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): August 14, 2023 (August 10, 2023)

Velo3D, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**001-39757**	**98-1556965**
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification Number)

511 Division Street **Campbell, California**	**95008**
(Address of principal executive offices)	(Zip Code)

(408) 610-3915
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

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

- ☐ Written communication 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 communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communication 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**
Common stock, par value $0.00001 per share	VLD	New York Stock Exchange
Warrants to purchase one share of common stock, each at an exercise price of $11.50 per share	VLD WS	New York Stock Exchange

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

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

Item 1.01 Entry into a Material Definitive Agreement.

Securities Purchase Agreement, Placement Agent Agreement and Offering of Senior Secured Convertible Notes

On August 10, 2023, Velo3D, Inc. (the "Company") entered into a securities purchase agreement (the "Purchase Agreement") with High Trail investments ON LLC and an affiliated institutional investor (collectively, the "Purchasers") pursuant to which the Company agreed to issue and sell, in a registered public offering by the Company directly to the Purchasers (the "Offering"), $70,000,000 aggregate principal amount of the Company's senior secured convertible notes (the "Initial Notes") at an issue price of 100.00% of their principal amount. In addition, pursuant to the Purchase Agreement, the Company granted the Purchasers the right to purchase up to an additional $35,000,000 aggregate principal amount of the Company's senior secured convertible notes (the "Additional Notes" and, together with the Initial Notes, the "Notes") in the Offering at an issue price of 100.00% of their principal amount so long as the notice to exercise such option is provided no later than the first anniversary of the Initial Closing Date (as defined below). The Purchase Agreement contains customary representations, warranties and agreements by the Company, conditions to closing, termination provisions and indemnification obligations.

The Offering has been registered pursuant to the Company's Registration Statement on Form S-3 (Registration Statement No. 333-268346) (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), on November 14, 2022 and declared effective by the Commission on November 21, 2022, including the prospectus supplement filed by the Company with the Commission pursuant to Rule 424(b) under the Act dated August 10, 2023 to the prospectus contained in the Registration Statement dated November 21, 2022.

The Company issued the Initial Notes at the initial closing (the "Initial Closing") on August 14, 2023 (the "Initial Closing Date"). The Company estimates that the net proceeds from the Initial Closing will be approximately $66 million, after deducting the estimated Offering expenses payable by the Company and the fee of the Placement Agent (as defined below) in connection with the Initial Closing.

As described below in Item 1.02 of this Current Report on Form 8-K, the Company used a portion of the net proceeds from the Offering of the Initial Notes to repay all outstanding obligations under the Company's third amended and restated loan and security agreement, as amended (the "Loan Agreement"), originally entered into with Silicon Valley Bank ("SVB"). The Company plans to use the remaining net proceeds from the Initial Notes (as well as any net proceeds from the Additional Notes) for working capital, capital expenditures and other general corporate purposes.

Credit Suisse Securities (USA) LLC acted as exclusive placement agent (the "Placement Agent") for the Offering, and, on August 10, 2023, the Company entered into a placement agent agreement (the "Placement Agent Agreement") with the Placement Agent pursuant to which the Company agreed to pay the Placement Agent a cash fee equal to the greater of (i) $1,500,000 and (ii) 5.0% of the gross proceeds from the sale of the Notes. The Placement Agent Agreement contains customary representations, warranties and agreements by the Company and indemnification obligations.

Copies of the Purchase Agreement and the Placement Agent Agreement are included in this Current Report on Form 8-K as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference. The summary descriptions of the terms of the Purchase Agreement and the Placement Agent Agreement in this report are qualified in their entirety by reference to Exhibits 10.1 and 10.2.

Base Indenture, Supplemental Indenture and Notes

In connection with the Offering, the Company entered into an indenture dated as of August 14, 2023 (the "Base Indenture") between the Company and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the "Trustee"), as supplemented by a first supplemental indenture dated as of August 14,

2023, between the Company and the Trustee (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), pursuant to which the Initial Notes were, and any Additional Notes will be, issued.

The Notes are senior secured obligations of the Company and will be effectively senior to all of the Company's unsecured indebtedness to the extent of the collateral securing the Notes. Aside from the foregoing, the Notes will rank pari passu with all of the Company's other senior indebtedness and senior to any of the Company's subordinated indebtedness.

As of the Initial Closing Date, the Notes are secured by a first lien security interest in the Company's and its wholly-owned subsidiary Velo3D US, Inc.'s assets, including, but not limited to, the Company's intellectual property (subject to prior liens and other customary exclusions, in each case, acceptable to High Trail Investors ON LLC, as collateral agent (the "Collateral Agent") in its sole discretion) other than the Company's and such subsidiary's non-U.S. assets and the Company's and such subsidiary's bank accounts (collectively, the "Initial Collateral") as described below under "—Security Agreement". The Notes provide that at or before 30 days after the Initial Closing Date (which period may be extended in the reasonable discretion of the Collateral Agent), the Company will deliver to the Collateral Agent such additional security documents, in form and substance reasonably acceptable to the Collateral Agent, which perfect a first lien security interest in all the Company's remaining assets (subject to prior liens and other customary exclusions, in each case, acceptable to the Collateral Agent in its sole discretion).

The Notes bear interest at 6.00% per annum, payable quarterly in cash on January 1, April 1, July 1 and October 1 of each year, commencing on October 1, 2023, and will mature on August 1, 2026 (the "Maturity Date"). When the Company repays principal on the Notes pursuant to the terms of the Notes, it will be required to pay 115% of the principal amount repaid (the "Repayment Price") plus accrued interest.

On the first day of each three-month period beginning on January 1, 2024 (a "Partial Redemption Date"), holders of the Notes may require the Company to redeem a portion of the principal amount of the Notes at the Repayment Price plus accrued interest. The aggregate principal amount of the Initial Notes that will be redeemable on a Partial Redemption Date will be $8,750,000 for a Repayment Price of $10,062,500.

Subject to certain exceptions, upon the completion of certain equity financings at a price below the conversion price of the Notes, holders of the Notes will have the right to require the Company to use up to 15% of the gross proceeds of the equity financing to redeem a portion of the principal amount of the Notes at the Repayment Price plus accrued interest.

Holders of the Notes will also have the right to require the Company to repurchase all or a portion of their Notes upon the occurrence of certain corporate events constituting a "fundamental change" at the greater of (a) 110% of the conversion value (calculated based on the 5-day volume-weighted-average price ("VWAP") of the Company's common stock during the period beginning on the later of the five VWAP trading days prior to the effective date of such fundamental change and the five VWAP trading days prior to the public announcement of such fundamental change) and (b) 100% of the Repayment Price plus accrued interest.

Holders of the Notes may convert their Notes into shares of the Company's common stock at any time prior to the Maturity Date. The Notes have an initial conversion rate of 475.1722 shares of the Company's common stock per $1,000 principal amount of the Notes (equivalent to an initial conversion price of approximately $2.10 per share of the Company's common stock). The initial conversion price will adjust to 110% of the average of the three daily VWAPs of the Company's common stock during the three trading day period ending on and including August 17, 2023, if such average is lower than the initial conversion price, with a corresponding adjustment to the conversion rate. The conversion rate will also be subject to customary anti-dilution adjustments and adjustments for certain corporate events. Subject to certain conditions, the Company can require conversion of the Notes if the closing price of the Company's common stock exceeds 175% of the conversion price for at least 20 VWAP trading days in a 30 consecutive VWAP trading day period.

The Notes contain customary affirmative and negative covenants (including covenants that limit the Company's ability to incur debt, make investments, transfer assets, engage in certain transactions with affiliates and merge with

other companies, in each case, other than those permitted by the Notes) and events of default. Furthermore, the Company will be required to maintain a minimum of $30 million of unrestricted cash and cash equivalents and to maintain minimum levels of quarterly revenue through the quarter ended June 30, 2026 specified in the Notes. If an event of default occurs, the holders of the Notes may declare the Notes due and payable for cash in an amount equal to the Event of Default Acceleration Amount (as defined in the Notes).

Copies of the Base Indenture, the First Supplemental Indenture and the form of Notes are included in this Current Report on Form 8-K as Exhibits 4.1, 4.2 and 4.3, respectively, and are incorporated herein by reference. The summary descriptions of the terms of the Indenture and the Notes in this report are qualified in their entirety by reference to Exhibits 4.1, 4.2 and 4.3.

