Stockholder Notice shall also be considered timely hereunder, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive office of the Corporation not later than the close of business on the tenth day following the first date all of such nominees or the size of the increased Board shall have been publicly announced or disclosed.

(c) For any matter to be brought properly before a special meeting of stockholders, the matter must be set forth in the Corporation's notice of the meeting given by or at the direction of the Board of Directors. In the event that the Corporation calls a special meeting of stockholders for the purpose of electing one or more persons to the Board of Directors, any stockholder 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 the meeting, if the Stockholder Notice required by Section 10(b) of Article I hereof shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which the date of the special meeting and the nominees proposed by the Board of Directors to be elected at such meeting are publicly announced or disclosed.

(d) For purposes of this Section 10 of Article I, a matter shall be deemed to have been "publicly announced or disclosed" if such matter is disclosed 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.

(e) Only persons who are nominated in accordance with either the procedures set forth in this Section 10 of Article I or the terms and conditions of the Stockholders Agreement, shall be eligible for election as directors of the Corporation. In no event shall the postponement or adjournment of an annual meeting already publicly noticed, or any announcement of such postponement or adjournment, commence a new period (or extend any time period) for the giving of notice as provided in this Section 10 of Article I. This Section 10 of Article I shall not apply to stockholders proposals made pursuant to Rule 14a-8 under the Exchange Act. Nothing in these Bylaws shall be deemed to affect any rights of the holders of any class or series of stock having a preference over shares of common stock of the Corporation as to dividends or upon liquidation to elect directors under specified circumstances.

(f) The person presiding at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether notice of nominees and other matters proposed to be brought before a meeting has been duly given in the manner provided in this Section 10 of Article I and, if not so given, shall direct and declare at the meeting that such nominees and other matters are not properly before the meeting and shall not be considered. Notwithstanding the foregoing provisions of this Section 10 of Article I, if the stockholder or a qualified representative of the stockholder does not appear at the annual or special meeting of stockholders of the Corporation to present any such nomination, or make any such proposal, such nomination or proposal shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

ARTICLE II

Directors

1. Powers. The business of the Corporation shall be managed by or under the direction of a Board of Directors who may exercise all the powers of the Corporation except as otherwise provided by law, by the Articles of Incorporation or by these Bylaws. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board of Directors until the vacancy is filled.

2. Election and Qualification. The total number of directors constituting the entire Board of Directors shall be fixed in the manner provided in the Articles of Incorporation. Directors need not be stockholders.

3. Vacancies: Reduction of Board. Subject to the provisions of the Articles of Incorporation and the terms and conditions of the Stockholders Agreement, a majority of the directors then in office, whether less than a quorum or otherwise, or a sole remaining director, may fill vacancies in the Board of Directors occurring for any reason and newly created directorships resulting from any increase in the authorized number of directors.

4. Tenure. Except as otherwise provided by law, by the Articles of Incorporation or by these Bylaws, directors shall hold office until the next annual meeting of the stockholders and their successors are duly elected and qualified or until their earlier resignation or removal. Any director may resign by delivering his or her written resignation to the Board of Directors or to the Chief Executive Officer, President or Secretary of the Corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

5. Removal. A director may be removed from the Board of Directors by the stockholders of the Corporation only as provided in the Articles of Incorporation and in accordance with the terms and conditions of the Stockholders Agreement.

6. Meetings. Regular meetings of the Board of Directors may be held without notice at such time, date and place (if any) as the Board of Directors may from time to time determine. Special meetings of the Board of Directors may be called, in writing, by the Chairperson, the Chief Executive Officer, the President, or two or more directors (or the sole director, if applicable), and designating the time, date and place (if any) thereof. Directors may participate in meetings of the Board of Directors by means of conference telephone or similar communications equipment by means of which all directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting.

7. Notice of Meetings. Notice of the time, date and place (if any) of all special meetings of the Board of Directors shall be given to each director by the Secretary, or Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the officer or one of the directors calling the meeting. Notice shall be given to each director in person or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours in advance of the meeting, or by written notice mailed to his or her business or home address at least forty-eight (48) hours in advance of the meeting. Notice need not be given to any director if a written waiver of notice is executed by him before or after the meeting, or if communication with such director is unlawful, and will be waived by any director by attendance thereat, except when the director attends the 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. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

8. Quorum. At any meeting of the Board of Directors, a majority of the directors then in office shall constitute a quorum. Less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice.

9. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, a majority of the directors present may take any action on behalf of the Board of Directors, unless a larger number is required by law or by the Articles of Incorporation.

10. Action without a Meeting. Unless otherwise restricted by the Articles of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or committee thereof may be taken without a meeting if all members of the Board of Directors or committee thereof consent thereto in writing or by electronic transmission, and such writings or electronic transmissions are filed with the records of the meetings of the Board of Directors or committee thereof. 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. Such consent shall be treated as a vote of the Board of Directors or committee thereof for all purposes.

11. Committees. The Board of Directors, by vote of a majority of the directors then in office, may establish one or more committees, each committee to consist of one or more directors, and may delegate thereto some or all of its powers except those which by law or by the Articles of Incorporation may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but in the absence of such rules its business shall be conducted so far as possible in the same manner as is provided in these Bylaws for the Board of Directors. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, unless the committee has only one or two members, in which case a quorum shall be one member, or unless a greater quorum is established by the Board. The vote of a majority of the members present at a meeting of the committee at the time of such vote if a quorum is then present shall be the act of such committee. All members of such committees shall hold their committee offices at the pleasure of the Board of Directors, and the Board of Directors may abolish any committee at any time. Each such committee shall report its action to the Board of Directors who shall have power to rescind any action of any committee without retroactive effect.

12. Compensation. Directors who are not salaried officers of the Corporation may receive a fixed sum per meeting attended or a fixed annual sum, or both, and such other forms of reasonable compensation as may be determined by resolution of the Board of Directors. All directors shall receive their expenses, if any, of attendance at meetings of the Board of Directors or any committee thereof. Any director may serve the Corporation in any other capacity and receive proper compensation therefor. If the Board of Directors establishes the compensation of directors pursuant to this Section 12, such compensation is presumed to be fair to the Corporation unless proven unfair by a preponderance of the evidence.

13. Chairperson. The Chairperson of the Board, if one is elected, shall preside, when present, at all meetings of the stockholders and of the Board of Directors. The Chairperson of the Board of Directors shall have such other powers and perform such other duties as the Board of Directors may from time to time designate.

14. Protection of Confidential Information; Recusal from Meetings. Each director acknowledges that as part of his or her service to the Corporation, and the exercise of his or her fiduciary duties on behalf of the Corporation, the director may receive confidential information of the Corporation (and its customers, strategic partners, vendors and suppliers). This confidential information includes, without limitation, nonpublic financial information, business and market strategy reports and presentations, pricing information, research and development activities, plans and strategies (including reports and presentations to the Board of Directors), invention disclosures, patentable and unpatentable inventions, technical specifications and information, and other scientific data, laboratory notebooks, unpublished patent or invention disclosures blueprints, biological and chemical compounds and properties, scientific reports, technical specifications and data, whether in hard copy or electronic media. Each director shall not use or disclose such confidential information for any purpose other than to promote and serve the best interests of the Corporation and its stockholders.

ARTICLE III

Officers

1. Enumeration. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a treasurer of the Corporation (the "Treasurer"), a Secretary, and such other officers, including one or more Vice Presidents, assistant treasurers ("Assistant Treasurers") and Assistant Secretaries, as the Board of Directors may determine.

2. Election. The Chief Executive Officer, President, Treasurer and Secretary shall be elected by the Board of Directors. Other officers may be chosen by the Board of Directors at such meeting or at any other meeting.

3. Qualification. No officer need be a stockholder or director. Any two or more offices may be held by the same person.

4. Tenure. Except as otherwise provided by the Articles of Incorporation, each of the officers of the Corporation shall hold his or her office until his or her successor is duly elected and qualified or until his earlier resignation or removal. Any officer may resign by delivering his or her written resignation to the Corporation, and such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

5. Removal. The Board of Directors may remove any officer with or without cause by a vote of a majority of the entire number of directors then in office.

6. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

7. Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer who, subject to the direction of the Board of Directors, shall have the ultimate responsibility for the management and control of the business and affairs of the Corporation, and shall perform such other duties and have such other powers which are delegated to him or her by the Board of Directors, these Bylaws or as may be provided by law.

8. President and Vice Presidents. The Board of Directors may elect a President who, subject to the direction of the Board of Directors, shall be the chief operating officer of the Corporation and shall have general charge of its business operations. The Board of Directors shall have the authority to appoint a temporary presiding officer to serve at any meeting of the stockholders or Board of Directors if the President is unable to do so for any reason.

Any Vice President shall have such powers and shall perform such duties as the Board of Directors may from time to time designate. In the absence of the President or in the event of his or her inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the directors, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers and responsible of and be subject to all the restrictions upon the President.

9. Treasurer and Assistant Treasurers. The Board of Directors may elect a Treasurer who, subject to the direction of the Board of Directors, shall have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. The Treasurer shall have custody of all funds, securities, and valuable documents of the Corporation, except as the Board of Directors may otherwise provide.

Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors may from time to time designate.

10. Secretary and Assistant Secretaries. The Secretary shall record the proceedings of all meetings of the stockholders and the Board of Directors in books kept for that purpose. In his or her absence from any such meeting an Assistant Secretary, or if he or she is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof.

The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation) and shall have such other duties and powers as may be designated from time to time by the Board of Directors, Chief Executive Officer or the President.

Any Assistant Secretary shall have such powers and perform such duties as the Board of Directors may from time to time designate.

11. Other Powers and Duties. Subject to these Bylaws, each officer of the Corporation shall have in addition to the duties and powers specifically set forth in these Bylaws, such duties and powers as are customarily incident to his or her office, and such duties and powers as may be designated from time to time by the Board of Directors.

ARTICLE IV

Capital Stock

1. Certificates of Stock and Uncertificated Shares. Unless the Board of Directors has provided by resolution that some or all of any or all classes or series of stock of the Corporation shall be uncertificated shares, each stockholder shall be entitled to a certificate of stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Such certificate shall be signed by the Chairperson or Vice Chairperson of the Board of Directors or the Chief Executive Officer, President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Such signatures may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. The Corporation shall, at the option of the Board of Directors or as otherwise stated in the Articles of Incorporation, be permitted to issue fractional shares.

2. Record Holders. Except as may otherwise be required by law, by the Articles of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws. It shall be the duty of each stockholder to notify the Corporation of his or her post office address.

3. Record Date. 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, or to consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or 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 shall not precede the date on which it is established, and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, more than ten (10) days after the date on which the resolution fixing the record date for stockholder consent without a meeting is established, nor more than sixty (60) days prior to any other action. In such case only stockholders of record on such record date shall be so entitled notwithstanding any transfer of stock on the books of the Corporation after the record date.

If no record date is fixed, (a) 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, (b) the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in this state, to its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded, and (c) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

4. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

ARTICLE V

Indemnification

1. Indemnification of Directors and Officers. The Corporation shall, to the fullest extent permitted by Nevada law, indemnify any person who is or was a director or officer of the Corporation or is or was a director or officer of the Corporation serving at the Corporation's request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other entity (each such person, an "Indemnitee") against expenses, including without limitation attorneys' fees, costs, expenses, judgments, fines, and amounts paid in settlement (collectively, "Expenses"), actually and reasonably incurred by the Indemnitee in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, whether or not an action, suit or proceeding by or in the right of the Corporation, to which the Indemnitee is, was, or is threatened to be made a party by reason of being an Indemnitee.

2. Indemnification Against Expenses. The Expenses of Indemnitees must be paid or reimbursed by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the action, suit, proceeding or claim described in Section 1 of this Article V, to the fullest extent permitted by Nevada law.

3. Indemnification of Employees and Other Persons. The Corporation may, by action of its Board of Directors and to the extent provided in such action, indemnify employees and other persons as though they were Indemnitees.

4. Insurance. The Corporation may purchase and maintain insurance or make other financial arrangements on behalf of any Indemnitee for any liability asserted against him or her and liability and expenses incurred by him or her in his or her capacity as a director, officer, employee, member, managing member or agent, or arising out of his or her status as such, whether or not the Corporation has the authority to indemnify him or her against such liability and expenses.

5. Non-Exclusivity of Indemnification Rights. The rights of indemnification set out in this Article V shall be in addition to and not exclusive of any other rights to which any Indemnitee may be entitled under the Articles of Incorporation, these Bylaws, any other agreement with the Corporation, any action taken by the stockholders or disinterested directors of the Corporation, or otherwise. The indemnification provided under this Article V shall inure to the benefit of the heirs, executors, and administrators of an Indemnitee.

6. Amendment. The provisions of this Article V may be amended as provided in Article VI; provided, however, no amendment or repeal of such provisions which adversely affects the rights of a director or officer under this Article V with respect to his or her acts or omissions prior to such amendment or repeal, shall apply to him without his or her consent.

ARTICLE VI

Miscellaneous Provisions

1. Fiscal Year. Except as otherwise determined by the Board of Directors, the fiscal year of the Corporation shall end on December 31st of each year.

2. Seal. The Board of Directors shall have power to adopt and alter the seal of the Corporation.

3. Notices and Waivers Thereof. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, whenever by law or under the provisions of the Articles of Incorporation or these Bylaws notice is required to be given to any director or stockholder, it will not be construed to require personal notice, but such notice may be given in writing, by mail or courier service, addressed to such director or stockholder, at the address of such director or stockholder as it appears on the records of the Corporation, with postage thereon prepaid, and such notice will be deemed to be given at the time when the same is deposited in the United States mail or upon delivery, if given by courier service. Notice to directors or stockholders may also be given by telephone, telegram, facsimile, electronic mail, electronic transmission or similar medium of communication or as otherwise may be permitted by these Bylaws. If such notice is delivered to a director or stockholder by electronic mail, such notice shall be deemed given when directed to the electronic mail address provided by such director or stockholder, and if such notice is delivered by any other electronic transmission, such notice shall be deemed given when directed to such director or stockholder.

Whenever any notice is required to be given by law or under the provisions of the Articles of Incorporation or these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to such notice, whether before or after the time of the event for which notice is to be given, will be deemed equivalent to such notice. Attendance of a person at a meeting will constitute a waiver of notice of such meeting, except when the person attends a meeting for the sole and express purpose of objecting, at the time of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

4. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations authorized to be executed by an officer of the Corporation in its behalf shall be signed by the Chief Executive Officer, President, Treasurer or Secretary, or by any other officer of the Corporation designated by the Board of Directors or Chief Executive Officer, except as the Board of Directors may generally or in particular cases otherwise determine.

5. Voting of Securities. Unless otherwise provided by the Board of Directors, the Chief Executive Officer, President, Treasurer or Secretary may waive notice of and act on behalf of this Corporation, or appoint another person or persons to act as proxy or attorney in fact for this Corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by this Corporation.