Security Agreement

In connection with the Initial Closing, on August 14, 2023, the Company and its wholly-owned subsidiary Velo3D US, Inc. entered into a U.S. security agreement (the "Security Agreement") with the Collateral Agent, which created a first lien security interest in the Company's and such subsidiary's assets, including, but not limited to, the Company's intellectual property (subject to prior liens and other customary exclusions, in each case, acceptable to the Collateral Agent in its sole discretion) and perfected a first lien security interest in the Initial Collateral.

A copy of the Security Agreement is included in this Current Report on Form 8-K as Exhibit 10.3 and is incorporated herein by reference. The summary description of the terms of the Security Agreement in this report is qualified in its entirety by reference to Exhibit 10.3.

Voting Agreements

In connection with the Offering, on August 10, 2023, the Company's officers and directors entered into voting agreements (the "Voting Agreements") with the Company pursuant to which the Company's officers and directors agreed to, among other things, vote at any annual or special meeting of the Company's stockholders their shares of common stock to approve the issuance of the shares of common stock issuable pursuant to the Notes and to provide a proxy to the Company to vote such shares accordingly. In addition, pursuant to the Voting Agreements, subject to certain exceptions, the Company's officers and directors will be bound by certain transfer restrictions with respect to their shares of common stock and certain related securities for a period of 90 days after the date of the Purchase Agreement.

A copy of the form of Voting Agreement is included in this Current Report on Form 8-K as Exhibit 10.4 and is incorporated herein by reference. The summary description of the terms of the Voting Agreement in this report is qualified in its entirety by reference to Exhibit 10.4.

Item 1.02 Termination of a Material Definitive Agreement.

On August 14, 2023, the Company used approximately $22 million of the net proceeds (the "Payoff Amount") from the Offering to repay in full the indebtedness outstanding under the Loan Agreement, which consists of borrowings under the Loan Agreement's revolving credit line and advances under the Loan Agreement's secured equipment loan facility. Upon the lender's receipt of the Payoff Amount, the Loan Agreement was terminated and the release of the lender's security interest in any of the Company's or its subsidiaries' assets or property was authorized.

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

The information required by this Item 2.03 relating to the Notes and the Indenture is set forth under Item 1.01 of this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statement and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Indenture, dated as of August 14, 2023, by and between the Company and U.S. Bank Trust Company, National Association, as trustee.
4.2	First Supplemental Indenture, dated as of August 14, 2023, by and between the Company and U.S. Bank Trust Company, National Association, as trustee.
4.3	Form of Note.
5.1	Opinion of Fenwick & West LLP.
10.1†	Securities Purchase Agreement, dated as of August 10, 2023, by and among the Company andHigh Trail Investors ON LLC and HB SPV I Master Sub LLC, as buyers.
10.2	Placement Agent Agreement, dated as of August 10, 2023, by and between the Company and Credit Suisse Securities (USA) LLC, as placement agent.
10.3†	Security Agreement, dated as of August 14, 2023, by and among the Company, Velo3D US, Inc. and High Trail Investors ON LLC, as collateral agent.
10.4	Form of Voting Agreement (included as Exhibit D to the Securities Purchase Agreement filed as Exhibit 10.1).
23.1	Consent of Fenwick & West LLP (contained in Exhibit 5.1).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

† Portions of this exhibit (indicated with markouts) have been redacted in accordance with Item 601(b)(10)(iv).

SIGNATURES

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

		Velo3D, Inc.	
Date:	August 14, 2023	By:	/s/ Benyamin Buller
		Name:	Benyamin Buller
		Title:	Chief Executive Officer

Exhibit 4.1

VELO3D, INC.

And

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

INDENTURE

Dated as of August 14, 2023

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INDENTURE, dated as of August 14, 2023, by and between Velo3D, Inc., a Delaware corporation, as Issuer (the "Company") and U.S. Bank Trust Company, National Association, a national banking association organized under the laws of United States, as Trustee (the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the "Securities"), as herein provided, up to such principal amount as may from time to time be authorized in or pursuant to one or more resolutions of the Board of Directors or by supplemental indenture.

All things necessary to make this Indenture a valid agreement of the Company in accordance with its terms have been done, and the execution and delivery thereof have been in all respects duly authorized by the parties hereto.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of a Series thereof, as follows:

ARTICLE 1 –
DEFINITIONS AND INCORPORATION BY REFERENCE

1.1 DEFINITIONS.

"Affiliate" of any specified Person means any other Person which, directly or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with, such specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Agent" means any Registrar, Paying Agent, co-registrar or agent for service of notices and demands.

"Board of Directors" means the Board of Directors of the Company or any committee duly authorized to act therefor.

"Board Resolution" means a copy of a resolution certified pursuant to an Officers' Certificate to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification which has been delivered to the Trustee.

"Capital Stock" means, with respect to any Person, any and all shares or other equivalents (however designated) of capital stock, partnership interests or any other participation, right or other interest in the nature of an equity interest in such Person or any option, warrant or other security convertible into any of the foregoing.

"Company" means the party named as such in the first paragraph of this Indenture until a successor replaces such party pursuant to Article 5 of this Indenture, and thereafter means the successor and any other primary obligor on the Securities.

"Company Order" means a written order signed in the name of the Company by two Officers, one of whom must be its Chief Executive Officer or its Chief Financial Officer.

"Company Request" means any written request signed in the name of the Company by its Chief Executive Officer, its President, any Vice President, its Chief Financial Officer or its Treasurer and attested to by its Secretary or any Assistant Secretary.

"Corporate Trust Office" means the office of the Trustee at which at any particular time its corporate trust business relating to this Indenture shall be principally administered.

"Default" means any event that is, or that with the passing of time or giving of notice or both would be, an Event of Default.

"Depository" means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depository" shall mean each Person who is then a Depository hereunder, and if at any time there is more than one such Person, such Persons.

"Dollars" means the currency of the United States of America.

"Euro" means the single currency of participating member states of the economic and monetary union as contemplated in the Treaty on European Union.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Foreign Currency" means any currency or currency unit issued by a government other than the government of the United States of America.

"Foreign Government Obligations" means, with respect to Securities that are denominated in a Foreign Currency, (i) direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by, or acting as an agency or instrumentality of, such government, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by such government, which, in either case under clauses (i) and (ii), are not callable or redeemable at the option of the issuer thereof.

"GAAP" means generally accepted accounting principles consistently applied as in effect in the United States of America from time to time.

"Global Security" or "Global Securities" means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2, evidencing all or part of a Series of Securities issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee, and bearing the legend set forth in Section 2.15(c) (or such other legend(s) as may be applied to such Securities in accordance with Section 2.2(24)).

"Holder" or "Securityholder" means the Person in whose name a Security is registered on the Registrar's books.

"Indebtedness" means (without duplication), with respect to any Person, any indebtedness at any time outstanding, secured or unsecured, contingent or otherwise, which is for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), or evidenced by bonds, notes, debentures or similar instruments, or representing the balance, deferred and unpaid, of the purchase price of any property (excluding any balances that constitute accounts payable or trade payables, and other accrued liabilities arising in the ordinary course of business), if and to the extent any of the foregoing indebtedness would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP.

"Indenture" means this Indenture as amended, restated or supplemented from time to time.

"Interest Payment Date," when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Lien" means, with respect to any property or assets of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or assets (including, without limitation, any capitalized lease obligation, conditional sales or other title retention agreement having substantially the same economic effect as any of the foregoing).

"Maturity," when used with respect to any Security, means the date on which the principal of such Security, or an installment of principal, becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, notice of option to elect payment or otherwise.

"Officer" means the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Treasurer or the Secretary of the Company, or any other officer designated by the Board of Directors, as the case may be.

"Officers' Certificate" means, with respect to any Person, a certificate signed by the Chairman, Chief Executive Officer, President, any Vice President or Secretary and the Chief Financial Officer or any Treasurer of such Person, that shall comply with applicable provisions of this Indenture.

"Opinion of Counsel" means a written opinion from legal counsel, which counsel is reasonably acceptable to the Trustee. The counsel may be an employee of or outside counsel to the Company.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government (including any agency or political subdivision thereof).

"Redemption Date," when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to this Indenture.

"Responsible Officer," when used with respect to the Trustee, means any officer within the corporate trust department or division of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions

similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter relating to this Indenture, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject, and who, in each case, shall have direct responsibility for the administration of this Indenture.

"SEC" means the United States Securities and Exchange Commission as constituted from time to time, or any successor performing substantially the same functions.

"Securities" means the securities that are issued under this Indenture, as amended, restated or supplemented from time to time pursuant to this Indenture.

"Securities Act" means the Securities Act of 1933, as amended.

"Series" or "Series of Securities" means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.1 and 2.2.

"Significant Subsidiary" means (i) any direct or indirect Subsidiary of the Company that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof, or (ii) any group of direct or indirect Subsidiaries of the Company that, taken together as a group, would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

"Stated Maturity," when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security and the interest thereon, or such installment of principal or interest, is due and payable, and when used with respect to any other Indebtedness, means the date specified in the instrument governing such Indebtedness as the fixed date on which the principal of such Indebtedness, or any installment of interest thereon, is due and payable.

"Subsidiary" of any specified Person means any corporation, limited liability company, partnership, joint venture, association or other business entity, whether now existing or hereafter organized or acquired, (i) in the case of a corporation, of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is held, directly or indirectly, by such Person or any of its Subsidiaries; or (ii) in the case of a partnership, joint venture, association or other business entity, with respect to which such Person or any of its Subsidiaries has the power to direct or cause the direction of the management and policies of such entity by contract or otherwise, or if in accordance with GAAP such entity is consolidated with such Person for financial statement purposes.

"TIA" means the Trust Indenture Act of 1939 (15 U.S. Code Section 77aaa-77bbbb) as in effect on the date of this Indenture (except as provided in Section 8.3).

"Trustee" means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture, and thereafter means the successor, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

"U.S. Government Obligations" means direct non-callable obligations of, or non-callable obligations guaranteed by, the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

1.2. OTHER DEFINITIONS.

The definitions of the following terms may be found in the sections indicated as follows:

TERM	DEFINED IN SECTION
"Bankruptcy Law"	6.1
"Business Day"	10.7
"Covenant Defeasance"	9.3
"Custodian"	6.1
"Event of Default"	6.1
"Journal"	10.15
"Judgment Currency"	10.16
"Legal Defeasance"	9.2
"Legal Holiday"	10.7
"Market Exchange Rate"	10.15
"Paying Agent"	2.4
"Place of Payment"	10.7
"Registrar"	2.4
"Required Currency"	10.16
"Service Agent"	2.4

1.3. INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT.

Whenever this Indenture refers to a provision of the TIA, the portion of such provision required to be incorporated herein in order for this Indenture to be qualified under the TIA is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC.

"Indenture securities" means the Securities.

"Indenture securityholder" means a Holder or Securityholder.

"Indenture to be qualified" means this Indenture.

"Indenture trustee" or "institutional trustee" means the Trustee.

"Obligor on the indenture securities" means the Company or any other obligor on the Securities.

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

1.4. RULES OF CONSTRUCTION.

Unless the context otherwise requires:

(1) a term has the meaning assigned to it herein, whether defined expressly or by reference;

(2) unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) words used herein implying any gender shall apply to each gender;

(6) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(7) "$," refers to Dollars, or such other money of the United States that at the time of payment is legal tender for payment of public and private debts.

ARTICLE 2 –
THE SECURITIES

2.1. ISSUABLE IN SERIES.

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is $105,000,000. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth in a Board Resolution, a supplemental indenture or an Officers' Certificate detailing the adoption of the terms thereof pursuant to the authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officers' Certificate or supplemental indenture may provide for the method by which specified terms (such as interest rate, Stated Maturity, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, PROVIDED, that all Series of Securities shall be equally and ratably entitled to the benefits of the Indenture.

2.2. ESTABLISHMENT OF TERMS OF SERIES OF SECURITIES.

At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.2(1) and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2(2) through 2.2(24)) by a Board Resolution, a supplemental indenture or an Officers' Certificate, in each case, pursuant to authority granted under a Board Resolution:

(1) the title of the Series (which shall distinguish the Securities of that particular Series from the Securities of any other Series);

(2) any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Section 2.7, 2.8, 2.11, 3.6 or 8.5);

(3) the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;

(4) the date or dates on which the principal of the Securities of the Series is payable;

(5) the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest, if any, shall accrue, the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any Interest Payment Date;

(6) the place or places where the principal of, and interest and premium, if any, on, the Securities of the Series shall be payable, or the method of such payment, if by wire transfer, mail or other means;

(7) if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;

(8) the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof, and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(9) the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof, and other detailed terms and provisions of such repurchase obligations;

(10) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which the Securities of the Series shall be issuable;

(11) the forms of the Securities of the Series in bearer (if to be issued outside of the United States of America) or fully registered form (and, if in fully registered form, whether the Securities will be issuable as Global Securities);

(12) if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.2;

(13) the currency of denomination of the Securities of the Series, which may be Dollars or any Foreign Currency, including, but not limited to, the Euro, and, if such currency of denomination is a composite currency other than the Euro, the agency or organization, if any, responsible for overseeing such composite currency;

(14) the designation of the currency, currencies or currency units in which payment of the principal of, and interest and premium, if any, on, the Securities of the Series will be made;

(15) if payments of principal of, or interest or premium, if any, on, the Securities of the Series are to be made in one or more currencies or currency units other than that or those in which such Securities are denominated, the manner in which the exchange rate with respect to such payments will be determined;

(16) the manner in which the amounts of payment of principal of, or interest and premium, if any, on, the Securities of the Series will be determined, if such amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;

(17) the provisions, if any, relating to any collateral provided for the Securities of the Series;

(18) any addition to or change in the covenants set forth in Articles 4 or 5 that applies to Securities of the Series;

(19) any addition to or change in the Events of Default which applies to any Securities of the Series, any provision for the payment of additional interest or liquidated damages in connection with any Event of Default, and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.2;

(20) the terms and conditions, if any, for conversion of the Securities into or exchange of the Securities for shares of common stock, preferred stock, other debt securities, or warrants, subscription rights or units for common stock, preferred stock or other securities of any kind of the Company that apply to Securities of the Series;

(21) any Trustees, depositories, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein;

(22) the terms and conditions, if any, upon which the Securities shall be subordinated in right of payment to other Indebtedness of the Company;

(23) if applicable, that the Securities of the Series, in whole or any specified part, shall be defeasible pursuant to Article 9; and

(24) any other terms of the Securities of the Series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 8.1, but which may modify or delete any provision of this Indenture insofar as it applies to such Series).

All Securities of any one Series need not be issued at the same time, and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture or Officers' Certificate referred to above, however, the authorized principal amount of any Series may not be increased to provide for issuances of additional Securities of such Series, unless otherwise provided in such Board Resolution, supplemental indenture or Officers' Certificate.

2.3. EXECUTION AND AUTHENTICATION.

The Securities shall be executed on behalf of the Company by two Officers of the Company or an Officer and an Assistant Secretary of the Company. Each such signature may be either manual, electronic or facsimile. The Company's seal may be impressed, affixed, imprinted or reproduced on the Securities and may be in facsimile form.

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

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture. The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate, upon receipt by the Trustee of a Company Order. Such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Each Security shall be dated the date of its authentication.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture hereto or Officers' Certificate delivered pursuant to Section 2.2, except as provided in Section 2.8.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.1) shall be fully protected in relying on: (a) the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officers' Certificate complying with Section 10.4, and (c) an Opinion of Counsel complying with Section 10.4.

The Trustee shall have the right to decline to authenticate and deliver any Securities of any Series: (a) if the Trustee, being advised in writing by outside counsel, determines that such action may not lawfully be taken; or (b) if the Trustee in good faith shall reasonably determine that such action would expose the Trustee to personal liability, or cause it to have a conflict of interest with respect to Holders of any then outstanding Series of Securities.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Any appointment shall be evidenced by an instrument signed by an authorized officer of the Trustee, a copy of which shall be furnished to the Company. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

2.4. REGISTRAR AND PAYING AGENT.

The Company shall maintain in each Place of Payment for any Series of Securities (i) an office or agency where such Securities may be presented for registration of transfer or for exchange ("Registrar"), (ii) an office or agency where such Securities may be presented for payment ("Paying Agent"),and PROVIDED, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the register for the Securities maintained by the Registrar), and (iii) an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served ("Service Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-Registrars and Service Agents and one or more additional Paying Agents. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office, or to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee as set forth in Section 10.2, except for the service of legal process on the Company. The Company or any of its Subsidiaries may also act as Paying Agent. If the Company acts as Paying Agent, it shall segregate the money held by it for the payment of principal of, and interest and premium, if any, on, the Securities and hold it as a separate trust fund. The Company may change any Paying Agent, Registrar, co-registrar, Service Agent or any other Agent without notice to any Securityholder.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes, and may from time to time rescind such designations; PROVIDED, HOWEVER, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any Series for such purposes. The Company hereby initially designates the Corporate Trust Office of the Trustee as such office of the Company. The Company shall give prompt written notice to the Trustee of such designation or rescission, and of any change in the location of any such other office or agency.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or Service Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any such Agent. If the Company fails to maintain a Registrar, Paying Agent, or Service Agent and demands, or fails to give the foregoing notice, the Trustee shall act as such. The Company hereby appoints the Trustee as the initial Registrar, Paying Agent and Service Agent for each Series unless another Registrar, Paying Agent or Service Agent, as the case may be, is appointed prior to the time Securities of that Series are first issued. .