6. Resident Agent. The Board of Directors may appoint a resident agent in any jurisdiction upon whom legal process may be served in any action or proceeding against the Corporation.

7. Corporate Records. The original or attested copies of the Articles of Incorporation, these Bylaws and the records of all meetings of the incorporator, stockholders and the Board of Directors and the stock and transfer records, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, shall be kept at the principal office of the Corporation, at the office of its counsel, or at an office of its transfer agent. The books of the Corporation may be kept at such place or places within or without the State of Nevada at such place or places as may be designated from time to time by the Board of Directors or in these Bylaws.

8. Articles of Incorporation. All references in these Bylaws to the Articles of Incorporation shall be deemed to refer to the Articles of Incorporation of the Corporation, as amended and in effect from time to time.

9. Amendments. These Bylaws may be amended or repealed or additional bylaws adopted by the stockholders or by the Board of Directors; provided that (a) the Board of Directors may not amend or repeal this Section 9 of Article VI or any provision of these Bylaws which by law, by the Articles of Incorporation or by these Bylaws requires action by the stockholders, and (b) any amendment or repeal of these Bylaws by the Board of Directors and any bylaw adopted by the Board of Directors may be amended or repealed by the stockholders.

10. Conflicts. In the event of any conflict between these Bylaws or any stockholders, voting, investor rights or other agreement to which the Corporation and the holders of shares of any class or series of capital stock of the Corporation are a party, then such agreement shall govern. In the event of any conflict between these Bylaws and the Articles of Incorporation, the Articles of Incorporation shall govern.

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Adopted by the Board of Directors: May 5, 2022.

Exhibit 4.2

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into and effective as of May 5, 2022 by and among Golden Nugget Online Gaming, Inc., a Delaware corporation ("GNOG"), New Duke Holdco, Inc., a Nevada corporation (to be renamed "DraftKings Inc." effective as of the Closing (as defined below)) ("New DraftKings"), Continental Stock Transfer & Trust Company, a New York corporation ("Continental"), and Computershare Inc., a Delaware corporation ("Computershare Inc."), and its affiliate, Computershare Trust Company, N.A., a federally chartered trust company (collectively with Computershare Inc., "Computershare").

WHEREAS, GNOG and Continental have previously entered into a warrant agreement, dated as of May 6, 2019 (the "Warrant Agreement"), governing the terms of GNOG's 5,883,333 outstanding warrants (the "Warrants") to purchase shares of Class A common stock, par value $0.0001 per share, of GNOG ("GNOG Class A common stock");

WHEREAS, GNOG has entered into an Agreement and Plan of Merger, dated as of August 9, 2021 (the "Merger Agreement"), with New DraftKings, DraftKings Inc., a Nevada corporation ("DK"), Duke Merger Sub, Inc., a Nevada corporation and wholly owned subsidiary of New DraftKings ("DraftKings Merger Sub"), and Gulf Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of New DraftKings ("GNOG Merger Sub"), pursuant to which (i) DraftKings Merger Sub will merge with and into DK, with DK surviving the merger (the "DK Merger"), and (ii) GNOG Merger Sub will merge with and into GNOG, with GNOG surviving the merger (the "GNOG Merger" and together with the DK Merger, the "Mergers");

WHEREAS, effective upon the closing of the GNOG Merger, holders of the shares of GNOG Class A common stock will receive 0.365 of a share of Class A common stock, par value $0.0001 per share, of New DraftKings ("New DraftKings Class A common stock") in exchange for each of their shares of GNOG Class A common stock;

WHEREAS, pursuant to Section 4.4 of the Warrant Agreement, upon the closing of the Mergers (the "Closing"), the Warrants will represent the right of the holders thereof to purchase 0.365 shares of New DraftKings Class A common stock;

WHEREAS, as a result of the foregoing, the parties hereto wish for GNOG to assign to New DraftKings all of GNOG's rights and interests and obligations in and under the Warrant Agreement and for New DraftKings to accept such assignment and assume all of GNOG's obligations thereunder, in each case, effective upon the Closing;

WHEREAS, effective upon the Closing, New DraftKings wishes to appoint Computershare to serve as successor Warrant Agent and Transfer Agent under the Warrant Agreement; and

WHEREAS, in connection with and effective upon such appointment, Continental wishes to assign all of its rights, interests and obligations as Warrant Agent and Transfer Agent under the Warrant Agreement, as hereby amended, to Computershare, Computershare wishes to assume all of such rights, interests and obligations and New DraftKings wishes to approve such assignment and assumption.

NOW, **THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Assumption of Warrant Agreement. GNOG hereby assigns, and New DraftKings hereby agrees to accept and assume, effective as of the Closing, all of GNOG's rights, interests and obligations in, and under, the Warrant Agreement and the Warrants. Unless the context otherwise requires, from and after the Closing, any references in the Warrant Agreement or the Warrants to: (i) the "Company" shall mean New DraftKings; (ii) "Common Stock" shall mean the shares of New DraftKings Class A common stock; and (iii) the "Board of Directors" or the "Board" or any committee thereof shall mean the board of directors of New DraftKings or any committee thereof.

2. Appointment of Successor Warrant Agent and Transfer Agent. New DraftKings hereby appoints Computershare to serve as successor Warrant Agent and Transfer Agent under the Warrant Agreement and Continental hereby assigns, and Computershare hereby agrees to accept and assume, effective as of the Closing, all of Continental's rights, interests and obligations in, and under, the Warrant Agreement and the Warrants, as Warrant Agent and Transfer Agent. Unless the context otherwise requires, from and after the Closing, any references in the Warrant Agreement and the Warrants to the "Warrant Agent" or "Transfer Agent" shall mean Computershare. Any notice, statement or demand authorized by the Warrant Agreement to be given or made by the holder of any Warrant or by the Company to or on the Warrant Agent pursuant to Section 9.2 shall be delivered to:

Computershare, Inc.
Computershare Trust Company, N.A.
150 Royall Street
Canton, MA 02021
Attention: Client Services
Facsimile: (781) 575-4210

3. Replacement Instruments. Following the Closing, upon request by any holder of a Warrant, New DraftKings shall issue a new instrument for such Warrant reflecting the adjustment to the terms and conditions described herein and in Section 4.4 of the Warrant Agreement.

4. Warrant Conversion. Following the Closing, each outstanding Warrant will cease to represent a warrant in respect of GNOG Class A common stock and instead shall entitle the holder thereof to purchase 0.365 of a share of New DraftKings Class A common stock at an exercise price of $31.50 per share of New DraftKings Class A common stock, subject to adjustment as set forth in the Warrant Agreement.

5. Amendment to Warrant Agreement. To the extent required by this Agreement, the Warrant Agreement is hereby deemed amended pursuant to Section 9.8 thereof to reflect the subject matter contained herein, effective as of the Closing, including the following.

a. Section 5.1 is hereby amended to replace the first sentence thereof with the following sentence:

"The Warrant Agent shall register the transfer, from time to time, of any outstanding Warrant upon the Warrant Register, upon surrender of such Warrant for transfer, in the case of a certificated Warrant, properly endorsed together with any evidence of authority that may be required by the Warrant Agent, including but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association, and appropriate instructions for transfer."

b. Section 5.2 is hereby amended to add the following as the final sentence thereof:

"In particular, such opinion of counsel shall state that all Warrants or Common Stock, as applicable, are registered under the Securities Act, or are exempt from such registration, and all appropriate state securities law filings have been made with respect to the Warrants or Common Stock; and that the Common Stock to be issued upon exercise of the Warrants, when issued, will be validly issued, fully paid and non-assessable."

c. Section 5.5 is hereby amended to add the following as the final sentence thereof.

"The Warrant Agent may countersign a Definitive Warrant Certificate in manual or facsimile form."

d. Section 8.1 is hereby amended to add the following sentence:

"The Warrant Agent shall not have any duty or obligation to take any action under any section of this Agreement that requires the payment of taxes and/or charges unless and until it is reasonably satisfied that all such payments have been made."

e. The first sentence of Section 8.2.1 is amended such that the sixty (60) days' notice period is replaced by thirty (30) days. The following language is inserted as the second sentence of Section 8.2.1.

"If for any reason the transfer agency relationship in effect between the Company and the Transfer Agent terminates, the Warrant Agent will be deemed to have resigned automatically and be discharged from its duties under this Agreement."

f. Section 8.2.3 is hereby amended such that all references to "corporation" therein are replaced with "entity."

g. Section 8.3.1 is hereby amended and restated in its entirety as follows:

"Remuneration. The Company agrees to pay to the Warrant Agent reasonable compensation for all services rendered by it hereunder in accordance with a fee schedule to be mutually agreed upon and, from time to time, on demand of the Warrant Agent, to reimburse the Warrant Agent for all of its reasonable and documented out-of-pocket expenses and external counsel fees and other disbursements incurred in the preparation, delivery, negotiation, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder."

h. Section 8.4.1 is hereby amended and restated in its entirety as follows:

"Reliance on Company Statement. Whenever in the performance of its duties under this Agreement the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering, or omitting to take any action hereunder, such fact or matter may be deemed to be conclusively proved and established by a certificate signed by a person believed by the Warrant Agent to be the Chief Executive Officer, the Chief Financial Officer, the Chief Legal Officer, the President, any Executive Vice President, any Vice President, the Secretary or the Chairman of the Board of the Company (each, an "***authorized officer***"); and such certificate shall be full authorization and protection to the Warrant Agent and the Warrant Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate. The Warrant Agent shall not be held to have notice of any change of authority of any authorized officer, until receipt of written notice thereof from the Company."

i. Section 8.4.2 is hereby amended and restated in its entirety as follows:

"Indemnity; Limitation on Liability. The Company also covenants and agrees to indemnify the Warrant Agent for, and to hold it harmless against, any and all loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of legal counsel) ("Losses") that may be paid, incurred or suffered by it, or which it may become subject, other than such Losses arising in connection with the gross negligence, bad faith or willful misconduct on the part of the Warrant Agent (which gross negligence, bad faith, or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered, or omitted to be taken by the Warrant Agent arising from, directly or indirectly, the execution, acceptance, administration, exercise and performance of its duties under this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly, or enforcing its rights hereunder. The costs and expenses incurred in enforcing this right of indemnification shall be paid by the Company. The Warrant Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction). Notwithstanding anything in this Agreement to the contrary, the aggregate liability of the Warrant Agent under this Agreement will be limited to the amount of annual fees paid by the Company, but not including reimbursable expenses, to the Warrant Agent during the twelve (12) months immediately preceding the event for which recovery from the Warrant Agent is being sought. Anything to the contrary notwithstanding, in no event will the Warrant Agent be liable for special, punitive, indirect, incidental or consequential loss or damages of any kind whatsoever (including, without limitation, lost profits), even if the Warrant Agent has been advised of the likelihood of or has foreseen the possibility of such loss or damages, and regardless of the form of action, subject to the provision of this section related to the Warrant Agent's own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction). The provisions under this Section 8 shall survive the expiration of the Warrant and the termination of this Agreement and the resignation, replacement or removal of the Warrant Agent."

j. Section 8.4.3 is hereby amended to replace the last sentence thereof with the following:

"The Warrant Agent shall not be responsible for making any adjustments required under the provisions of Sections 3.1 and 4 hereof or responsible for the manner, method, or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant or as to whether any shares of Common Stock shall, when issued, be valid and fully paid and non-assessable.

k. Section 8.4.3 is hereby further amended to add the following as the final three sentences thereof:

"The Company hereby agrees that it will provide the Warrant Agent with reasonably prompt notice of such adjustments. The Company shall also calculate and transmit to the Warrant Agent, and the Warrant Agent shall have no obligation under this Agreement to calculate, the cashless exercise ratio described in subsection 3.3.1(b). In addition, the Warrant Agent shall have no duty or obligation to investigate or confirm whether the Company's determination of the number of shares of Common Stock to be issued on such exercise is accurate or correct.

l. Section 8.5 is hereby amended and restated in its entirety as follows:

"Acceptance of Agency. The Warrant Agent hereby accepts the agency established by this Agreement and agrees to perform the same upon the express terms and conditions (and no implied terms and conditions) herein set forth and among other things shall account for, and pay to the Company, all monies received by the Warrant Agent for the purchase of shares of Common Stock through the exercise of the Warrants. The Warrant Agent shall act hereunder solely as agent for the Company. The Warrant Agent shall not assume any obligations or relationship of agency or trust with any of the owners or holders of the Warrants or Common Stock. The Warrant Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any holder of Warrants with respect to any action or default by the Company, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon the Company. The Warrant Agent shall have no responsibility to the Company, any holders of Warrants, any holders of shares of Common Stock or any other Person for interest or earnings on any moneys held by the Warrant Agent pursuant to this Agreement."

m. Section 8.6 is hereby deleted.

n. The following provisions are hereby incorporated into Section 8 in the numerical order set forth below:

"8.6 Legal Counsel. The Warrant Agent may consult with legal counsel selected by it (who may be legal counsel for the Company), and the opinion or advice of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in accordance with, and in reliance upon, such advice or opinion.

8.7 Reliance on Agreement and Warrants. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Warrants (except as to its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

8.8 No Responsibility as to Certain Matters. The Warrant Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant; nor shall it be responsible for any change in the exercisability of the Warrant any adjustment required under this Agreement or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any securities to be issued pursuant to this Agreement or any Warrant or as to whether any other securities will, when so issued, be validly authorized and issued, fully paid and nonassessable.

8.9 Freedom to Trade in Company Securities. Subject to applicable laws, the Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

8.10 Reliance on Attorneys and Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Warrant Agent shall not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, omission, default, neglect or misconduct, absent gross negligence, willful misconduct or bad faith in the selection and continued employment thereof (which gross negligence, willful misconduct or bad faith must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

8.11 No Risk of Own Funds. No provision of this Agreement shall require the Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise any of its rights or powers if it believes that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

8.12 No Notice. The Warrant Agent shall not be required to take notice or be deemed to have notice of any event or condition hereunder, including any event or condition that may require action by the Warrant Agent, unless the Warrant Agent shall be specifically notified in writing of such event or condition by the Company, and all notices or other instruments required by this Agreement to be delivered to the Warrant Agent must, in order to be effective, be received by the Warrant Agent as specified in Section 9.2 hereof, and in the absence of such notice so delivered, the Warrant Agent may conclusively assume no such event or condition exists.

8.13 Ambiguity. In the event the Warrant Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Warrant Agent hereunder, the Warrant Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Company, the holder of any Warrant or any other person for refraining from taking such action, unless the Warrant Agent receives written instructions signed by the Company which eliminates such ambiguity or uncertainty to the satisfaction of Warrant Agent.

8.14 Non-Registration. The Warrant Agent shall not be liable or responsible for any failure of the Company to comply with any of its obligations relating to any registration statement filed with the Securities and Exchange Commission or this Agreement, including without limitation obligations under applicable regulation or law.

8.15 Signature Guarantee. The Warrant Agent may rely on and be fully authorized and protected in acting or failing to act upon (a) any guaranty of signature by an "eligible guarantor institution" that is a member or participant in the Securities Transfer Agents Medallion Program or other comparable "signature guarantee program" or insurance program in addition to, or in substitution for, the foregoing; or (b) any related law, act, regulation or any interpretation of the same.