2.5. PAYING AGENT TO HOLD ASSETS IN TRUST.

The Trustee as Paying Agent shall, and the Company shall require each Paying Agent other than the Trustee to agree in writing that each Paying Agent shall, hold in trust for the benefit of the Holders of any Series of Securities or the Trustee all assets

held by the Paying Agent for the payment of principal of, or interest or premium, if any, on, such Series of Securities (whether such assets have been distributed to it by the Company or any other obligor on such Series of Securities), and the Company and the Paying Agent shall notify the Trustee in writing of any Default by the Company (or any other obligor on such Series of Securities) in making any such payment. The Company at any time may require a Paying Agent to distribute all assets held by it to the Trustee and account for any assets disbursed, and the Trustee may, at any time during the continuance of any payment default with respect to any Series of Securities, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Company to the Paying Agent, the Paying Agent shall have no further liability for such assets.

2.6. SECURITYHOLDER LISTS.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities. If the Trustee is not the Registrar, the Company shall furnish to the Trustee as of each regular record date for the payment of interest on the Securities of a Series and before each related Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders of each Series of Securities.

2.7. TRANSFER AND EXCHANGE.

When Securities of a Series are presented by the Holder to the Registrar with a request to register the transfer thereof, the Registrar shall register the transfer as requested if the requirements of applicable law are met, and when such Securities of a Series are presented to the Registrar with a request to exchange them for an equal principal amount of other authorized denominations of Securities of the same Series, the Registrar shall make the exchange as requested. To permit transfers and exchanges, upon surrender of any Security for registration of transfer at the office or agency maintained pursuant to Section 2.4, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request.

If Securities are issued as Global Securities, the provisions of Section 2.15 shall apply.

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

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Registrar or a co-registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar or a co-registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

Any exchange or transfer shall be without charge, except that the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to a transfer or exchange, but this provision shall not apply to any exchange pursuant to Section 2.11, 3.6 or 8.5. The Trustee shall not be required to register transfers of Securities of any Series, or to exchange Securities of any Series, for a period of 15 days before the record date for selection for redemption of such Securities. The Trustee shall not be required to exchange or register transfers of Securities of any Series called or being called for redemption in whole or in part, except the unredeemed portion of such Security being redeemed in part.

2.8. REPLACEMENT SECURITIES.

If a mutilated Security is surrendered to the Trustee, or if the Holder of a Security presents evidence to the satisfaction of the Company and the Trustee that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding. An indemnity bond may be required by the Company or the Trustee that is sufficient in the reasonable judgment of the Company or the Trustee, as the case may be, to protect the Company, the Trustee or any Agent from any loss which any of them may suffer if a Security is replaced. The Company may charge such Holder for the Company's out-of-pocket expenses in replacing a Security, including the fees and expenses of the Trustee. Every replacement Security shall constitute an original additional obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that Series duly issued hereunder.

2.9. OUTSTANDING SECURITIES.

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.9 as not outstanding.

If a Security is replaced pursuant to Section 2.8 (other than a mutilated Security surrendered for replacement), it ceases to be outstanding until the Company and the Trustee receive proof satisfactory to each of them that the replaced Security is held by a bona fide purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.8.

If a Paying Agent holds on a Redemption Date or the Stated Maturity money sufficient to pay the principal of, premium, if any, and accrued interest on, Securities payable on that date, and is not prohibited from paying such money to the Holders thereof pursuant to the terms of this Indenture (PROVIDED, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made), then on and after that date and upon payment of such money to the Holder, such Securities will be cancelled and cease to be outstanding and interest on them ceases to accrue.

A Security does not cease to be outstanding solely because the Company or an Affiliate holds the Security.

2.10. WHEN TREASURY SECURITIES DISREGARDED; DETERMINATION OF HOLDERS' ACTION.

In determining whether the Holders of the required aggregate principal amount of the Securities of any Series have concurred in any direction, waiver or consent, the Securities of any Series owned by the Company or any other obligor on such Securities, or by any Affiliate of any of them, shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities of such Series which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities of such Series so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities of such Series and that the pledgee is not the Company or any other obligor on the Securities of such Series, or an Affiliate of any of them.

2.11. TEMPORARY SECURITIES.

Until definitive Securities are ready for delivery, the Company may prepare and execute, and upon the receipt of a Company Order, the Trustee shall authenticate, temporary Securities. Temporary Securities shall be substantially in the form, and shall carry all rights, of definitive Securities, but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and execute, and upon the receipt of a Company Order, the Trustee shall authenticate, definitive Securities in exchange for temporary Securities without charge to the Holder.

2.12. CANCELLATION.

All Securities surrendered for payment, redemption or registration of transfer or exchange, or for credit against any sinking fund payment, shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee, at the written direction of the Company, or, at the direction of the Company, the Registrar or the Paying Agent, and no one else, shall cancel, and at the written request of the Company shall dispose of, all Securities surrendered for transfer, exchange, payment or cancellation. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.12. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 2.12, except as expressly permitted by this Indenture.

2.13. PAYMENT OF INTEREST; DEFAULTED INTEREST; COMPUTATION OF INTEREST.

Except as otherwise provided as contemplated by Section 2.2 with respect to any Series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security is registered at the close of business on the regular record date for such interest, as provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the terms of such Series.

If the Company defaults in a payment of interest on the Securities, it shall pay the defaulted amounts, plus any interest payable on defaulted amounts pursuant to Section 4.1, to the Persons who are Securityholders on a subsequent special record date, which date shall be the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, or the next succeeding Business Day if such date is not a Business Day. At least 15 days before the special record date, the Company shall deliver or cause to be delivered to each Securityholder, with a copy to the Trustee, a notice that states the special record date, the payment date and the amount of defaulted interest, and interest payable on such defaulted interest, if any, to be paid.

Except as otherwise specified as contemplated by Section 2.2 for Securities of any Series, interest on the Securities of each Series shall be computed on the basis of a 360-day year of twelve 30-day months.

2.14. CUSIP NUMBER.

The Company in issuing the Securities may use one or more "CUSIP" numbers, and, if the Company does so, the Trustee shall use the CUSIP number(s) in notices of redemption or exchange as a convenience to Holders, PROVIDED, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number(s) printed in the notice or on the

Securities, and that reliance may be placed only on the other identification numbers printed on the Securities, and that any such redemption or exchange shall not be affected by any defect in or omission of any such numbers. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers assigned to the Securities.

2.15. PROVISIONS FOR GLOBAL SECURITIES.

(a) A Board Resolution, a supplemental indenture hereto or an Officers' Certificate shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities, and the Depository for such Global Securities or Securities.

(b) Notwithstanding any provisions to the contrary contained in Section 2.7 and in addition thereto, if, and only if the Depository (i) at any time is unwilling or unable to continue as Depository for such Global Security or ceases to be a clearing agency registered under the Exchange Act and (ii) a successor Depository is not appointed by the Company within 90 days after the date the Company is so informed in writing or becomes aware of the same, the Company promptly will execute and deliver to the Trustee definitive Securities, and the Trustee, upon receipt of a Company Request for the authentication and delivery of such definitive Securities (which the Company will promptly execute and deliver to the Trustee) and an Officers' Certificate to the effect that such Global Security shall be so exchangeable, will authenticate and deliver definitive Securities, without charge, registered in such names and in such authorized denominations as the Depository shall direct in writing (pursuant to instructions from its direct and indirect participants or otherwise) in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms. Upon the exchange of a Global Security for definitive Securities, such Global Security shall be canceled by the Trustee. Unless and until it is exchanged in whole or in part for definitive Securities, as provided in this Section 2.15(b), a Global Security may not be transferred except as a whole by the Depository with respect to such Global Security to a nominee of such Depository, by a nominee of such Depository to such Depository or another nominee of such Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.

(c) Any Global Security issued hereunder shall bear a legend in substantially the following form:

> "This Security is a Global Security within the meaning of the Indenture hereinafter referred to, and is registered in the name of the Depository or a nominee of the Depository. This Security is exchangeable for Securities registered in the name of a Person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository."

(d) The Depository, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

(e) Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of, and interest and premium, if any, on, any Global Security shall be made to the Depository or its nominee in its capacity as the Holder thereof.

(f) Except as provided in Section 2.15(e) above, the Company, the Trustee and any Agent shall treat a Person as the Holder of such principal amount of outstanding Securities of any Series represented by a Global Security as shall be specified in a written statement of the Depository (which may be in the form of a participants' list for such Series) with respect to such Global Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture, PROVIDED, that until the Trustee is so provided with a written statement, it may treat the Depository or any other Person in whose name a Global Security is registered as the owner of such Global Security for the purpose of receiving payment of the principal of, and any premium and (subject to Section 2.13) any interest on, such Global Security and for all other purposes whatsoever, and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

2.16. PERSONS DEEMED OWNERS.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, the Registrar and any agent of the Company, the Registrar or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of the principal of, and any premium and (subject to Section 2.13) any interest on, such Security and for all other purposes whatsoever, and none of the Company, the Trustee, the Registrar or any agent of the Company, the Trustee or the Registrar shall be affected by notice to the contrary.

ARTICLE 3 – REDEMPTION

3.1. NOTICES TO TRUSTEE.

The Company may, with respect to any Series of Securities, reserve the right to redeem and pay the Series of Securities, or may covenant to redeem and pay the Series of Securities or any part thereof, prior to the Stated Maturity thereof at such time and on

such terms as provided for in such Securities or the related Board Resolution, supplemental indenture or Officers' Certificate. If a Series of Securities is redeemable and the Company elects to redeem all or part of such Series of Securities, it shall notify the Trustee in writing of the Redemption Date and the principal amount of Securities to be redeemed at least 45 days (unless a shorter notice shall be satisfactory to the Trustee) before the Redemption Date. Any such notice may be canceled at any time prior to notice of such redemption being delivered to any Holder, and shall thereby be void and of no effect.

3.2. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

Unless otherwise indicated for a particular Series of Securities by a Board Resolution, a supplemental indenture or an Officers' Certificate, if fewer than all of the Securities of a Series are to be redeemed, the Trustee shall select the Securities of a Series to be redeemed pro rata, by lot or by any other method that the Trustee considers fair and appropriate (unless the Company specifically directs the Trustee otherwise) subject, in the case of Global Securities, to the applicable rules and procedures of the Depository and, if such Securities are listed on any securities exchange, by a method that complies with the requirements of such exchange.

The Trustee shall make the selection from Securities of a Series outstanding and not previously called for redemption, and shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed at least 35 but not more than 60 days before the Redemption Date. Securities of a Series in denominations of $1,000 may be redeemed only in whole. The Trustee may select for redemption portions of the principal of Securities of a Series that have denominations larger than $1,000. Securities of a Series and portions of them it selects shall be in amounts of $1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.2(10), the minimum principal denomination for each Series and integral multiples thereof. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. Notwithstanding the above, the applicable procedures of the Depository regarding the selection of Securities issued as Global Securities shall govern.

Neither the Trustee nor any Agent will have any responsibility for any action taken or not taken by the Depository. The Trustee and the Paying Agent will have no responsibility or obligation to any beneficial owner of a Global Security or a depository participant or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any Redemption Notice) or the payment of any amount, under or with respect to such Securities. The rights of beneficial owners in any Global Securities will be exercised only through the Depository subject to the Depository Procedures. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

3.3. NOTICE OF REDEMPTION.

Unless otherwise indicated for a particular Series by Board Resolution, a supplemental indenture hereto or an Officers' Certificate, at least 30 days, and no more than 60 days, before a Redemption Date, the Company shall deliver, or cause to be delivered, a notice of redemption by first-class mail to each Holder of Securities to be redeemed at his or her last address as the same appears on the registry books maintained by the Registrar , or, with respect to Securities issued as Global Securities, such notice shall be delivered in accordance with the applicable procedures of the Depository. The notice shall identify the Securities to be redeemed and shall state:

(1) the Redemption Date;

(2) the redemption price, and that such redemption price shall become due and payable on the Redemption Date;

(3) if any Security of a Series is being redeemed in part, the portion of the principal amount of such Security of a Series to be redeemed and that, after the Redemption Date and upon surrender of such Security of a Series, a new Security or Securities in principal amount equal to the unredeemed portion will be issued;

(4) the name and address of the Paying Agent;

(5) that Securities of a Series called for redemption must be surrendered to the Paying Agent to collect the redemption price, and the place or places where each such Security is to be surrendered for such payment;

(6) that, unless the Company defaults in making the redemption payment, interest on the Securities of a Series called for redemption ceases to accrue on the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the redemption price upon surrender to the Paying Agent of the Securities redeemed;

(7) if fewer than all of the Securities of a Series are to be redeemed, the identification of the particular Securities of a Series (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities of a Series to be redeemed and the aggregate principal amount of Securities of a Series to be outstanding after such partial redemption.

(8) the CUSIP number, if any, printed on the Securities being redeemed; and

(9) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's sole expense; provided, however, that the Company has delivered to the Trustee prior to the notice date, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice and the form of such notice.

3.4. EFFECT OF NOTICE OF REDEMPTION.

Once the notice of redemption described in Section 3.3 is delivered, Securities of a Series called for redemption become due and payable on the Redemption Date and at the redemption price, plus interest, if any, accrued to the Redemption Date. Upon surrender to the Trustee or Paying Agent, such Securities of a Series shall be paid at the redemption price, plus accrued interest, if any, to the Redemption Date; PROVIDED, that if the Redemption Date is after a regular interest payment record date and on or prior to the next Interest Payment Date, the accrued interest shall be payable to the Holder of the redeemed Securities registered on the relevant record date, as specified by the Company in the notice to the Trustee pursuant to Section 3.1.

3.5. DEPOSIT OF REDEMPTION PRICE.

On or prior to the Redemption Date (but no later than 11:00 A.M. Eastern Time on such date), the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

On and after any Redemption Date, if money sufficient to pay the redemption price of, and accrued interest on, Securities called for redemption shall have been made available in accordance with the preceding paragraph and the Company and the Paying Agent are not prohibited from paying such moneys to Holders, the Securities called for redemption will cease to accrue interest and the only right of the Holders of such Securities will be to receive payment of the redemption price of and, subject to the proviso in Section 3.4, accrued and unpaid interest on such Securities to the Redemption Date. If any Security called for redemption shall not be so paid, interest will be paid, from the Redemption Date until such redemption payment is made, on the unpaid principal of the Security and any interest or premium, if any, not paid on such unpaid principal, in each case, at the rate and in the manner provided in the Securities.

3.6. SECURITIES REDEEMED IN PART.

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

ARTICLE 4 – COVENANTS

4.1. PAYMENT OF SECURITIES.

The Company shall pay the principal of, and interest and premium, if any, on, each Series of Securities on the dates and in the manner provided in such Securities and this Indenture.

An installment of principal or interest shall be considered paid on the date it is due if the Trustee or Paying Agent holds on that date money designated for and sufficient to pay such installment and is not prohibited from paying such money to the Holders pursuant to the terms of this Indenture or otherwise.

The Company shall pay interest on overdue principal, and overdue interest, to the extent lawful, at the rate specified in the Series of Securities.

4.2. SEC REPORTS.

The Company will deliver to the Trustee within 15 days after the filing of the same with the SEC, copies of the quarterly and annual reports and of the information, documents and other reports, if any, which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; PROVIDED, HOWEVER, that each such report or document will be deemed to be so delivered to the Trustee if the Company files such report or document with the SEC through the SEC's EDGAR database no later than the time such report or document is required to be filed with the SEC pursuant to the Exchange Act. Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will file with the SEC, to the extent permitted, and provide the Trustee with, such quarterly and annual reports and such information, documents and other reports specified in Sections 13 and 15(d) of the Exchange Act. The Company will also comply with the other provisions of TIA Section 314(a).

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). The Trustee will not be responsible and shall have no liability whatsoever to determine whether any financial information has been filed or posted on the EDGAR system (or any successor electronic delivery procedure) or have any duty to monitor or determine whether the Company has delivered the reports described under this Section 4.2 or otherwise complied with its obligation under this Section 4.2.