8.16 Authorized Officers. The Warrant Agent shall be fully authorized and protected in relying upon written instructions received from any authorized officer of the Company and shall not be liable for any action taken, suffered or omitted to be taken by, the Warrant Agent in accordance with such advice or instructions.

8.17 Transfer Agent. For the avoidance of doubt, the Transfer Agent has the same rights and immunities as the Warrant Agent set forth in this Section 8 in the performance of its duties under this Agreement.

8.18. Bank Accounts. All funds received by Computershare Inc. under this Agreement that are to be distributed or applied by Computershare Inc. in the performance of Services (the "Funds") shall be held by Computershare Inc. as agent for the Company and deposited in one or more bank accounts to be maintained by Computershare Inc. in its name as agent for the Company. Until paid pursuant to the terms of this Agreement, Computershare Inc. will hold the Funds through such accounts in: deposit accounts of commercial banks with Tier 1 capital exceeding $1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). Computershare Inc. shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by Computershare Inc. in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. Computershare Inc. may from time to time receive interest, dividends or other earnings in connection with such deposits. Computershare Inc. shall not be obligated to pay such interest, dividends or earnings to the Company, any holder or any other party.

8.19 Delivery of Exercise Price. The Warrant Agent shall forward funds received for Warrant exercises in a given month by the 5th business day of the following month by wire transfer to an account designated by the Company.

8.20 Confidentiality. The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including *inter alia*, personal, non-public warrant holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement, including the fees for services set forth in the schedule attached hereto, shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law, including, without limitation, pursuant to subpoenas from state or federal government authorities (*e.g.*, in divorce and criminal actions); provided, that, the party receiving such request or demand will promptly notify the other party to secure instructions from an authorized officer of such party as to such request or demand and to enable the other party the opportunity to request a protective order or other confidential treatment, unless such notification is otherwise prohibited by applicable law or court order.

8.21 Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest."

Section 9.2 is hereby amended to replace the following language:

"Landcadia Holdings II, Inc.
1510 West Loop South
Houston, Texas 77027
Attention: Steven L. Scheinthal"

with the following:

"DraftKings Inc.
222 Berkeley Street, 5th Floor
Boston, MA 02116
Attention: R. Stanton Dodge"

and the following language

"Winston & Strawn LLP
200 Park Avenue
New York, New York, 10166
Attn: Joel L. Rubinstein, Esq.
Email: jubinstein@winston.com"

with the following:

"White & Case LLP
1221 Avenue of the Americas
New York, New York 10020-1095
Attn: Joel L. Rubinstein, Esq.
Email: joel.rubinstein@whitecase.com"

Section 9.5 is hereby amended to replace the first sentence thereof with the following:

"A copy of this Agreement shall be available at all reasonable times at the office of the Warrant Agent designated from time to time, for inspection by the Registered Holder of any Warrant."

Section 9.8 is hereby amended to add the following sentences to the end of that provision:

"No supplement or amendment to this Agreement shall be effective unless duly executed by the Warrant Agent and the Company. Upon the delivery of a certificate from an authorized officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 9.8, the Warrant Agent shall execute such supplement or amendment. Notwithstanding anything in this Agreement to the contrary, the Warrant Agent shall not be required to execute any supplement or amendment to this Agreement that it has determined would adversely affect its own rights, duties, obligations or immunities under this Agreement."

Section 9.9 is hereby amended to remove the period at the end of the first sentence and replace with the following:

"; provided, however, that if the exclusion of such provision shall adversely affect the rights, immunities, liabilities, duties or obligations of the Warrant Agent, the Warrant Agent shall be entitled to resign immediately upon written notice to the Company."

6. **Governing Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, as such laws are applied to contracts entered into and performed in such State without resort to that State's conflict-of-laws rules.

7. **Counterpart**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by email or exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party.

8. **Successors and Assigns**. All the covenants and provisions of this Agreement shall bind and inure to the benefit of each party's respective successors and assigns.

9. **Entire Agreement**. This Agreement and the Warrant Agreement, as hereby amended, constitute the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and thereof.

10. **Indemnification**. The Company agrees to indemnify, defend and hold Computershare harmless from, and to hold it harmless against, any and all loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable and documented fees and expenses of external legal counsel) that may be paid, incurred or suffered by it, or which it may become subject arising out of the assignment contemplated hereunder in connection with events occurring before the date of this Agreement.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date and year first written above.

GOLDEN NUGGET ONLINE GAMING, INC.

By: /s/ Michael Harwell
Name: Michael Harwell
Title: Chief Financial Officer

NEW DUKE HOLDCO, INC. (to be renamed DraftKings Inc.)

By: /s/ Jason Park
Name: Jason Park
Title: Chief Financial Officer and Treasurer

CONTINENTAL STOCK TRANSFER & TRUST COMPANY

By: /s/ Erika Young
Name: Erika Young
Title: Vice President

COMPUTERSHARE TRUST COMPANY, N.A. and
Computershare, Inc.,
On behalf of both entities

By: /s/ Collin Ekeogu
Name: Collin Ekeogu
Title: Manager, Corporate Actions

Exhibit 4.5

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into and effective as of May 5, 2022 by and among DraftKings Inc., a Nevada corporation (to be renamed "DraftKings Holdings Inc." as of the Closing (as defined below)) ("Old DraftKings"), New Duke Holdco, Inc., a Nevada corporation (to be renamed "DraftKings Inc." effective as of the Closing) ("New DraftKings"), and Computershare Inc., a Delaware corporation ("Computershare Inc."), and its wholly owned subsidiary, Computershare Trust Company, N.A., a federally chartered trust company (collectively with Computershare Inc., "Computershare").

WHEREAS, Old DraftKings and Computershare have previously entered into a warrant agreement, dated as of May 10, 2019 (the "Original Warrant Agreement"), by and between Diamond Eagle Acquisition Corp. and Continental Stock Transfer & Trust Company, as warrant agent, as assumed by Old DraftKings and assigned to Computershare by that certain Assignment and Assumption Agreement, dated as of April 23, 2020 (together with the Original Warrant Agreement, the "Warrant Agreement"), governing the terms of Old DraftKings' 1,610,682 outstanding warrants (the "Warrants") to purchase shares of Class A common stock, par value $0.0001 per share, of Old DraftKings ("Old DraftKings Class A common stock");

WHEREAS, Old DraftKings has entered into an Agreement and Plan of Merger, dated as of August 9, 2021 (the "Merger Agreement"), with Golden Nugget Online Gaming, Inc., a Delaware corporation ("GNOG"), New DraftKings, Old DraftKings, Duke Merger Sub, Inc., a Nevada corporation and wholly owned subsidiary of New DraftKings ("DraftKings Merger Sub"), and Gulf Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of New DraftKings ("GNOG Merger Sub"), pursuant to which (i) DraftKings Merger Sub will merge with and into Old DraftKings, with Old DraftKings surviving the merger (the "DK Merger"), and (ii) GNOG Merger Sub will merge with and into GNOG, with GNOG surviving the merger (the "GNOG Merger" and together with the DK Merger, the "Mergers");

WHEREAS, effective upon the closing of the DK Merger, holders of the shares of Old DraftKings Class A common stock will receive one share of Class A common stock, par value $0.0001 per share, of New DraftKings ("New DraftKings Class A common stock") in exchange for each of their shares of Old DraftKings Class A common stock;

WHEREAS, pursuant to Section 4.4 of the Warrant Agreement, upon the closing of the Mergers (the "Closing"), the Warrants will represent the right of the holders thereof to purchase one share of New DraftKings Class A common stock; and

WHEREAS, as a result of the foregoing, the parties hereto wish for Old DraftKings to assign to New DraftKings all of Old DraftKings' rights and interests and obligations in and under the Warrant Agreement and for New DraftKings to accept such assignment and assume all of Old DraftKings' obligations thereunder, in each case, effective upon the Closing.

NOW, **THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Assumption of Warrant Agreement. Old DraftKings hereby assigns, and New DraftKings hereby agrees to accept and assume, effective as of the Closing, all of Old DraftKings' rights, interests and obligations in, and under, the Warrant Agreement and the Warrants. Unless the context otherwise requires, from and after the Closing, any references in the Warrant Agreement or the Warrants to: (i) the "Company" shall mean New DraftKings; (ii) "Common Stock" shall mean the shares of New DraftKings Class A common stock; and (iii) the "Board of Directors" or the "Board" or any committee thereof shall mean the board of directors of New DraftKings or any committee thereof.

2. Replacement Instruments. Following the Closing, upon request by any holder of a Warrant, New DraftKings shall issue a new instrument for such Warrant reflecting the adjustment to the terms and conditions described herein and in Section 4.4 of the Warrant Agreement.

3. Warrant Conversion. Following the Closing, each outstanding Warrant will cease to represent a warrant in respect of Old DraftKings Class A common stock and instead shall entitle the holder thereof to purchase one share of New DraftKings Class A common stock at an exercise price of $11.50 per share of New DraftKings Class A common stock, subject to adjustment as set forth in the Warrant Agreement.

4. Amendment to Warrant Agreement. To the extent required by this Agreement, the Warrant Agreement is hereby deemed amended pursuant to Section 9.8 thereof to reflect the subject matter contained herein, effective as of the Closing, including the following.

a. Section 9.2 is hereby amended to replace the following language:

"Diamond Eagle Acquisition Corp.
2121 Avenue of the Stars, Suite 2300
Los Angeles, CA 90067
Attention: Eli Baker"

with the following:

"DraftKings Inc.
222 Berkeley Street, 5th Floor
Boston, MA 02116
Attention: R. Stanton Dodge"

and the following language

"Winston & Strawn LLP
200 Park Avenue
New York, New York, 10166
Attn: Joel L. Rubinstein, Esq.
Email: jubinstein@winston.com"

with the following:

"White & Case LLP
1221 Avenue of the Americas
New York, New York 10020-1095
Attn: Joel L. Rubinstein, Esq.
Email: joel.rubinstein@whitecase.com"

5. Full Force and Effect. Except as expressly modified and amended herein, all of the terms and conditions of the Warrant Agreement shall remain in full force and effect.

6. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, as such laws are applied to contracts entered into and performed in such State without resort to that State's conflict-of-laws rules.

7. Counterpart. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by email or exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party.

7. Successors and Assigns. All the covenants and provisions of this Agreement shall bind and inure to the benefit of each party's respective successors and assigns.

8. **Entire Agreement**. This Agreement and the Warrant Agreement, as hereby amended, constitute the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and thereof.

9. **Indemnification**. New DraftKings agrees to indemnify, defend and hold Computershare harmless from, and to hold it harmless against, any and all loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable and documented fees and expenses of external legal counsel) that may be paid, incurred or suffered by it, or which it may become subject arising out of the assignment contemplated hereunder in connection with events occurring before the date of this Agreement.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date and year first written above.

DRAFTKINGS INC. (to be renamed DraftKings Holdings Inc.)

By: /s/ Jason Park
Name: Jason Park
Title: Chief Financial Officer and Treasurer

[*Signature Page to DK Warrant Assumption Agreement*]

NEW DUKE HOLDCO, INC. (to be renamed DraftKings Inc.)

By: /s/ Jason Park
Name: Jason Park
Title: Treasurer and Chief Financial Officer

[*Signature Page to DK Warrant Assumption Agreement*]

COMPUTERSHARE TRUST COMPANY, N.A. and COMPUTERSHARE, INC., On behalf of both entities

By: /s/ Thomas Borbely
Name: Thomas Borbely
Title: Senior Manager, Corporate Actions

[*Signature Page to DK Warrant Assumption Agreement*]

Exhibit 4.6

FIRST SUPPLEMENTAL INDENTURE

This First Supplemental Indenture (this "Supplemental Indenture") is made as of May 5, 2022, by and among DraftKings Holdings Inc. (formerly known as DraftKings Inc.), a Nevada corporation, as issuer (the "Company"), DraftKings Inc. (formerly known as New Duke Holdco, Inc.), a Nevada corporation and the parent company of the Company, as guarantor ("Parent"), and Computershare Trust Company, N.A., as Trustee (the "Trustee") under the Indenture referred to below.

W I T N E S S E T H

WHEREAS, the Company and the Trustee are parties to that certain Indenture, dated as of March 18, 2021 (the "Indenture"), pursuant to which the Company issued its 0% Convertible Senior Notes due 2028 (the "Notes");

WHEREAS, the Company entered into an Agreement and Plan of Merger, dated as of August 9, 2021 (as may be amended from time to time, the "Merger Agreement") with Golden Nugget Online Gaming, Inc., a Delaware corporation ("GNOG"), Parent, and certain other parties thereto, pursuant to which the Company will, among other things, (i) acquire all issued and outstanding shares of common stock of GNOG and (ii) undergo a holding company reorganization (the "Reorganization") whereby each share of Class A Common Stock of the Company, par value $0.0001 per share ("Company Class A Common Stock"), issued and outstanding immediately prior to the effective time of the Reorganization will be converted into one share of Class A Common Stock of Parent, par value $0.0001 per share ("Parent Class A Common Stock"), and each share of Class B Common Stock of the Company, par value $0.0001 per share, issued and outstanding immediately prior to the effective time of the Reorganization will be converted into one share of Class B Common Stock of Parent, par value $0.0001 per share;

WHEREAS, Section 14.07(a) of the Indenture provides that, in the case of any Share Exchange Event, the Company, or the successor or purchasing corporation, as the case may be, will execute with the Trustee, without the consent of the Holders, a supplemental indenture providing that, at and after the effective time of the Share Exchange Event, the right to convert each $1,000 principal amount of Notes will be changed into a right to convert such principal amount of Notes into the kind and amount of Reference Property that a holder of a number of shares of the Company Class A Common Stock equal to the Conversion Rate immediately prior to such Share Exchange Event would have been entitled to receive upon such Share Exchange Event;

WHEREAS, the Reorganization was consummated on May 5, 2022 and constituted a Share Exchange Event;

WHEREAS, Parent desires to fully and unconditionally guarantee all of the payment obligations of the Company under the Notes and the Indenture so as to make available the exemption from the registration requirements of the Securities Act provided by Section 3(a)(9) of the Securities Act for shares of Parent Class A Common Stock delivered upon conversion of the Notes following the Reorganization;

WHEREAS, pursuant to Section 10.01 of the Indenture, the Company and the Trustee may, without the consent of any Holder, enter into indentures supplemental to the Indenture for the purpose of, among other things, (i) adding guarantees with respect to the Notes and (ii) in connection with any Share Exchange Event;

WHEREAS, pursuant to Section 10.01 of the Indenture, the Trustee is authorized to join with the Company in the execution of any such supplemental indenture to the Indenture, and to make any further appropriate agreements and stipulations that may be therein contained;

WHEREAS, the Company and Parent desire and have requested the Trustee to join them in the execution and delivery of this Supplemental Indenture; and

WHEREAS, all conditions necessary to authorize the execution and delivery of this Supplemental Indenture have been complied with or have been done or performed.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, receipt of which is hereby acknowledged, the Company, Parent and the Trustee agree as follows for the equal and ratable benefit of the Holders:

ARTICLE 1

DEFINITIONS

Section 1.01. General. A term defined in the Indenture has the same meaning when used in this Supplemental Indenture unless such term is otherwise defined herein or amended or supplemented pursuant to this Supplemental Indenture. The words "herein," "hereof," "hereunder," and words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

ARTICLE 2

EFFECT OF CONVERSION RIGHT

Section 2.01. Conversion. The Company and Parent expressly agree that, in accordance with Section 14.07 of the Indenture, at and after the effective time of the Reorganization, the right of the Holder of each Note that was outstanding as of the effective time of the Reorganization to convert each $1,000 principal amount of such Note shall be changed into the right to convert each $1,000 principal amount of such Note into the number of shares of Parent Class A Common Stock that a holder of a number of shares of Company Class A Common Stock equal to the Conversion Rate immediately prior to the effective time of the Reorganization would have been entitled to receive upon the Reorganization. For purposes of this Supplemental Indenture, "Reference Property" and "unit of Reference Property," as defined in the Indenture, means Parent Class A Common stock and 1.0 share of Parent Class A Common Stock, respectively. Upon the consummation of the Reorganization, references to "Class A Common Stock" in the Indenture shall be deemed to refer to the Reference Property and references to "shares of Class A Common Stock" in the Indenture shall be deemed to refer to units of Reference Property.