4.3. WAIVER OF STAY, EXTENSION OR USURY LAWS.

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

4.4. COMPLIANCE CERTIFICATE.

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate which complies with TIA Section 314(a)(4) stating that a review of the activities of the Company and its Subsidiaries during such fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and that there is no default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, or interest or premium, if any, on, the Securities is prohibited, or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b)(i) If any Default or Event of Default has occurred and is continuing or (ii) if any Holder seeks to exercise any remedy hereunder with respect to a claimed Default under this Indenture or the Securities, within five Business Days after the Company becoming aware of such occurrence the Company shall deliver to the Trustee an Officers' Certificate specifying such event, notice or other action and what action the Company is taking or proposes to take with respect thereto.

4.5. CORPORATE EXISTENCE.

Subject to Article 5, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, in accordance with the organizational documents (as the same may be amended from time to time) of the Company and the rights (charter and statutory), licenses and franchises of the Company; PROVIDED, HOWEVER, that the Company shall not be required to preserve any such right, license or franchise, or its corporate existence, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not adverse in any material respect to the Holders.

ARTICLE 5 – SUCCESSOR CORPORATION

5.1. LIMITATION ON CONSOLIDATION, MERGER AND SALE OF ASSETS.

(a) The Company will not, in any transaction or series of transactions, merge or consolidate with or into, or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets (as an entirety or substantially as an entirety in one transaction or a series of related transactions), to any Person or Persons, unless at the time of and after giving effect thereto (i) either (A) if the transaction or series of transactions is a merger or consolidation, the Company shall be the surviving Person of such merger or consolidation, or (B) the Person formed by such consolidation or into which the Company is merged or to which the properties and assets of the Company are transferred (any such surviving Person or transferee Person being the "Surviving Entity") shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia, or a corporation or comparable legal entity organized under the laws of a foreign jurisdiction and shall expressly assume by a supplemental indenture executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company (including, without limitation, the obligation to pay the principal of, and premium and interest, if any, on, the Securities and the performance of the other covenants) under the Securities of each Series and this Indenture, and in each case, this Indenture shall remain in full force and effect; and (ii) immediately before and immediately after giving effect to such transaction or series of transactions on a pro forma basis (including, without limitation, any Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing.

(b) In connection with any consolidation, merger or transfer of assets contemplated by this Section 5.1, the Company shall deliver, or cause to be delivered, to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer, and the supplemental indenture in respect thereto, comply with this Section 5.1, and that all conditions precedent herein provided for relating to such transaction or transactions have been complied with.

5.2. SUCCESSOR PERSON SUBSTITUTED.

Upon any consolidation, merger or transfer of all or substantially all of the assets of the Company in accordance with Section 5.1 above, the successor corporation formed by such consolidation, or into which the Company is merged or to which such transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter (except with respect to any such transfer which is a lease) the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 6 –
DEFAULTS AND REMEDIES

6.1. EVENTS OF DEFAULT.

An "Event of Default," wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution, supplemental indenture or Officers' Certificate, it is provided that such Series shall not have the benefit of said Event of Default:

(1) there is a default in the payment of any principal of, or premium, if any, on, the Securities when the same becomes due and payable at Maturity, upon acceleration, redemption or otherwise;

(2) there is a default in the payment of any interest on any Security of a Series when the same becomes due and payable, and the Default continues for a period of 30 days;

(3) the Company defaults in the observance or performance of any other covenant in the Securities of a Series or in this Indenture for 90 days after written notice from the Trustee or the Holders of not less than 25% in the aggregate principal amount of the Securities of such Series then outstanding, which notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default";

(4) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due;

(5) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Significant Subsidiary in an involuntary case;

(B) appoints a Custodian of the Company or any Significant Subsidiary, or for all or substantially all of the property of the Company or any Significant Subsidiary; or

(C) orders the liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 90 consecutive days; or

(6) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate, in accordance with Section 2.2(19).

The term "Bankruptcy Law" means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee may withhold notice of any Default (except in the payment of the principal of, or interest or premium, if any, on, the Securities) to the Holders of the Securities of any Series in accordance with Section 7.5. When a Default is cured, it ceases to exist.

The Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been actually received by a Responsible Officer at the Corporate Trust Office of the Trustee from the Company, a Paying Agent, any Holder or any agent of any Holder.

6.2. ACCELERATION.

If an Event of Default with respect to Securities of any Series at the time outstanding (other than an Event of Default arising under Section 6.1(4) or (5)) occurs and is continuing, the Trustee by written notice to the Company, or the Holders of not less than 25% in aggregate principal amount of the Securities of that Series then outstanding by written notice to the Company and the Trustee, may declare that the entire principal amount of all the Securities of that Series then outstanding plus accrued and unpaid interest to the date of acceleration are immediately due and payable, in which case such amounts shall become immediately due and payable; PROVIDED, HOWEVER, that after such acceleration but before a judgment or decree based on such acceleration is obtained by the Trustee, the Holders of a majority in aggregate principal amount of the outstanding Securities of that Series may rescind and annul such acceleration and its consequences if (i) all existing Events of Default, other than the nonpayment of accelerated principal, interest or premium, if any, that has become due solely because of the acceleration, have been cured or waived, (ii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid and (iii) the rescission would not conflict with any judgment or decree. No such rescission shall affect any subsequent Default or impair any right consequent thereto. In case an Event of Default specified in Section 6.1(4) or (5) with respect to the Company occurs, such principal, premium, if any, and interest amount with respect to all of the Securities of that Series shall be due and payable immediately without any declaration or other act on the part of the Trustee or the Holders of the Securities of that Series.

6.3. REMEDIES.

If an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy by proceeding at law or in equity to collect the payment of the principal of, or interest and premium, if any, on, the Securities of that Series, or to enforce the performance of any provision of the Securities of that Series or this Indenture.

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

6.4. WAIVER OF PAST DEFAULTS AND EVENTS OF DEFAULT.

Subject to Sections 6.2, 6.7 and 8.2, the Holders of a majority in principal amount of the Securities of any Series then outstanding by written notice to the Trustee have the right to waive any existing Default or Event of Default with respect to such Series or compliance with any provision of this Indenture (with respect to such Series) or the Securities of such Series. Upon any such waiver, such Default with respect to such Series shall cease to exist, and any Event of Default with respect to such Series arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto. This Section 6.4 shall be in lieu of TIA Section 316(a)(1)(B), and TIA Section 316(a)(1)(B) is hereby expressly excluded from this Indenture and Section as permitted by the TIA.

6.5. CONTROL BY MAJORITY.

Subject to Sections 6.2, 6.7 and 8.2, the Holders of a majority in principal amount of the Securities of any Series then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee by this Indenture with respect to such Series. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture, or that the Trustee determines may be unduly prejudicial to the rights of another Securityholder or the Trustee, or that may involve the Trustee in personal liability; PROVIDED, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. This Section 6.5 shall be in lieu of TIA Section 316(a)(1)(A), and TIA Section 316(a)(1)(A) is hereby expressly excluded from this Indenture and Section as permitted by the TIA.

6.6. LIMITATION ON SUITS.

Subject to Section 6.7, a Securityholder may not institute any proceeding or pursue any remedy with respect to this Indenture or the Securities of a Series unless:

(1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to the Securities of that Series;

(2) the Holders of at least 25% in aggregate principal amount of the Securities of such Series then outstanding make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to be incurred in compliance with such request;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities of such Series then outstanding.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder, or to obtain a preference or priority over another Securityholder.

6.7. RIGHTS OF HOLDERS TO RECEIVE PAYMENT.

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

6.8. COLLECTION SUIT BY TRUSTEE.

If an Event of Default in payment of principal, interest or premium, if any, specified in Section 6.1(1) or (2) with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company (or any other obligor on the Securities of that Series) for the whole amount of unpaid principal and premium, if any, and accrued interest remaining unpaid, together with interest on overdue principal and premium, if any, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate then borne by the Securities of that Series, and such further amounts as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, as set forth in Section 7.7.

6.9. TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee may file such proofs of claim and other papers or documents, and take other actions (including sitting on a committee of creditors), as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), any of their respective creditors or any of their respective property, and the Trustee shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings, and any custodian in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7, and to the extent that such payment of reasonable compensation, expenses, disbursements and advances in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or accept or adopt on behalf of any Securityholder, any plan of reorganization, arrangement, adjustment or composition affecting the Securities of a Series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceedings.