ARTICLE 3

GUARANTEE

Section 3.01. Guarantee. Parent hereby unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, this Supplemental Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(a) the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption, conversion or otherwise, and interest on the overdue principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of and accrued and unpaid interest on, each of the Notes, if lawful, and all other obligations of the Company to the Holder or the Trustee under the Indenture, this Supplemental Indenture and the Notes will be promptly paid or performed in full when due, whether at maturity, by acceleration, redemption, conversion or otherwise; and

(b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise (collectively, such guarantee, the "Note Guarantee").

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, Parent will be obligated to pay or perform the same immediately. Parent agrees that this is a guarantee of payment and not a guarantee of collection.

Parent hereby agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance that might otherwise constitute a legal or equitable discharge or defense of a guarantor. Parent hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes or the Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to the Company, Parent or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantor, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

Parent agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Parent further agrees that, as between Parent, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Section 6.02 of the Indenture for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Section 6.02 of the Indenture, such obligations (whether or not due and payable) will forthwith become due and payable by Parent for the purpose of this Note Guarantee.

Section 3.02 Limitation on Parent Liability. Parent, and by its acceptance of this Note Guarantee, each Holder, hereby confirms that it is the intention of all such parties that this Note Guarantee of Parent not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to this Note Guarantee.

Section 3.03 Execution. To evidence the Note Guarantee set forth in Section 3.01 hereof, this Supplemental Indenture will be executed on behalf of Parent by one of its Officers. Parent hereby agrees that the Note Guarantee set forth in Section 3.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of the Note Guarantee. If an Officer whose signature is on this Supplemental Indenture no longer holds that office at the time the Trustee authenticates the Note on which the Note Guarantee is endorsed, the Note Guarantee will be valid nevertheless. The delivery of any Note by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Note Guarantee set forth in this Supplemental Indenture on behalf of Parent.

Section 3.04 Releases. Upon the satisfaction and discharge of the Indenture in accordance with Article 3 of the Indenture, Parent will be released and relieved of any obligations under the Note Guarantee.

ARTICLE 4

NO RELEASE OF COMPANY

Section 4.01. Obligations of the Company. Notwithstanding the agreement of Parent to become liable for the due and punctual payment of the principal of (and premium, if any, on) and interest, if any (including accrued and unpaid interest, if any), on all the Notes issued under and subject to the Indenture and for the delivery of Parent Class A Common Stock and/or Cash upon conversion of the Notes pursuant to Article Fourteen of the Indenture, the Company remains fully liable for all of its obligations under the Indenture and has not been released from any liabilities or obligations thereunder except for the issuance of the Class A Common Stock of the Company upon conversion of the Notes pursuant to Article Fourteen of the Indenture.

ARTICLE 5

Miscellaneous Provisions

Section 5.01. Effectiveness; Construction. This Supplemental Indenture shall become effective upon its execution and delivery by the Company, Parent and the Trustee and as of the date hereof. Upon such effectiveness, the Indenture shall be supplemented in accordance herewith. This Supplemental Indenture shall form a part of the Indenture for all purposes.

Section 5.02. Indenture Remains in Full Force and Effect. Except as supplemented hereby, all provisions in the Indenture shall remain in full force and effect.

Section 5.03. Trustee Matters. The Trustee accepts the Indenture, as supplemented hereby, and agrees to perform the same upon the terms and conditions set forth therein, as supplemented hereby. The Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee, whether or not elsewhere herein so provided. The recitals contained in this Supplemental Indenture shall be taken as the statements of the Company and Parent and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

Section 5.04. Severability. In the event any provision of this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 5.05. Headings. The article and section headings of this Supplemental Indenture have been inserted for convenience of reference only and are not to be considered a part of this Supplemental Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 5.06. Successors. All agreements of the Company, Parent and the Trustee in this Supplemental Indenture shall bind their respective successors.

Section 5.07. Governing Law. THIS SUPPLEMENTAL INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE, THE INDENTURE AND EACH NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF).

Section 5.08. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or other electronic format (including, without limitation, “pdf,” “tif” or “jpg”) transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. The words “execution,” “signed,” “signature,” and words of like import in this Supplemental Indenture shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf,” “tif” or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign) and such signatures shall be deemed to be original signatures for all purposes. The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

[*Signatures follow*]

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

DraftKings Holdings Inc., as Company

By: /s/ Jason Park
Name: Jason Park
Title: Chief Financial Officer

DraftKings Inc., as Guarantor

By: /s/ Jason Park
Name: Jason Park
Title: Chief Financial Officer

Computershare Trust Company, N.A., as Trustee

By: /s/ Jerry Urbanek
Name: Jerry Urbanek
Title: Trust Officer

[Signature Page to First Supplemental Indenture]

Exhibit 10.1

FORM OF INDEMNIFICATION AGREEMENT

This **I**NDEMNIFICATION **A**GREEMENT (the "***Agreement***") is made and entered into as of _____, 2022 between **D**RAFT**K**INGS **I**NC**.**, a Nevada corporation (the "***Company***"), and _____ ("***Indemnitee***").

WITNESSETH THAT:

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the "***Board***") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. Chapter 78 of the Nevada Revised Statutes (the "***NRS***") and the Amended and Restated Articles of Incorporation of the Company (the "***Articles***") authorize indemnification of the directors, officers, employees, fiduciaries and agents of the Company. The Amended and Restated Bylaws of the Company (the "***Bylaws***") provide that the Company will indemnify the directors and officers of the Company. The NRS expressly provides that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and persons acting on behalf of the Company with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of any indemnification provisions in the Articles and/or the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the NRS, the Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or a director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be so indemnified.

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as an officer and/or a director from and after the date of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof.

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his or her Corporate Status (as hereinafter defined), Indemnitee was or is a party, or is threatened to be made a party, to any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), the Company shall indemnify Indemnitee against all Expenses (as hereinafter defined), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee either (i) is not liable pursuant to NRS 78.138 or (ii) acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his or her Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 1(b), the Company shall indemnify Indemnitee against all Expenses and amounts paid in settlement actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding or any claim, issue or matters therein, if Indemnitee either (i) is not liable pursuant to NRS 78.138 or (ii) acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses or other amounts shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that the court in which the Proceeding was brought or other court of competent jurisdiction shall determine that in view of all the circumstances in the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

(c) Termination of Proceeding. The termination of any Proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, adversely affect the right of Indemnitee to indemnification or create an inference or presumption either that Indemnitee is liable pursuant to NRS 78.138, that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, or, with respect to any criminal action or proceeding, that Indemnitee had reasonable cause to believe that the conduct was unlawful. The Company acknowledges that such a resolution, short of final judgment, may be successful on the merits if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such Proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(d) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, the Company shall indemnify Indemnitee to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her on his or her behalf in connection with the defense of the Proceeding. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee, to the fullest extent permitted by law, as may be amended from time to time, against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, if, by reason of his or her Corporate Status, he or she was or is a party, or is threatened to be made a party, to any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the simple or gross negligence, recklessness, or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Section 6 and Section 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Section 1 and Section 2 hereof is available, in respect of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall pay the entire amount of any judgment or settlement of such Proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such Proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

(e) The Company hereby acknowledges that Indemnitee may have rights to indemnification for payment of the judgment or settlement amount provided by another entity ("***Other Indemnitor(s)***"). The Company agrees with Indemnitee that the Company is the indemnitor of first resort of Indemnitee with respect to matters for which indemnification is provided under this Agreement and that the Company will be obligated to make all payments due to or for the benefit of Indemnitee under this agreement without regard to any rights that Indemnitee may have against the Other Indemnitor(s). The Company hereby waives any equitable rights to contribution or indemnification from the Other Indemnitor in respect of any amounts paid to Indemnitee hereunder until such time as the Indemnitee has been fully and finally indemnified. The Company further agrees that no payment of Expenses or losses by the Other Indemnitor(s) to or for the benefit of Indemnitee shall affect the obligations of the Company hereunder.

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee, by reason of his or her Corporate Status, is a witness, or is made (or asked) to respond to discovery requests or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her, or on his or her behalf, in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with defending any Proceeding within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and Indemnitee shall also submit a written undertaking to repay any Expenses advanced if it shall ultimately be determined by a court of competent jurisdiction that Indemnitee is not entitled to be indemnified by the Company against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free. In furtherance of the foregoing, Indemnitee hereby undertakes to repay such amounts advanced if, and to the extent that, it shall ultimately be determined by a court of competent jurisdiction that Indemnitee is not entitled to be indemnified by the Company pursuant to the terms of this Agreement.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the NRS and public policy of the State of Nevada. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, the Company is actually and materially prejudiced as a result of such failure.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following three methods, which shall be at the election of the Board (i) by a majority vote of a quorum consisting of Disinterested Directors (as defined below), (ii) if a majority vote of a quorum consisting of Disinterested Directors so orders, or if a quorum of Disinterested Directors cannot be obtained, by Independent Counsel (as defined below) in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iii) by the stockholders of the Company.

(c) Notwithstanding anything to the contrary set forth in this Agreement, if a request for indemnification is made after a Change in Control, at the election of Indemnitee made in writing to the Company, and if the Board by a majority vote of a quorum consisting of Disinterested Directors orders the determination of Indemnitee's entitlement to indemnification to be made by an Independent Counsel, or if a quorum of Disinterested Directors cannot be obtained, any determination required to be made pursuant to Section 6(b) above as to whether Indemnitee is entitled to indemnification shall be made by Independent Counsel selected as provided in this Section 6(c). The Independent Counsel shall be selected by Indemnitee, unless Indemnitee shall request that such selection be made by the Board. The party making the selection shall give written notice to the other party advising it of the identity of the Independent Counsel so selected. The party receiving such notice may, within seven (7) days after such written notice of selection shall have been given, deliver to the other party a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 13 hereof, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made, the Independent Counsel so selected may not serve as Independent Counsel unless and until a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected (or, if selected, such selection shall have been objected to) in accordance with this paragraph, then either the Company or Indemnitee may petition the courts of the State of Nevada or other court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom an objection is favorably resolved or the person so appointed shall act as Independent Counsel under Section 6(c) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof. The Company shall pay any and all reasonable and necessary fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(d). The Independent Counsel shall be selected by the Board. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "***Independent Counsel***" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected (or, if selected, such selection shall have been objected to) in accordance with this paragraph, then either the Company or Indemnitee may petition the appropriate courts of the State of Nevada or other court of competent jurisdiction for resolution of any objection which shall have been made by Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom an objection is favorably resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay any and all reasonable fees and expenses incident to the procedures of this Section 6(d), regardless of the manner in which such Independent Counsel was selected or appointed.

(e) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(f) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(f) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. The Company will promptly advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied.

(g) Notwithstanding anything to the contrary set forth in this Agreement, if the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have been appointed or shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification, unless the Company establishes by written opinion of Independent Counsel that (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(g) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Disinterested Directors resolve as required by Section 6(b)(iii) of this Agreement to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(h) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel or member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) or Section 6(c) of this Agreement within sixty (60) days after receipt by the Company of the request for indemnification, or such longer period, not to exceed an additional thirty (30) days, to which the period may be extended pursuant to Section 6(g), (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication of Indemnitee's entitlement to such indemnification or advancement of expenses either, at Indemnitee's sole option, in (1) an appropriate court of the State of Nevada, or any other court of competent jurisdiction or (2) an arbitration to be conducted by a single arbitrator, selected by mutual agreement of the Company and Indemnitee, pursuant to the rules of the American Arbitration Association. The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) or Section 6(c) of this Agreement that Indemnitee is not entitled to indemnification, (i) any judicial proceeding or arbitration commenced pursuant to this Section 7 shall be conducted in all respects de novo on the merits, and Indemnitee shall not be prejudiced by reason of any adverse determination under Section 6(b) or Section 6(c); and (ii) in any such judicial proceeding or arbitration, the Company shall have the burden of proving that Indemnitee is not entitled to indemnification under this Agreement.

(c) If a determination shall have been made pursuant to Section 6(b) or Section 6(c), or shall have been deemed to have been made pursuant to Section 6(g), of this Agreement that Indemnitee is entitled to indemnification, the Company shall be obligated to pay the amounts constituting such indemnification within five (5) days after such determination has been made or has been deemed to have been made and shall be conclusively bound by such determination in any judicial proceeding commenced pursuant to this Section 7, unless the Company establishes by written opinion of Independent Counsel that (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the request for indemnification or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of, or an award in arbitration to enforce, his or her rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay to him or her, or on his or her behalf, in advance, and shall indemnify him or her against, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him or her in such judicial adjudication or arbitration, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

8. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and advancement of expenses as provided by this Agreement shall not be deemed exclusive of, and shall be in addition to, any other rights to which Indemnitee may at any time be entitled under applicable law, the Articles or the Bylaws of the Company, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise, and nothing in this Agreement shall diminish or otherwise restrict Indemnitee's rights to indemnification or advancement of expenses under any of the foregoing. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the NRS, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Articles, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change and Indemnitee shall be deemed to have such greater benefits hereunder. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. The Company shall not adopt any amendments to its Articles or Bylaws, the effect of which would be to deny, diminish or encumber Indemnitee's right to indemnification or advancement of expenses under this Agreement, any other agreement or otherwise, without the prior written consent of the Indemnitee.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights (with all of Indemnitee's reasonable expenses, including, without limitation, attorneys' fees and charges, related thereto to be reimbursed by or, at the option of Indemnitee, advanced by the Company).

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), or similar provisions of state statutory law or common law; or

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act); or

(d) for any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(e) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company (other than to enforce Indemnitee's rights under this Agreement) or its directors, officers, employees or other indemnitees, unless (i) the Board of the Company authorized the Proceeding (or such part of the Proceeding) prior to its initiation, or (ii) the Company indemnifies Indemnitee, in its sole discretion, independently of this Agreement pursuant to the powers vested in the Company under applicable law.

10. Retroactive Effect; Duration of Agreement; Successors and Binding Agreement. All agreements and obligations of the Company contained herein shall be deemed to have become effective upon the date Indemnitee first had Corporate Status; shall continue during the period Indemnitee has Corporate Status; and shall continue thereafter so long as Indemnitee may be subject to any Proceeding (or any action commenced under Section 7 hereof) by reason of his or her Corporate Status, whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation, reorganization or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives. The Company shall require any such successor to all or substantially all of the business or assets of the Company, by agreement in form and substance satisfactory to Indemnitee and his or her counsel, expressly to assume and agree to perform this Agreement in the same manner and to the same extent the Company would be required to perform if no such succession had taken place. Except as otherwise set forth in this Section 10, this Agreement shall not be assignable or delegable by the Company.

11. Security. To the extent requested by Indemnitee and approved by the Board of the Company, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve, or continue to serve, as an officer or a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as an officer or a director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

13. Definitions. For purposes of this Agreement:

(a) "***Change in Control***" means the occurrence of any one of the following events:

(i) any sale, lease, exchange or other transfer (in one or a series of related transactions) of all or substantially all of the assets of the Company;

(ii) any "Person" as such term is used in Section 13(d) and Section 14(d) of the Exchange Act becomes, directly or indirectly, the "beneficial owner" as defined in Rule 13d-3 under the Exchange Act of securities of the Company that represent more than 50% of the combined voting power of the Company's then outstanding voting securities (the "***Outstanding Company Voting Securities***"); provided, however, that for purposes of this Section 13(a)(ii), the following acquisitions shall not constitute a Change in Control: (I) any acquisition directly from the Company, (II) any acquisition by the Company, (III) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person or entity that directly or indirectly controls, is controlled by or is under common control with the Company and/or to the extent provided by the Board, any person or entity in which the Company has a significant interest, (IV) any acquisition by any corporation pursuant to a transaction that complies with Sections 13(a)(iv)(A) and 13(a)(iv)(B), (V) any acquisition involving beneficial ownership of less than 50% of the then-outstanding shares of the Company's Class A common stock, par value $0.0001 per share (and any stock or other securities into which such ordinary shares may be converted or into which they may be exchanged) (the "***Outstanding Company Common Shares***") or the Outstanding Company Voting Securities that is determined by the Board, based on review of public disclosure by the acquiring Person with respect to its passive investment intent, not to have a purpose or effect of changing or influencing the control of the Company; provided, however, that for purposes of this clause (V), any such acquisition in connection with (x) an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents or (y) any "Business Combination" (as defined below) shall be presumed to be for the purpose or with the effect of changing or influencing the control of the Company;

(iii) during any period of not more than two (2) consecutive years, individuals who constitute the Board as of the beginning of the period (the "***Incumbent Directors***") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the beginning of such period, whose election or nomination for election was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without written objection to such nomination) will be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any person other than the Board will be deemed to be an Incumbent Director;

(iv) consummation of a merger, amalgamation or consolidation (a "***Business Combination***") of the Company with any other corporation, unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or, for a non-corporate entity, equivalent governing body), as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, and (B) at least a majority of the members of the board of directors (or, for a non-corporate entity, equivalent governing body) of the entity resulting from such Business Combination were Incumbent Directors at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination;

(v) the stockholders of the Company approve a plan of complete liquidation of the Company.

(b) "***Corporate Status***" means the fact that a person is or was a director, officer, employee, agent or fiduciary of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(c) "***Disinterested Director***" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(d) "***Enterprise***" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, trustee, partner, manager, managing member, employee, agent or fiduciary.

(e) "***Expenses***" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred or actually incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in a Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Should any payments by the Company to or for the account of Indemnitee under this Agreement be determined to be subject to any federal, state or local income or excise tax, Expenses shall also include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) Indemnitee would have been in had no such tax been determined to apply to those payments. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee's counsel as being reasonable in the good faith judgment of such counsel shall be presumed conclusively to be reasonable. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(f) "***Independent Counsel***" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(g) "***Proceeding***" includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative, legislative or investigative (formal or informal); in each case whether or not Indemnitee's Corporate Status existed at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his or her rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement unless, and only to the extent that, the Company is actually and materially prejudiced as a result of such delay or failure.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed facsimile, or (c) upon delivery when sent by a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee's signature hereto.

(b) To the Company at:

DraftKings Inc.
222 Berkeley Street 5th Floor
Boston, Massachusetts 02116
Attention: Chief Legal Officer
Fax: (617) 249-1722

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Successors and Assigns. The terms of this Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors, administrators and other legal representatives.

21. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement (other than an arbitration pursuant to Section 7 hereof) shall be brought only in the Eighth Judicial District Court of Clark County (the "***Nevada Court***"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Nevada Court for purposes of such action or proceeding, (iii) waive any objection to the laying of venue of any such action or proceeding in the Nevada Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Nevada Court has been brought in an improper or inconvenient forum.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

COMPANY

DRAFTKINGS INC.

By: _____
Name:
Title:

INDEMNITEE

_____
Name:
Address: _____

[*Signature Page to Indemnification Agreement*]

Exhibit 10.2

CERTAIN CONFIDENTIAL INFORMATION, IDENTIFIED BY BRACKETED ASTERISKS "[***]", HAS BEEN OMITTED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

AMENDED AND RESTATED TRADEMARK LICENSE AGREEMENT

This AMENDED AND RESTATED TRADEMARK LICENSE AGREEMENT ("Agreement") is made and effective as of May 5, 2022 (the "Effective Date"), by and among FERTITTA ENTERTAINMENT, LLC (f/k/a Golden Nugget, LLC), a Nevada limited liability company ("GN Parent"), GNLV, LLC, a Nevada limited liability company ("Licensor"), and GOLDEN NUGGET ONLINE GAMING, LLC, a New Jersey limited liability company ("Licensee").

WHEREAS, Licensor and Licensee entered into a Trademark License Agreement, dated as of December 29, 2020 (the "Original Agreement"), pursuant to which Licensor licensed certain trademarks to Licensee;

WHEREAS, Licensor and Licensee desire to enter into this Agreement to amend and restate and supersede the Original Agreement in its entirety, effective as of the Effective Date;

WHEREAS, Licensor has the right and authority to license the use of the trademarks set forth on Exhibit A attached hereto (collectively, the "Marks"); and

WHEREAS, Licensee desires to acquire from Licensor, and Licensor desires to grant to Licensee, licenses to use and display the Marks in connection with engaging in the business of (i) online and mobile gaming (including, without limitation, "free-to-play" or "demo" versions, in either case, associated with real money online and mobile gaming applications), (ii) online and mobile race and sports wagering, (iii) online and mobile skills gaming, and (iv) other categories as mutually agreed to by Licensor and Licensee from time to time (collectively, the "Business"), subject to certain limited exceptions as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and in the Commercial Agreement (as defined below), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT OF LICENSE.

(a) License to the Marks.

(i) License Grant. During the License Term, Licensor, on behalf of itself and its Affiliates, hereby grants to Licensee an exclusive (even as to Licensor and its Affiliates, except as otherwise provided in Section 1(a)(vi) below), non-transferable (except as provided in Section 6), irrevocable (until this Agreement is terminated according to Section 7) license to use and display the Marks solely in connection with the operation, promotion and marketing of the Business (the "Exclusive License") in any jurisdiction worldwide, subject to Section 1(a)(ii) (the "Territory").

CERTAIN CONFIDENTIAL INFORMATION, IDENTIFIED BY BRACKETED ASTERISKS "[***]", HAS BEEN OMITTED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

(ii) Use in New Jurisdictions. If Licensor hereafter owns or controls any "GOLDEN NUGGET" trademarks in connection with goods or services in the field of the Business, or related to the operation, promotion and marketing of the Business, including in any additional jurisdiction, such trademarks will automatically be licensed to Licensee pursuant to Section 1(a)(i), and Licensor shall notify Licensee, and the parties hereto will amend Exhibit A to include such trademarks as part of the Marks for all purposes hereunder. If Licensee intends to use or display the Marks in any jurisdiction in which Licensor or any of its Affiliates does not have any rights in or to the Marks as of or prior to such time (such jurisdiction, a "New Jurisdiction"), Licensee shall so inform Licensor in writing (such a notice, a "New Jurisdiction Entry Notice"). Licensor shall have forty-five (45) days from the date of a New Jurisdiction Entry Notice (the "New Jurisdiction Review Period") to evaluate, at its sole cost and expense, whether there are any third party trademarks in such New Jurisdiction that conflict with the Marks proposed to be used or displayed by Licensee therein or whether the use and display of such Marks is reasonably likely to result in liability to Licensor in such New Jurisdiction. Prior to the expiration of the New Jurisdiction Review Period, Licensor shall notify Licensee in writing if Licensor has reasonably and in good faith determined that (A) the use and display of such Marks in such New Jurisdiction conflicts with any third party trademarks registered in such New Jurisdiction or (B) the use and display of such Marks in such New Jurisdiction is reasonably likely to result in liability to Licensor in such New Jurisdiction, and, in each case, such notice shall set forth the reasons for such determination (such a notice, a "New Jurisdiction Concern Notice"). Notwithstanding Licensor's delivery of a New Jurisdiction Concern Notice, Licensee may still use and display the proposed Marks in such New Jurisdiction pursuant to the licenses set forth in this Agreement; provided that Licensee notifies Licensor prior to commencing any such use or display, and Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates for any third-party claims (including claims of infringement, dilution, and unfair competition) in such New Jurisdiction to the extent arising from Licensee's and its Permitted Sublicensees' use and display of the proposed Marks in such New Jurisdiction.

(iii) Sublicensing. Licensee may sublicense all or any portion of the rights set forth in Section 1(a)(i) to (A) its Affiliates, (B) any of its or its Affiliates' agents, subcontractors, vendors, contractors, partners and suppliers, in each case, in connection with the operation, marketing or promotion of the Business, and (C) third-party casinos that provide market access for Licensee and its Affiliates in connection with operating the Business to the extent required to comply with applicable gaming laws and regulations (collectively, the "Permitted Sublicensees").

(iv) Form of Use of Marks. The Exclusive License includes the right of Licensee and its Permitted Sublicensees to use and display the Marks as part of trademarks and domain names for the Business in combination with:

A. (1) "online gaming" (including "GNOG"), "online casino," "iGaming," "online sportsbook," "fantasy sports," "daily fantasy sports," "interactive" or "interactive gaming," (2) any "DraftKings" trademarks or the phrase "powered by DraftKings," and/or (3) any other generic or descriptive terms customarily utilized by third parties engaged in the Business;

B. (1) any other trademarks owned or controlled by DraftKings Inc. (f/k/a New Duke Holdco, Inc., a Nevada corporation) ("DraftKings") or its Affiliates, or (2) any other trademarks to the extent required to comply with applicable gaming laws and regulations; provided that, in the case of this subclause (B), Licensee may only combine such trademarks with "Golden Nugget Online Gaming," "GNOG," or other trademarks agreed to by the parties hereto pursuant to subclause (A) of this Section 1(a)(iv); or

C. with Licensor's prior written approval, not to be unreasonably withheld, conditioned or delayed, any other trademarks reasonably related to the Business; provided that to the extent Licensee seeks Licensor's approval pursuant to this clause (C) (in accordance with the notice procedures set forth in Section 10(a)), (1) Licensor's failure to respond within thirty (30) days of such request shall be deemed to constitute Licensor's approval thereof and (2) if Licensor rejects any such proposed combination, it shall provide Licensee with a written statement outlining the reasons therefor.

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(v) Restrictions. Nothing in this Agreement shall allow Licensee to use any of the Marks in connection with any other activity or business other than the Business, including operation or management of a land-based (i.e., "brick and mortar") casino or hotel, except as licensed pursuant to Section 1(b). For the avoidance of doubt, neither Licensor nor its Affiliates shall have the right to use, display or license (and shall not license nor authorize any other person or entity to use or display) any of the Marks in connection with the Business (other than to the extent of the Specified OSB Retained Rights (as defined below)) anywhere in the world, and Licensor agrees not to, and shall ensure that its Affiliates do not, oppose, contest or otherwise object to Licensee's and its Permitted Sublicensees' use or display of the Marks, so long as such use or display is in compliance with the License (as defined below) granted under this Agreement. Any rights not expressly granted to Licensee under this Agreement are reserved by Licensor.

(vi) Exceptions to Exclusivity. Notwithstanding anything to the contrary in Section 1(a)(i), GN Parent or any of its applicable Affiliates may use the Marks to [***] (the "Specified OSB Retained Rights").

(b) License to Brick and Mortar Marks.

(i) License Grant. During the License Term, Licensor, on behalf of itself and its Affiliates, hereby grants to Licensee a non-exclusive, non-transferable (except as provided in Section 6), irrevocable (until this Agreement is terminated according to Section 7) license to use and display the Brick and Mortar Marks (as defined below) and any other Marks sublicensed under the Existing Sublicenses (as defined below), in each case in the Territory, solely to the extent required by third party brick and mortar casino licensees for whom Licensee operates the Business pursuant to an operating or market access agreement with such third party (each, an "Operating Agreement"), respectively, but only to the extent necessary to comply with applicable gaming laws and regulations (the "Non-Exclusive License" and, together with the Exclusive License, the "License"). Licensee may sublicense all or any portion of the rights set forth in this Section 1(b)(i) to such third parties; provided, however, any such sublicense shall terminate as of the expiration or termination of the related Operating Agreement. Solely with respect to any Operating Agreement entered into after the Effective Date (which, for clarity, shall exclude the Existing Sublicenses and any other Operating Agreement entered into on or before the Effective Date), Licensee's rights under this Section 1(b)(i) shall be further subject to the following conditions: (A) the Non-Exclusive License shall be limited to the use of (x) "GOLDEN NUGGET ONLINE GAMING" and "GNOG" and (y) any such other trademark reasonably related to the Business which Licensor determines, in its reasonable business judgment, is sufficiently distinctive so as to distinguish the ownership and operation of such brick and mortar casino from Licensor's and its Affiliates' ownership and operation of the "Golden Nugget" branded brick and mortar casinos of Licensor and its Affiliates (such trademarks collectively, the "Brick and Mortar Marks"), (B) the Brick and Mortar Marks will only be used in conjunction with a second distinguishing term similar to the co-branding utilized at the "DraftKings at Casino Queen" casino located in East St. Louis, Illinois, and (C) to the extent applicable, Licensee shall include a disclaimer on the applicable website or mobile application to disclose to the general public that neither Licensor nor its Affiliates owns, operates or holds any financial interest in the casino utilizing such Brick and Mortar Marks. In the case of the following four (4) Operating Agreements in existence as of the Effective Date, to the extent that Licensee has granted or agreed to grant a sublicense to use or display any Marks other than Brick and Mortar Marks, Licensee shall use commercially reasonable efforts to limit its applicable sublicensee's use and display of the Marks to the Brick and Mortar Marks and/or to amend the applicable trademark licenses so that they are limited solely to the Brick and Mortar Marks and used in accordance with the conditions set forth in clauses (A) through (C) above: [***] (collectively, the "Existing Sublicenses").