6.10. PRIORITIES.

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: to Securityholders for amounts then due and unpaid for the principal of, and interest and premium, if any, on, the Securities in respect of which, or for the benefit of which, such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities; for principal and any premium and interest, respectively; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall deliver to each Securityholder a notice that states the record date, the payment date and amount to be paid.

6.11. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10% in principal amount of the Securities of a Series then outstanding.

ARTICLE 7 – TRUSTEE

7.1. DUTIES OF TRUSTEE.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the same circumstances in the conduct of his own affairs.

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

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

(2) In the absence of gross negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

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

(1) This paragraph does not limit the effect of paragraph (b) of this Section 7.1.

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

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Sections 6.2 and 6.5.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds, or otherwise incur any liability, including financial liability, in the performance of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risk or liability is not reasonably assured to it. The Trustee shall be under no obligation to exercise any of the rights or power vested in it by this Indenture at the request or direction of any of the Holder pursuant to this Indenture, unless such Holders shall have offered, and if requested provided, to the Trustee indemnity satisfactory to the Trustee against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(e) Whether or not therein expressly so provided, paragraphs (a), (b), (c) and (d) of this Section 7.1 shall govern every provision of this Indenture that in any way relates to the Trustee.

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

(g) The Paying Agent, the Registrar and any authenticating agent shall be entitled to the protections, immunities and standard of care set forth in paragraphs (a), (b), (c), (d) and (f) of this Section 7.1 and in Section 7.2 with respect to the Trustee.

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

7.2. RIGHTS OF TRUSTEE.

(a) Subject to Section 7.1:

(1) The Trustee may rely on, and shall be protected in acting or refraining from acting upon, any document reasonably believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(2) Before the Trustee acts or refrains from acting, it may require and may conclusively rely on an Officers' Certificate or an Opinion of Counsel, or both, which shall conform to the provisions of Section 10.5. The Trustee shall be protected and shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(3) The Trustee may act through agents and attorneys, and shall not be responsible for the misconduct or negligence of any agent appointed by it with due care.

(4) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers.

(5) The Trustee may consult with counsel of its selection, which may be counsel to the Company, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(6) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have provided to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby.

(7) The Trustee shall not be deemed to have knowledge of any fact or matter (including, without limitation, a Default or Event of Default) unless such fact or matter is known to a Responsible Officer of the Trustee.

(8) Unless otherwise expressly provided herein or in the Securities of a Series or the related Board Resolution, supplemental indenture or Officers' Certificate, the Trustee shall not have any responsibility with respect to reports, notices, certificates or other documents filed with it hereunder, except to make them available for inspection, at reasonable times, by Securityholders, it being understood that delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (except as set forth in Section 4.4).

(9) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document.

(10) The permissive right of the Trustee to take actions permitted by this Indenture will not be construed as an obligation or duty to do so.

(11) The rights, privileges, protection, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other person employed to act hereunder.

(12) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any Person authorized to sign an Officers' Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(13) In no event shall the Trustee be responsible or liable for special, punitive, indirect or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

7.3. INDIVIDUAL RIGHTS OF TRUSTEE.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities, and may make loans to, accept deposits from, perform services for or otherwise deal with the Company, or any Affiliate thereof, with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, shall be subject to Sections 7.10 and 7.11.

7.4. TRUSTEE'S DISCLAIMER.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities (except that the Trustee represents that it is duly authorized to execute and deliver this Indenture and authenticate the Securities and perform its obligations hereunder), and the Trustee shall not be accountable for the Company's use of the proceeds from the sale of Securities or any money paid to the Company or pursuant to the Company's direction pursuant to the terms of this Indenture, and the Trustee shall not be responsible for any statement or recital herein or any statement in the Securities or any other document in connection with the sale of the Securities or pursuant to this Indenture other than its certificates of authentication.

7.5. NOTICE OF DEFAULT.

If a Default or an Event of Default occurs and is continuing with respect to the Securities of any Series, and if it is known to a Responsible Officer of the Trustee, the Trustee shall deliver to each Securityholder of the Securities of that Series notice of the Default or the Event of Default, as the case may be, within 90 days after it occurs or, if later, after a Responsible Officer of the Trustee has knowledge of such Default or Event of Default (except if such Default or Event of Default has been validly cured or waived before the giving of such notice). Except in the case of a Default or an Event of Default in payment of the principal of, or interest or premium, if any, on, any Security of any Series, the Trustee may withhold the notice if and so long as it determines in good faith determine(s) that withholding the notice is in the interests of the Securityholders of that Series.

7.6. REPORTS BY TRUSTEE TO HOLDERS.

If and to the extent required by the TIA, within 60 days after May 15 of each year, commencing the May 15 following the date of this Indenture, the Trustee shall deliver to each Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a). The Trustee also shall comply with TIA Sections 313(b) and 313(c).

A copy of each report at the time of its delivering to Securityholders shall be filed with the SEC and any stock exchange on which the Securities of that Series are listed. The Company shall promptly notify the Trustee in writing when the Securities of any Series are listed on any stock exchange or any delisting thereof, and the Trustee shall comply with TIA Section 313(d).

7.7. COMPENSATION AND INDEMNITY.

The Company shall pay to the Trustee from time to time compensation for its services as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any provision of law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee within 45 days after receipt of request for all reasonable disbursements, expenses and advances incurred or made by it in connection with its duties under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee (in any of its capacities), its officers, direction, employees and agents for, and hold it harmless against, any and all loss, liability or expense incurred by it in connection with the acceptance or performance of its duties under this Indenture including the reasonable costs and expenses of enforcing this Indenture and defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee, upon receiving written notice thereof, shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity.

The failure by the Trustee to so notify the Company shall not however relieve the Company of its obligations. Notwithstanding the foregoing, the Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by the Trustee through its gross negligence or willful misconduct, as established by a final, non-appealable order of a court of competent jurisdiction. To secure the payment obligations of the Company in this Section 7.7, the Trustee shall have a lien prior to the Securities of any Series on all money or property held or collected by the Trustee except such money or property held in trust to pay the principal of, interest and premium, if any, on particular Securities of that Series.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(4) or (5) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

For purposes of this Section 7.7, the term "Trustee" shall include any trustee appointed pursuant to this Article 7.

The obligations of the Company under this Section 7.7 shall survive the termination or satisfaction and discharge of this Indenture or the resignation or removal of the Trustee for any reason

7.8. REPLACEMENT OF TRUSTEE.

The Trustee may resign with respect to the Securities of one or more Series by so notifying the Company in writing at least 90 days in advance of such resignation.

The Holders of a majority in principal amount of the outstanding Securities of any Series may remove the Trustee with respect to that Series by notifying the removed Trustee in writing and may appoint a successor Trustee with respect to that Series with the consent of the Company, which consent shall not be unreasonably withheld. The Company may remove the Trustee with respect to that Series at its election if:

(1) the Trustee fails to comply with, or ceases to be eligible under, Section 7.10;

(2) the Trustee is adjudged a bankrupt or an insolvent, or an order for relief is entered with respect to the Trustee, under any Bankruptcy Law;

(3) a Custodian or other public officer takes charge of the Trustee or its property; or

(4) the Trustee otherwise becomes incapable of acting.

(5) If the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee, with respect to any Series of Securities for any reason, the Company shall promptly appoint, by Board Resolution, a successor Trustee.

If a successor Trustee with respect to the Securities of one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the outstanding Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee with respect to the Securities of one or more Series fails to comply with Section 7.10, any Securityholder of the applicable Series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately following such delivery, (i) the retiring Trustee with respect to one or more Series shall, subject to its rights under Section 7.7, transfer all property held by it as Trustee with respect to such Series to the successor Trustee, (ii) the resignation or removal of the retiring Trustee shall become effective and (iii) the successor Trustee with respect to such Series shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee with respect to the Securities of one or more Series shall deliver notice of its succession to each Securityholder of such Series.

A retiring Trustee shall not be liable for the acts or omissions of any successor Trustee after its succession.

Notwithstanding replacement of the Trustee pursuant to this section 7.8, the Company's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee

7.9. SUCCESSOR TRUSTEE BY CONSOLIDATION, MERGER OR CONVERSION.

If the Trustee, or any Agent, consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another entity, subject to Section 7.10, the successor corporation without any further act shall be the successor Trustee or Agent, as the case may be.