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(ii) Form of Use of Brick and Mortar Marks. The Non-Exclusive License includes the right of Licensee and its Permitted Sublicensees to use and display the Brick and Mortar Marks (and any other Marks sublicensed under the Existing Sublicenses) in combination with:

A. (1) "online gaming" (including "GNOG"), "online casino," "iGaming," "online sportsbook," "fantasy sports," "daily fantasy sports," "interactive" or "interactive gaming," (2) any "DraftKings" trademarks or the phrase "powered by DraftKings," and/or (3) any other generic or descriptive terms customarily utilized by third parties engaged in the Business;

B. (1) any other trademarks owned or controlled by DraftKings or its Affiliates, or (2) any other trademarks to the extent required to comply with applicable gaming laws and regulations; provided that, in the case of this subclause (B), Licensee may only combine such trademarks with "Golden Nugget Online Gaming," "GNOG," or other trademarks agreed to by the parties hereto pursuant to subclause (A) of this Section 1(b)(ii); or

C. with Licensor's prior written approval, not to be unreasonably withheld, conditioned or delayed, any other trademarks reasonably related to the Business; provided that to the extent Licensee seeks Licensor's approval pursuant to this clause (C) (in accordance with the notice procedures set forth in Section 10(a)), (1) Licensor's failure to respond within thirty (30) days of such request shall be deemed to constitute Licensor's approval thereof and (2) if Licensor rejects any such proposed combination, it shall provide Licensee with a written statement outlining the reasons therefor.

2. OWNERSHIP AND PROTECTION OF THE MARKS.

(a) Goodwill. Licensee recognizes the significant value of the goodwill associated with the Marks and acknowledges and agrees (i) that such Marks, and all rights therein and the goodwill pertaining thereto shall inure solely to Licensor, (ii) that such Marks have acquired secondary meaning in the mind of the public, and (iii) that Licensee shall not, directly or indirectly, contest or challenge Licensor's ownership of all right, title and interest in and to such Marks or the validity thereof, including, without limitation, the goodwill associated therewith. Notwithstanding anything expressed in this Agreement to the contrary, Licensee shall not acquire, be deemed to have acquired and shall not claim any rights to such Marks other than the irrevocable License rights granted by Licensor, on behalf of itself and its Affiliates, under this Agreement during the License Term.

(b) Notice of Infringement. Licensee shall give Licensor prompt written notice of any actual or threatened infringement, misappropriation or other conflict with the Marks by any third party after Licensee has actual knowledge of such infringement, misappropriation or other conflict. Licensor shall give Licensee prompt written notice of any actual or threatened infringement, misappropriation or other conflict with the Marks online or that otherwise relates to or may reasonably be expected to impact the Business of Licensee or its Permitted Sublicensees by any third party after Licensor has actual knowledge of such infringement, misappropriation or other conflict.

(c) Notice of Regulatory Action. Licensee shall promptly notify Licensor if Licensee receives, or if Licensee becomes aware that, a citation has been issued or investigation commenced by any regulatory agency (federal, state or local) for violation of any law that may have a reasonable likelihood of having an adverse effect on Licensor or damaging the goodwill associated with the Marks or included in the Marks.

(d) Protection of Rights in the Marks.

(i) Licensor shall, and shall cause its Affiliates to, take all actions reasonably necessary to preserve the value of the Marks, including by exercising reasonable quality control with respect to use and display of the Marks. Licensor shall have the first right, but not the obligation, to apply for, register for, and maintain registrations for the Marks. Upon Licensee's request to register a new Mark, Licensor may apply to register the relevant Mark in its name in connection with the relevant goods and services in such jurisdiction; provided that the applicable costs incurred in connection with such registration shall be shared equally between Licensor and Licensee, including, for clarity, any applicable costs incurred in connection with a proposed registration that is subsequently denied. At Licensor's sole cost and expense (subject to Section 2(d)(ii), and other than as set forth in the foregoing sentence), Licensee shall provide Licensor with all commercially reasonable cooperation to assist Licensor in protecting, applying for, registering, or maintaining any of Licensor's rights in the Marks.

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(ii) If Licensor fails to register or maintain any Marks hereunder in connection with goods or services in the field of the Business, or related to the operation, promotion and marketing of the Business, Licensee shall have the right, but not the obligation, during the License Term, to apply for, register, and maintain registrations of such Marks in the name of Licensor at Licensee's sole cost and expense (subject to Section 2(d)(i) and Section 2(e)); provided that if Licensor (x) does not apply for registration of any Mark because Licensor has reasonably and in good faith determined that (A) the use and display of such Marks in the applicable jurisdiction conflicts with any third party trademarks in that particular jurisdiction, (B) the registration of such Mark in connection with the applicable goods and services in that particular jurisdiction is reasonably likely to be denied or opposed by the relevant trademark office, or (C) the registration of such Mark in connection with the applicable goods or services in the applicable jurisdiction is reasonably likely to result in liability to Licensor in that particular jurisdiction and (y) has notified Licensee of the reasons for such determination within forty-five (45) days of receiving Licensee's request to register such Mark, then if Licensee applies for registration of such Mark in accordance with this Section 2(d)(ii), Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates for any third-party claims (including claims of infringement, dilution, and unfair competition) in that particular jurisdiction to the extent arising from Licensee's and its Permitted Sublicensees' registration of such Mark in that particular jurisdiction ("Covered Registration Claims"). Licensor, on behalf of itself or its applicable Affiliate, hereby irrevocably designates and appoints Licensee and each of its duly authorized officers and agents as Licensor's or such Affiliate's agent and attorney in fact, to act for and in Licensor's or such Affiliate's behalf and instead of Licensor or such Affiliate to execute and file any document and to do all other lawfully permitted acts to further the purposes described in Section 2(d)(i) and this Section 2(d)(ii) at Licensee's sole cost (subject to Section 2(d)(i) and Section 2(e)), which shall constitute an irrevocable power of attorney coupled with an interest. Except as set forth in this Section 2(d)(ii), Licensee will not attempt to register or apply for (x) any trademarks that are the same as, or confusingly similar to, the Marks, in its own name (or in the name of any of its Affiliates or Permitted Sublicensees) or (y) any trademarks in the name of Licensor.

(iii) Licensor will notify Licensee in writing in advance if Licensor or its applicable Affiliate (A) elects to abandon any registrations for the Marks; or (B) plans to sell to any third party (other than an Affiliate of Licensor) any Marks. Licensor shall ensure, and shall cause its Affiliates to ensure, that any assignee and any exclusive licensee (if the field of such license relates to the Business) of any such Marks agrees in writing that such Marks are and shall remain subject to the License granted herein.

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(e) Licensor's Enforcement and Defense of Rights in the Marks. Licensor shall have the first right, but not the obligation, to bring infringement actions, defend challenges and participate in similar adversarial proceedings against third parties relating to the Marks (each, a "Proceeding"). If Licensor or any of its Affiliates elects to bring an infringement action against a suspected infringer of a Mark in the field of the Business or engages in any other Proceeding, (i) Licensor shall promptly (and in the event such action or other Proceeding relates to a Mark that is material to the Business of Licensee or its Permitted Sublicensees, within ten (10) business days) notify Licensee in writing of such Proceeding, which written notice shall, in the event such action or other Proceeding relates to a Mark that is material to the Business of Licensee or its Permitted Sublicensees, contain the material facts and circumstances of such action or Proceeding, (ii) Licensor shall, or shall cause its applicable Affiliates to, bring such Proceeding in Licensor's own name, (iii) Licensee will join as a party (at Licensor's expense) if a court of competent jurisdiction determines Licensee is an indispensable party to such Proceeding and cannot otherwise be joined, and (iv) if Licensee is not joined as a party to such Proceeding pursuant to the foregoing clause (iii), Licensee shall have the right, but not the obligation, to jointly participate (at Licensee's expense) in any such Proceeding, including to assert any damages suffered by Licensee or its Affiliates, and if Licensee decides to participate therein, Licensor shall, and shall cause its Affiliates to, reasonably cooperate with Licensee to facilitate such participation. In all such Proceedings, Licensor shall bear its own costs and expenses, consult with Licensee in connection with such Proceedings and provide Licensee with meaningful opportunity to review and comment on materials associated therewith, and give due consideration in good faith to Licensee's comments. If Licensor brings any such Proceeding or defends against any challenges to the Marks, Licensee shall reasonably cooperate in all respects with Licensor in the conduct thereof, and shall assist in all reasonable ways, including having its employees testify when reasonable to do so, and upon taking measures to ensure confidentiality obligations hereunder, make available for discovery or trial exhibit relevant records, papers, information, samples, specimens, and the like, subject to Licensor's reimbursement of any out-of-pocket expenses and other reasonable costs (such as employee time taken to testify or prepare documents, etc.) incurred on an on-going basis by Licensee in providing Licensor such assistance. If Licensor or any of its Affiliates undertakes a Proceeding, any monetary recovery, damages, or settlement derived from such Proceeding will be allocated in the following order (until such amount is exhausted): (1) Licensor shall retain the reasonable, documented and unreimbursed out-of-pocket costs and expenses actually incurred by Licensor (including reasonable, documented and unreimbursed outside attorney fees) in connection with the Proceeding; (2) Licensor shall remit to Licensee any reasonable, documented and unreimbursed out-of-pocket costs and expenses actually incurred by Licensee or its Affiliates (including reasonable, documented and unreimbursed outside attorney fees) in connection with such Proceeding; and (3) any remaining amounts shall be allocated between the parties proportional to the respective damages suffered by such party and its Affiliates. Licensor may not, and shall ensure that its Affiliates do not, settle any Proceeding in a manner that affects Licensee or its rights in the Marks without the prior written approval of Licensee.

(f) Licensee's Enforcement and Defense of Rights in the Marks. If (i) Licensor or its applicable Affiliate do not bring a Proceeding against a suspected infringer or diluter of any of the Marks in the field of the Business within [***] of Licensor's awareness of such infringement or dilution, or (ii) Licensor or its applicable Affiliate (or any receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of Licensor's or its applicable Affiliate's property or business) is unable or unwilling to do so (including if Licensor or its applicable Affiliate undergoes a Bankruptcy Event), then Licensee shall have the right, but not the obligation, to bring a Proceeding or otherwise seek to enforce its rights against such suspected infringer or diluter, in each case, in Licensee's own name, at Licensee's sole cost and expense. Licensor will, and will cause its applicable Affiliate to, join as a party (at Licensee's expense) if a court of competent jurisdiction determines Licensor or such Affiliate is an indispensable party to such Proceeding and cannot otherwise be joined. If Licensee brings any such Proceeding, Licensor shall, and shall cause its applicable Affiliate, to, reasonably cooperate in all respects with Licensee in the conduct thereof, and shall assist in all reasonable ways, including having its employees testify when reasonable to do so, and upon taking measures to ensure confidentiality obligations hereunder, make available for discovery or trial exhibit relevant records, papers, information, samples, specimens, and the like, subject to Licensee's reimbursement of any reasonable and documented out-of-pocket expenses and other reasonable and documented costs (such as employee time taken to testify or prepare documents, etc.) incurred on an on-going basis by Licensor and its Affiliates in providing Licensee such assistance. If Licensee undertakes a Proceeding, any monetary recovery, damages, or settlement derived from such Proceeding will be retained in its entirety by Licensee. Licensee may not settle any such action in a manner that adversely affects Licensor or its rights in the Marks without the prior written approval of Licensor (such approval not to be unreasonably withheld, conditioned or delayed).

(g) Customer Confusion, Mistake or Deception. In the event that Licensee or Licensor becomes aware of any incident of actual customer confusion or mistake or deception as to the source of the parties' respective goods and services arising from either party's use of the Marks, the parties shall use their best efforts to agree upon reasonable steps to ensure that such confusion does not recur.

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(h) Licensor's Representations and Warranties. Licensor, on behalf of itself and its Affiliates, hereby represents and warrants to Licensee that: (i) Licensor or one of its Affiliates is the sole and exclusive owner of the registered Marks listed in the table set forth on Exhibit A (the "Registered Marks"); (ii) Licensor has the valid and lawful right to grant the License and other rights granted to Licensee under this Agreement with respect the Registered Marks, and has obtained all authorizations, consents or permissions as may be necessary in connection therewith; (iii) the License and other rights granted to Licensee under this Agreement, and the performance by Licensor and its Affiliates of their obligations under this Agreement, do not violate, breach or otherwise conflict with Licensor's or its Affiliates' organizational documents, any applicable law or any other agreement to which Licensor or any of its Affiliates is a party or to which the Marks are subject; (iv) the Registered Marks are subsisting, and to Licensor's knowledge, valid and enforceable; and (v) to Licensor's knowledge, as of the Effective Date, no third party is infringing, misappropriating or otherwise violating any of the Marks in a manner that has had or is reasonably likely to have a material adverse effect on the Business as presently conducted.

3. TERM.

The parties hereto agree that the Agreement term shall commence on the Effective Date and shall continue until the 50th anniversary of the Closing Date, unless earlier terminated pursuant to Section 7 of this Agreement (the "License Term").

4. FEES; SET-OFF.

(a) Fees. In consideration of the licenses granted to Licensee hereunder, (i) Licensee shall, or shall cause Crown to, without duplication, pay any Net Gaming Revenue or Brand Royalty Fee amounts due and payable by Crown under the Commercial Agreement in accordance with the terms and subject to the conditions of the Commercial Agreement, subject to the Dispute Resolution Mechanism (as defined below), and (ii) Licensee shall pay to Licensor (A) with respect to goods and services within the field of the Business branded under the Marks (other than, for the avoidance of doubt, any good and services within the field of the Business to the extent such goods and services constitute Online Offerings under the Commercial Agreement, but including, for the avoidance of doubt, online and mobile horse race wagering and online and mobile poker, in each case, branded under the Marks), a [***] fee equal to either [***] (such fees, the "Other Revenue Royalty Fees"), and (B) with respect to the sale of GNOG Merchandise by Licensee (excluding, for the avoidance of doubt, the distribution of gifts, giveaways and complimentary items), a [***] fee of [***] (such fees, the "Merchandise Royalty Fees" and, together with the Brand Royalty Fees and Other Revenue Royalty Fees, the "Fees"). All Net Gaming Revenue and Brand Royalty Fee amounts paid to Licensor under Clause (i) of this Section 4(a) and all Other Revenue Royalty Fees paid to Licensor under Clause (ii)(A) of this Section 4(a), in each case, shall count towards the MG commitment provided for in the Commercial Agreement (and, for clarity, only in the event that (x) the Net Gaming Revenue and Brand Royalty Fee amounts received by FEI under the Commercial Agreement *plus* (y) the Net Gaming Revenue and Brand Royalty Fee amounts received by Licensor under Clause (i) of this Section 4(a) *plus* (z) the Other Revenue Royalty Fees received by Licensor under Clause (ii)(A) of this Section 4(a), all in the aggregate, fail to meet the MG commitment provided for in the Commercial Agreement shall any MG true up payment be due and payable).

(b) Statements. The parties hereby acknowledge and agree that the section of the Commercial Agreement entitled "Statements" shall govern with respect to statements and reports for the Other Revenue Royalty Fees and the Merchandise Royalty Fees, and shall apply to this Agreement *mutatis mutandis*.

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(c) Bankruptcy; Set-Off. In the event of a Bankruptcy Event of Licensor in which Licensor rejects this Agreement and Licensee elects to retain its right to use the Marks pursuant to Section 365(n) of the Bankruptcy Code, Licensee shall remain obligated to pay any Other Revenue Royalty Fees and any Merchandise Royalty Fees, and for the avoidance of doubt, shall also remain obligated to cause Crown to pay the Brand Royalty Fees in accordance with the terms and subject to the conditions of the Commercial Agreement and shall remain liable to Licensor for Brand Royalty Fees that Crown fails to pay in accordance with the terms of the Commercial Agreement, in each case, subject to the Dispute Resolution Mechanism and for so long as Licensee is an Affiliate of Crown; provided, however, Licensee shall have the right to carry forward, for application against any (i) Other Revenue Royalty Fees, (ii) Merchandise Royalty Fees, and (iii) any Brand Royalty Fees payable by Crown under the Commercial Agreement, any costs incurred by Licensee to apply for, register, maintain, enforce, or defend the Marks (to the extent such costs are incurred as a result of Licensor's rejection of this Agreement), including pursuant to the power of attorney granted in Section 2(d) hereof. For the avoidance of doubt, (A) the obligations to pay the Brand Royalty Fees hereunder remain subject to any "set-off" or "offset" rights that are explicitly set forth in this Agreement or the Commercial Agreement, (B) in no instance will Licensee be obligated to pay Brand Royalty Fees hereunder to the extent already paid by Crown under the Commercial Agreement and (C) any Brand Royalty Fees paid under this Agreement or the Commercial Agreement which would also be owed under the other shall be in lieu of, and not in addition to, such amounts owed under the other.

5. QUALITY CONTROL AND USE OF THE MARKS.

(a) Quality Standards. The nature and quality of the Business and the use of the Marks, along with all representations of the Marks included therein, in connection therewith, shall be of a high standard and quality so as to reflect favorably upon the Business but in any event no less than substantially the same quality, usage, style and appearance as historically used by Golden Nugget Atlantic City in connection with its online and mobile gaming and online and mobile sports wagering business concerning such Marks, and shall not knowingly place the Marks or Licensor in a negative light or context (the "Quality Standards"). Licensor agrees that Licensee's use and display of the Marks in a manner that is consistent in all material respects with Licensee's use and display of the Marks immediately prior to the Closing Date of the Merger Agreement shall be deemed to be in compliance with the Quality Standards; provided, however, Licensor may make changes to its branding guidelines from time to time and Licensor may require Licensee to comply with such updated guidelines, provided that Licensor (i) shall not update the branding guidelines more than once every three (3) calendar years, (ii) consults with Licensee on any contemplated updates prior to finalization and gives due consideration in good faith to Licensee's comments, (iii) provides Licensee with prior written notice of any finalized updated branding guidelines, (iv) gives Licensee a reasonable period of time to make any necessary changes to comply with such updated branding guidelines (which in all cases, shall be no less than ninety (90) days after notice of such finalized updated guidelines), (v) shall not update or apply the branding guidelines in a discriminatory manner against Licensee or any of its Permitted Sublicensees, and (vi) shall not update the branding guidelines in a manner that would materially alter or restrict Licensee's or its Permitted Sublicensees' use or display of the Marks as contemplated by Section 1. Neither party hereto shall knowingly use the Marks in connection with firearms, weapons, ammunition, obscene, lewd, or pornographic materials, any items with a sexual function or purpose, or any illegal activities. Licensee shall display the Marks in accordance with sound trademark usage principles, including using commercially reasonable efforts to use ® in connection with use or display of the Registered Marks.

(b) Reporting and Inspection. In order to preserve the validity and integrity of the Marks, Licensee shall permit representatives of Licensor to inspect the facilities of Licensee engaged in using or displaying the Marks or performing the services offered under the Marks at any time during normal business hours to ensure that (i) Licensee is maintaining the Quality Standards, and (ii) Licensee's use and display of the Marks are permissible as set forth in this Agreement. Licensor shall provide not less than five (5) business days' prior written notice of a request for an inspection. Any such inspection shall be conducted in a manner that will not interfere with Licensee's or its Affiliates' normal business activities and may only occur once in any twelve (12) month period (such that after an inspection is performed, Licensor may not perform an inspection until twelve (12) months following such inspection). Notwithstanding the foregoing, if any inspection reveals material non-conformance with the Quality Standards, then Licensor may conduct an additional inspection, at its discretion, within such twelve (12) month period. Licensee shall at reasonable request of Licensor, not to exceed two (2) times in any twelve (12) month period, submit without charge to Licensor representative samples of its use and display of the Marks.

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6. ASSIGNMENT.

(a) Licensor may not assign or transfer this Agreement other than in connection with a sale of all or substantially all of Licensor's casino business or the Golden Nugget brand. Except as set forth in Section 6(c), Licensee shall not assign or otherwise transfer this Agreement to a third party, whether by assignment, by operation of law, or otherwise (in each case, a "Contract Transfer") without the prior written consent of Licensor, such consent not to be unreasonably withheld, conditioned, or delayed. A transfer of control of Licensee or a majority of the ownership of Licensee, whether by a single transaction or in a series of transactions shall be deemed to be a Contract Transfer requiring Licensor's consent hereunder (other than in the circumstances set forth in Section 6(c)); provided that, for the avoidance of doubt, Licensor's consent right hereunder shall be solely with respect to transfer of this Agreement and shall not be required in the event of a transfer of control of Licensee or a majority of the ownership of Licensee, whether by a single transaction or in a series of transactions, or any assets (other than this Agreement) of Licensee, in each case, so long as Licensee's ultimate parent company immediately prior to such Contract Transfer (for clarity, as of the Effective Date, DraftKings Inc. or any successor parent company thereof) or any Affiliate thereof remains the "Licensee" under this Agreement. Licensee shall give Licensor at least thirty (30) days prior written notice of any proposed Contract Transfer, which shall specify (x) the nature and terms of the proposed Contract Transfer, (y) the identity of the transferee, and (z) such information reasonably necessary for Licensor to determine that the conditions set forth in Section 6(b) are satisfied.

(b) Licensor agrees that it will not withhold consent to a proposed Contract Transfer if, as of the effective date of the proposed Contract Transfer, the following conditions are met, to its reasonable satisfaction:

(i) [***].

(ii) [***].

(iii) [***].

(iv) [***].

(v) [***].

(vi) [***].

(vii) [***].

(viii) [***].

(c) Notwithstanding anything to the contrary, (i) this Agreement and all of Licensee's rights and obligations hereunder shall automatically transfer to any collateral agent or its designee as provided in any credit agreement or security interest in connection with any loan provided to Licensee or its Affiliates and (ii) Licensee may assign this Agreement without prior written notice to, or the consent of, Licensor in connection with (1) a change of control of Licensee's ultimate parent company (i.e., DraftKings Inc. or any successor parent company thereof), (2) a sale of all or substantially all of the business of Licensee's ultimate parent company (i.e., DraftKings Inc. or any successor parent company thereof) and its subsidiaries, or (3) a sale of all or substantially all of the iGaming business of Licensee's ultimate parent company (i.e., DraftKings Inc. or any successor parent company thereof) and its subsidiaries; provided, however, that Licensee shall provide Licensor with written notice within thirty (30) days after any such Contract Transfer. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective permitted successors and permitted assigns.

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7. DEFAULT; TERMINATION.

(a) Licensor may only terminate this Agreement upon written notice to Licensee if Licensee has committed a material breach of any of its representations, warranties, covenants, duties, or obligations under this Agreement and has failed to cure such material breach within thirty (30) days after having received a written notice of the breach from Licensor; provided, however, that (i) in the event a breach is curable and cannot be cured within such thirty (30) day period, then Licensee shall be entitled to such additional time (not to exceed thirty (30) days of additional time, for a total of sixty (60) days) (the "Cure Period") as is reasonably required to effectuate a cure as long as Licensee has commenced and proceeds to effectuate such a cure, and (ii) with respect to any breach of Section 5, Licensor may only terminate this Agreement if (A) Licensor's written notice of such breach cites with specificity the basis on which Licensor is alleging that Licensee is in breach of Section 5 (the "Quality Control Breach Notice"), (B) Licensee has failed to cure such breach on a go-forward basis (i.e., without regard for the specific breach(es) identified in the Quality Control Breach Notice) within ninety (90) days after receipt of such Quality Control Breach Notice from Licensor (the "Initial Quality Control Cure Period"); provided that, if such breach is not curable within the Initial Quality Control Cure Period, Licensee shall be entitled to such additional time as is reasonably required to effectuate a cure as long as Licensee has commenced and diligently proceeds to effectuate such a cure and (C) to the extent Licensee in good faith purports to have cured such breach pursuant to the foregoing clause (B) and Licensor reasonably and in good faith determines that such purported cure is insufficient, (x) Licensor shall deliver a second Quality Control Breach Notice to Licensee, which cites with specificity the basis on which such purported cure has been determined to be insufficient and (y) Licensee shall be entitled to (1) an additional thirty (30) days after receipt of such second Quality Control Breach Notice from Licensor (the "Secondary Quality Control Cure Period") to cure such breach on a go-forward basis (i.e., without regard for any specific breach(es) identified in any Quality Control Breach Notice); provided that, if such breach is not curable within the Secondary Quality Control Cure Period, Licensee shall be entitled to such additional time as is reasonably required to effectuate a cure as long as Licensee has commenced and diligently proceeds to effectuate such a cure within the Secondary Quality Control Cure Period or (2) seek recourse from a court of competent jurisdiction or other tribunal (in which case, Licensor shall not terminate this Agreement unless and until a final determination has been made by a court of competent jurisdiction or tribunal in favor of Licensor with respect to the purported breach). For clarity, (x) all breaches of Section 5 are deemed curable and (y) non-payment of any amounts in dispute in good faith will not be considered a material breach of this Agreement until a final determination has been made by a court of competent jurisdiction that such amounts are due and payable.

(b) The Agreement shall automatically terminate if Crown elects not to renew the Commercial Agreement or elects to terminate the Commercial Agreement, in each case, in its entirety in accordance with its terms.

(c) In addition, Licensee and Licensor may terminate this Agreement in a writing signed by both Licensee and Licensor.

8. EFFECT OF TERMINATION OR EXPIRATION.

(a) Upon and after the expiration or termination of this Agreement, all rights granted to Licensee hereunder shall automatically terminate and Licensee shall have no further right to use the Marks in connection with the Business. Notwithstanding anything to the contrary in this Agreement, Licensee shall be permitted to continue using and displaying the Marks after termination or expiration of this Agreement in a manner that does not create a likelihood of confusion, consistent with "fair use," solely (i) for reference to the historical branding of the Business, or the relationship between Licensee, on the one hand, and Licensor and its Affiliates, on the other hand, (ii) for retention of any books, records or other materials for internal archival purposes (and not public display), and (iii) as required by applicable Laws, including in connection with any corporate filings.

(b) As promptly as practicable but in no event later than [***] from the date of expiration or any other form of termination of the License Term with respect to the Business (such period be referred to as "Phase Out Period"), Licensee shall change all trade names, online names, company names or business names of the Licensee so as to eliminate the use or inclusion therein of the Marks. Licensee shall provide a written certification to Licensor signed by an officer of Licensee stating that Licensee has complied with the requirements of this Section 8(b). If Licensee is using the Marks during the Phase Out Period (other than as set forth in Section 8(a)), it shall take commercially reasonable steps to inform the general public, customers, suppliers and contractors that it is not a licensee of Licensor and is using the Marks with permission solely to facilitate the transition to a new brand. After the Phase Out Period, Licensee shall thereafter refrain from operating or doing business under any name that would give the general public the impression that the License granted pursuant to this Agreement is still in force or that Licensee is in any way connected or affiliated with or sponsored by Licensor. Notwithstanding the foregoing, Licensee may continue to maintain archival copies of contracts, annual reports and marketing materials that include the Marks solely for archival purposes.

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(c) If and to the extent this Agreement is terminated by Licensor and Licensee disputes in good faith Licensor's grounds for such termination, then Licensor shall not, and shall cause its Affiliates not to, directly or indirectly, use or display, authorize or otherwise permit any third party to use or display, any of the Marks in connection with the Business for the period commencing on the date of termination by Licensor of this Agreement and expiring [***] after such date (the "Cool-Off Period"); provided, however, (i) Licensor is not restricted during the Cool-Off Period from [***], and (ii) the Cool-Off Period shall terminate immediately upon the resolution of such dispute by mutual agreement of the parties (unless otherwise mutually agreed in connection with such mutual agreement) or a final determination of a court of competent jurisdiction, in each case, in favor of Licensor.

9. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY; INDEMNIFICATION.

(a) **WITHOUT LIMITING ANY REPRESENTATIONS OR WARRANTIES EXPLICITLY SET FORTH IN THE MERGER AGREEMENT, AND EXCEPT AS EXPRESSLY SET FORTH IN SECTION 2(H), THE MARKS ARE PROVIDED BY LICENSOR AS IS, AND LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING THE MARKS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF MARKS. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND CONTRACT), EVEN IF SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

(b) Licensor hereby agrees to indemnify, defend, and hold harmless Licensee, its Affiliates, and its or their members, shareholders, employees, agents, representatives, directors, officers, successors, Permitted Sublicensees, and permitted assigns, from and against any and all third-party claims arising in whole or in part, directly or indirectly, out of or in consequence of any allegation of intellectual property infringement or trademark dilution based on Licensee's use or display of any of the Marks in material compliance with the terms of this Agreement, but excluding, for the avoidance of doubt, any allegation of infringement or dilution to the extent it is based on the combination of the Marks with other words, phrases, terms or trademarks as permitted pursuant to Section 1(a)(iv) or Section 1(b)(ii).

(c) Licensee shall indemnify, defend, and hold harmless Licensor, its Affiliates, and its or their members, shareholders, employees, agents, representatives, directors, officers, successors, and permitted assigns from and against any and all third-party claims arising in whole or in part, directly or indirectly, out of any allegation of intellectual property infringement or trademark dilution based on Licensee's use of any of the Marks in violation of the terms of this Agreement.

(d) Except as expressly provided to the contrary herein, it is the intent of the parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any indemnifiable losses attributable to such party's fault.

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10. MISCELLANEOUS.

(a) Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered either by personal service, facsimile, e-mail or prepaid overnight courier service and addressed as follows:

If to Licensee: DraftKings Inc.
222 Berkeley St., 5th Floor
Boston, MA 02116
Attention: Jason Robins, Chief Executive Officer
Email: jrobins@draftkings.com

With a copy to:

DraftKings Inc.
222 Berkeley St., 5th Floor
Boston, MA 02116
Attention: R. Stanton Dodge, Chief Legal Officer and Secretary
Email: sdodge@draftkings.com

If to Licensor: GNLV, LLC.
1600 West Loop South, Floor 30
Houston, Texas 77027
Attention: General Counsel
Telephone: (713) 386-7000
Telecopy: (713) 386-7070
Email: sscheinthal@ldry.com; dkohlhausen@ldry.com

(b) Disclaimer of Agency. Nothing in this Agreement shall create a partnership or joint venture or establish the relationship of principal and agent or any other relationship of a similar nature between the parties hereto, and no party shall have the power to obligate or bind the other in any manner whatsoever.

(c) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(d) Survival. All rights and obligations herein that are by their nature continuing will survive expiration or termination of this Agreement.

(e) General. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, excluding its provisions concerning conflict of laws. Each party acknowledges that it has had ample opportunity to have this Agreement reviewed and negotiated by competent counsel, and waives any right it may have to interpret a writing against the drafter thereof. This Agreement, together with the Commercial Agreement, constitutes the complete agreement of the parties hereto on the subject matter covered herein and supersedes all other prior or contemporaneous understandings, agreements or representations, written or oral. For the avoidance of doubt, from and after the Effective Date, this Agreement replaces and supersedes the Original Agreement, and the Original Agreement shall automatically be terminated and be of no further force or effect. No term or provision of this Agreement may be waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach. This Agreement may not be amended except by a written instrument signed by authorized representatives of all parties hereto and expressly declared to be an amendment or modification thereof. The headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement. If any provision of this Agreement is held to be invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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(f) Bankruptcy. All rights and licenses under the Marks granted under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Bankruptcy Code"), licenses of rights to "intellectual property" as defined under Section 101 of the Bankruptcy Code. Licensee shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code in the event of the commencement of a bankruptcy proceeding by or against Licensor or its applicable Affiliate under the Bankruptcy Code.

(g) Further Assurances. Each party shall take such further actions and provide to the other parties, its successors, assigns or other legal representatives, such cooperation and assistance as may be reasonably requested by the other parties (at the other parties' cost) to more fully and effectively effectuate the purposes of this Agreement.

(h) Equitable Relief. In the event of a material breach of this Agreement by a party, the parties acknowledge and agree that: (i) such breach is likely to cause significant and irreparable harm to the other parties and will not be susceptible to cure by the payment of monetary damages and (ii) if not cured within the Cure Period, the non-breaching party shall be entitled to obtain injunctive relief and/or other equitable relief, in addition to other remedies afforded under this Agreement or by law, all of which shall be cumulative, to prevent or restrain such breach of this Agreement. In the event that a party shall employ an attorney to enforce the terms and conditions of this Agreement, the prevailing party in such action be entitled to recover all reasonable costs and expenses sustained by the enforcing party in the enforcement of such terms and obligations, including but not limited to reasonable attorneys' fees and expenses, costs of collection and court costs.

(i) Privileged License. Licensee hereby acknowledges that Licensor and its Affiliates are businesses that have gaming licenses issued by the state gaming authorities (each a "Commission"). If required by any regulatory authority having jurisdiction over Licensor, and if requested to do so by Licensor, Licensee shall, at Licensee's expense, obtain any license, qualification, clearance or the like necessary for Licensee to operate the Business.

(j) Certain Definitions.

(i) For purposes of this Agreement, the capitalized terms have the meanings ascribed to such terms in Section 10(j)(ii) of this Agreement or as otherwise defined elsewhere in this Agreement. All capitalized terms used herein, but otherwise not defined, shall have the meanings ascribed to them in the Merger Agreement.

(ii) For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by, or under common control with such first person or entity as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any person or entity, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such first or entity, whether through the ownership of voting securities, by contract or otherwise.

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"Bankruptcy Event" means an event in which either party (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (C) makes or seeks to make a general assignment for the benefit of its creditors, or (D) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

"Brand Royalty Fee" has the meaning set forth in the Commercial Agreement.

"Closing Date" means the "Closing Date" as defined in the Merger Agreement.

"Commercial Agreement" means that certain Master Commercial Agreement, entered into as of August 9, 2021, by and among Fertitta Entertainment, Inc. ("FEI") and Crown Gaming Inc., a wholly owned subsidiary of DraftKings ("Crown").

"Dispute Resolution Mechanism" has the meaning set forth in the Commercial Agreement.

"GNOG Merchandise" means all goods or products bearing any Marks that are sold within the following categories: (1) apparel for men and women, (2) fashion accessories for men and women, (3) housewares, (4) drinkware, (5) luggage/backpacks, (6) outdoor cooking devices/tools/accessories, (7) car accessories, (8) recreational games and activities, and (9) such additional categories as the parties may agree to subsequently in writing.

"Merger Agreement" means that certain Agreement and Plan of Merger, dated as of August 9, 2021, among Golden Nugget Online Gaming, Inc., a Delaware corporation and the indirect parent corporation of Licensee, DraftKings, DraftKings Holdings Inc. (f/k/a DraftKings Inc.), a Nevada corporation, Duke Merger Sub, Inc., a Nevada corporation, and Gulf Merger Sub, Inc., a Delaware corporation.

"MG" has the meaning set forth in the Commercial Agreement.

"Net Gaming Revenue" has the meaning set forth in the Commercial Agreement; provided that, [***].

"Online Offering" has the meaning set forth in the Commercial Agreement.

"Trademarks" or "trademarks" mean all trademarks, service marks, trade names, service names, brand names, certifications, corporate names, logos, and any and all other indications of origin, including all goodwill associated therewith.

(k) Interpretation. Unless the express context otherwise requires: (i) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) the terms defined in the singular have a comparable meaning when used in the plural, and vice versa; (iii) references herein to a specific Section or Exhibit shall refer, respectively, to Sections or Exhibits of this Agreement; and (iv) wherever the word "include," "includes" or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation."

[***This space is intentionally left blank***]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date above written.

LICENSEE:

GOLDEN NUGGET ONLINE GAMING, LLC

By: /s/ Paul Liberman
Name: Paul Liberman
Title: President and Chief Executive Officer

LICENSOR:

GNLV, LLC

By: /s/ Steven L. Scheinthal
Name: Steven L. Scheinthal
Title: Senior Vice President and Secretary

GN PARENT:

FERTITTA ENTERTAINMENT, LLC

By: /s/ Steven L. Scheinthal
Name: Steven L. Scheinthal
Title: Vice President and Secretary

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ACKNOWLEDGED AND AGREED
WITH RESPECT TO SECTION 4(A) HEREOF:

FERTITTA ENTERTAINMENT, INC.

By: /s/ Steven L. Scheinthal
Name: Steven L. Scheinthal
Title: Vice President and Secretary

ACKNOWLEDGED AND AGREED
WITH RESPECT TO SECTION 4(A) HEREOF:

CROWN GAMING INC.

By: /s/ Paul Liberman
Name: Paul Liberman
Title: President and Chief Executive Officer

DRAFTKINGS COMPLETES ACQUISITION OF GOLDEN NUGGET ONLINE GAMING

BOSTON, MA – May 5, 2022-- DraftKings Inc. (Nasdaq: DKNG) today announced the completion of its acquisition of Golden Nugget Online Gaming, Inc. ("Golden Nugget Online Gaming" or "GNOG") (the "GNOG Acquisition").

The GNOG Acquisition will, among other things, allow DraftKings to leverage Golden Nugget's established brand to broaden its reach into new customer segments and enhance the combined company's iGaming product offerings through DraftKings' vertically-integrated tech stack and Golden Nugget Online Gaming's unique capabilities – including Live Dealer. The GNOG Acquisition does not include brick and mortar Golden Nugget casinos, which will continue to be owned by Fertitta Entertainment.

"Acquiring Golden Nugget Online Gaming gives us synergies across our business," said Jason Robins, Chairman and CEO of DraftKings. "We anticipate that this acquisition will provide meaningful revenue uplift by utilizing our data-driven marketing capabilities and a dual brand iGaming strategy, gross margin improvement opportunities, and cost savings across external marketing and SG&A. I am proud to welcome the Golden Nugget Online Gaming team to the DraftKings family."

"This will be an alliance unlike any other in the digital sports, entertainment and online gaming industry," said Tilman Fertitta, Chairman and CEO of Golden Nugget Online Gaming. "Now that the acquisition is completed, I look forward to what the future will bring for our combined company and am confident this relationship will be a huge success."

DraftKings will integrate Golden Nugget Online Gaming employees across its business, including Thomas Winter, who will transition to General Manager of North America iGaming, from his previous role as President of Golden Nugget Online Gaming.

Synergies and Strategic Benefits of the Acquisition

The GNOG Acquisition will deliver significant benefits to DraftKings as well as expected synergies of $300 million at maturity. DraftKings will deploy a multi-brand approach that will enhance cross-selling opportunities and drive increased revenue growth. In addition, there will be multiple channels for cost savings by, among other things, recognizing enhanced returns on advertising spending through marketing efficiencies, eliminating platform costs from migrating Golden Nugget Online Gaming's current technology to DraftKings' in-house proprietary platform, and reducing G&A costs, such as vendor services and duplicative overhead. Additionally, DraftKings and Fertitta Entertainment expect to rebrand certain current and future retail sportsbook locations at Fertitta Entertainment-owned Golden Nugget properties into DraftKings sportsbooks.

Combined company revenues

DraftKings expects revenue to increase from additional cross-promotion opportunities, which would be expected to complementarily grow DraftKings' customer base by engaging existing Golden Nugget Online Gaming's iGaming-first customers. Additional anticipated revenue synergies include potential technology and game expansion, such as Live Dealer offerings.

Marketing efficiencies

The GNOG Acquisition will allow DraftKings to drive efficiencies by streamlining marketing and capitalizing on additional cross-promotion opportunities. By deploying a multi-brand strategy and accessing Golden Nugget Online Gaming's built-in iGaming-first customer, DraftKings expects to recognize increased returns on advertising spending and greater LTV to CAC ratios.

Technology optimization

DraftKings plans to bring Golden Nugget Online Gaming onto its in-house technology, which is expected to deliver cost savings by reducing Golden Nugget Online Gaming's third-party platform costs, operating expenses, and vendor costs. Additionally, once integrated, customers of both brands will utilize DraftKings' technology and have access to expanded product offerings and features, including in-house live dealer and proprietary games, as well as an overall improvement in the customer experience.

Advisors
Raine Group served as exclusive financial advisor to DraftKings, and Sullivan & Cromwell LLP served as legal counsel to DraftKings. Jefferies served as lead financial advisor to Golden Nugget Online Gaming, and White & Case LLP served as legal counsel to Golden Nugget Online Gaming. Spectrum Gaming Capital acted as financial advisor and White & Case LLP acted as legal counsel to the Special Committee of Golden Nugget Online Gaming's board of directors. Latham and Watkins LLP served as legal counsel to Fertitta Entertainment.

About DraftKings
DraftKings Inc. is a digital sports entertainment and gaming company created to fuel the competitive spirit of sports fans with products that range across daily fantasy, regulated gaming and digital media. Headquartered in Boston, and launched in 2012 by Jason Robins, Matt Kalish and Paul Liberman, DraftKings is the only U.S.-based vertically integrated sports betting operator. DraftKings is a multi-channel provider of sports betting and gaming technologies, powering sports and gaming entertainment for operators in 17 countries. The company operates iGaming in 5 states through its DraftKings brand, as well as operating Golden Nugget Online Gaming, an award-winning iGaming product and iconic gaming brand, in 3 states. DraftKings' Sportsbook is live with mobile and/or retail betting operations in the United States pursuant to regulations in 18 states. DraftKings' daily fantasy sports product is available in 6 countries internationally with 15 distinct sports categories. DraftKings is both an official daily fantasy and sports betting partner of the NFL, NBA, MLB, NHL, PGA TOUR and UFC as well as an official daily fantasy partner of NASCAR. Launched in August 2021, DraftKings Marketplace is a digital collectibles ecosystem designed for mainstream accessibility that offers curated NFT drops and supports secondary-market transactions. DraftKings also owns Vegas Sports Information Network (VSiN), a multi-platform broadcast and content company.

Forward Looking Statements

This press release may contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and the Private Securities Litigation Reform Act of 1995, known as the PSLRA. When used in this press release, the words "estimates," "projected," "expects," "anticipates," "forecasts," "plans," "intends," "believes," "seeks," "may," "will," "should," "future," "propose" and variations of these words or similar expressions (or the negative versions of such words or expressions) are intended to identify forward-looking statements. These forward-looking statements are not guarantees of future performance, conditions or results, and involve a number of known and unknown risks, uncertainties, assumptions and other important factors, many of which are outside DraftKings' control, that could cause actual results or outcomes to differ materially from those discussed in the forward-looking statements. These forward-looking statements include, without limitation, DraftKings' expectations with respect to future performance and anticipated financial impacts of the Transactions, including expected synergies and opportunities related to the GNOG Acquisition. These forward-looking statements involve significant risks and uncertainties that could cause actual results to differ materially from expected results. These factors are outside DraftKings' control and are difficult to predict. Factors that may cause such differences include, but are not limited to: (1) the outcome of any legal proceedings that may be instituted against DraftKings and GNOG following the completion of the GNOG Acquisition; (2) the inability to maintain the listing of DraftKings' Class A Common Stock on Nasdaq following the GNOG Acquisition; (3) the ability to recognize the anticipated benefits of the Transactions, which may be affected by, among other things, competition and the ability of the combined company to grow and manage growth profitably and retain its key employees; (4) costs related to the GNOG Acquisition; (5) changes in applicable laws or regulations, particularly with respect to gaming, gambling, sportsbooks, fantasy sports and other similar businesses; (6) the possibility that DraftKings may be adversely affected by other economic, business, and/or competitive factors, (7) market and supply chain disruptions due to the COVID-19 outbreak or other epidemics, pandemics or similar public health events; and (8) other risks and uncertainties indicated from time to time relating to the Transactions, including those identified in DraftKings' and Golden Nugget Online Gaming's filings with the SEC. The foregoing list of factors is not exclusive. Readers should not place undue reliance upon any forward-looking statements, which speak only as of the date made. For a discussion of additional risks and uncertainties, which could cause actual results to differ from those contained in the forward-looking statements, see DraftKings' and Golden Nugget Online Gaming's filings with the SEC. DraftKings undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Contacts

DraftKings
Media: Media@draftkings.com
@DraftKingsNews
Investors: Investors@draftkings.com