7.10. ELIGIBILITY; DISQUALIFICATION.

This Indenture shall always have a Trustee who satisfies the requirements of TIA Sections 310(a)(1), (2) and (5) in every respect. The Trustee (or in the case of a Trustee that is a Person included in a bank holding company system, the related bank holding company) shall have a combined capital and surplus of at least $100,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA Section 310(b), including the provision in Section 310(b)(1). In addition, if the Trustee is a Person included in a bank holding company system, the Trustee, independently of such bank holding company, shall meet the capital requirements of TIA Section 310(a)(2). If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.10, it shall resign immediately in the manner and with the effect specified in this Article 7.

7.11. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

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

7.12. PAYING AGENTS.

The Company shall cause each Paying Agent other than the Trustee to execute and deliver to it and the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 7.12:

(1) that it will hold all sums held by it as agent for the payment of the principal of, or interest or premium, if any, on, the Securities (whether such sums have been paid to it by the Company or by any obligor on the Securities) in trust for the benefit of Holders of the Securities or the Trustee;

(2) that it will at any time during the continuance of any Event of Default, upon written request from the Trustee, deliver to the Trustee all sums so held in trust by it together with a full accounting thereof; and

(3) that it will give the Trustee written notice within three Business Days after any failure of the Company (or by any obligor on the Securities) in the payment of any installment of the principal of, or interest or premium, if any, on, the Securities when the same shall be due and payable.

ARTICLE 8 –
AMENDMENTS, SUPPLEMENTS AND WAIVERS

8.1. WITHOUT CONSENT OF HOLDERS.

The Company, when authorized by a Board Resolution, and the Trustee may amend, restate or supplement this Indenture or the Securities of one or more Series without notice to or consent of any Securityholder:

(1) to comply with Section 5.1;

(2) to provide for certificated Securities in addition to uncertificated Securities;

(3) to comply with any requirements of the SEC under the TIA;

(4) to cure any ambiguity, defect or inconsistency, or to make any other change herein or in the Securities that does not materially and adversely affect the rights of any Securityholder;

(5) to provide for the issuance of, and establish the form and terms and conditions of, Securities of any Series as permitted by this Indenture; or

(6) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series, and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee.

The Trustee is hereby authorized to join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture, and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects its own rights, duties or immunities under this Indenture.

8.2. WITH CONSENT OF HOLDERS.

(a) The Company, when authorized by a Board Resolution, and the Trustee may amend, restate or supplement this Indenture or the Securities of one or more Series with the written consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Securities of such Series affected by such amendment, restatement or supplement without notice to any Securityholder. The Holders of not less than a majority in aggregate principal amount of the outstanding Securities of each such Series affected by such amendment, restatement or supplement may waive compliance by the Company in a particular instance with any provision of this Indenture or the Securities of such Series without notice to any Securityholder. Subject to Section 8.4, without the consent of each Securityholder affected, however, an amendment, supplement or waiver may not:

(1) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver to this Indenture or the Securities;

(2) reduce the rate of, or change the time for payment of, interest on any Security;

(3) reduce the principal, or change the Stated Maturity, of any Security, or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation;

(4) make any Security payable in a currency other than that stated in the Security;

(5) change the amount or time of any payment required by the Securities, or reduce the premium payable upon any redemption of the Securities, or change the time before which no such redemption may be made;

(6) waive a Default or Event of Default in the payment of the principal of, or interest or premium, if any, on, any Security (except a rescission of acceleration of the Securities of any Series by the Holders of at least a majority in principal amount of the outstanding Securities of such Series and a waiver of the payment default that resulted from such acceleration);

(7) waive a redemption payment with respect to any Security, or change any of the provisions with respect to the redemption of any Securities;

(8) make any changes in Section 6.6 or this Section 8.2, except to increase any percentage of Securities the Holders of which must consent to any matter; or

(9) take any other action otherwise prohibited by this Indenture to be taken without the consent of each Holder affected thereby.

(b) Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the receipt by the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Securityholders as aforesaid and of the documents described in Section 8.6, the Trustee shall join with the Company in the execution of such supplemental indenture, unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

(c) It shall not be necessary for the consent of the Holders under this section to approve the particular form of any proposed amendment, restatement, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, restatement or supplement under this Section becomes effective, the Company shall deliver to Securityholders a notice briefly describing the amendment, restatement or supplement. Any failure of the Company to deliver any such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any supplemental indenture.

8.3. COMPLIANCE WITH TRUST INDENTURE ACT.

Every amendment to, or supplement of, this Indenture or the Securities shall comply with the TIA as then in effect.

8.4. REVOCATION AND EFFECT OF CONSENTS.

Until an amendment, restatement, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Security is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Security or portion thereof, and of any Security issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Security. Any such Holder or subsequent Holder, however, may revoke the consent as to his Security or portion of a Security, if the Trustee receives the notice of revocation before the date the amendment, restatement, supplement, waiver or other action becomes effective.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, restatement, supplement or waiver, which record date shall be at least 30 days prior to the first solicitation of such consent. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, restatement, supplement or waiver, or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date.

After an amendment, restatement, supplement, waiver or other action becomes effective, it shall bind every Securityholder, unless it makes a change described in any of clauses (1) through (9) of Section 8.2. In that case, the amendment, restatement, supplement, waiver or other action shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; PROVIDED, that any such waiver shall not impair or affect the right of any Holder to receive payment of the principal of, and interest and premium, if any, on, a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

8.5. NOTATION ON OR EXCHANGE OF SECURITIES.

If an amendment, restatement, supplement or waiver changes the terms of a Security of any Series, the Trustee may request the Holder of such Security to deliver it to the Trustee. In such case, the Trustee shall place an appropriate notation on such Security about the changed terms and return it to the Holder. Alternatively, the Company, in exchange for such Security, may issue, and the Trustee shall authenticate, a new security that reflects the changed terms. Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, restatement, supplement or waiver.

8.6. TRUSTEE TO SIGN AMENDMENTS, ETC.

The Trustee shall sign any amendment, restatement, supplement or waiver authorized pursuant to this Article 8 if the amendment, restatement, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment, restatement, supplement or waiver the Trustee shall be entitled to receive and, subject to Section 7.1, shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment, restatement, supplement or waiver is authorized or permitted by this Indenture. The Company may not sign an amendment, restatement or supplement until the Board of Directors of the Company approves it.

ARTICLE 9 –
DISCHARGE OF INDENTURE; DEFEASANCE

9.1. DISCHARGE OF INDENTURE.

The Company may terminate its obligations under the Securities of any Series and this Indenture with respect to such Series, except the obligations referred to in the last paragraph of this Section 9.1, if there shall have been canceled by the Trustee, or delivered to the Trustee for cancellation, all Securities of such Series theretofore authenticated and delivered (other than any Securities of such Series that are asserted to have been destroyed, lost or stolen and that shall have been replaced as provided in Section 2.8) and the Company has paid all sums payable by it hereunder or deposited all required sums with the Trustee.

After such delivery the Trustee upon request shall acknowledge in a writing prepared by or on behalf of the Company the discharge of the Company's obligations under the Securities of such Series and this Indenture, except for those surviving obligations specified below.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company in Sections 7.7, 9.5 and 9.6 shall survive.

9.2. LEGAL DEFEASANCE.

The Company may at its option, by Board Resolution, be discharged from its obligations with respect to the Securities of any Series on the date upon which the conditions set forth in Section 9.4 below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the Securities of such Series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall, subject to Section 9.6, execute proper instruments acknowledging the same, as are delivered to it by the Company), except for the following, which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of outstanding Securities of such Series to receive solely from the trust funds described in Section 9.4 and as more fully set forth in such section, payments in respect of the principal of, and interest and premium, if any, on, the Securities of such Series when such payments are due, (B) the Company's obligations with respect to the Securities of such Series under Sections 2.4, 2.5, 2.6, 2.7, 2.8 and 2.9, (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder (including claims of, or payments to, the Trustee under or pursuant to Section 7.7) and (D) this Article 9. Subject to compliance with this Article 9, the Company may exercise its option under this Section 9.2 with respect to the Securities of any Series notwithstanding the prior exercise of its option under Section 9.3 below with respect to the Securities of such Series.

9.3. COVENANT DEFEASANCE.

At the option of the Company, pursuant to a Board Resolution, the Company shall be released from its obligations with respect to the outstanding Securities of any Series under Sections 4.2 through 4.5, inclusive, and Section 5.1, with respect to the outstanding Securities of such Series, on and after the date the conditions set forth in Section 9.4 are satisfied (hereinafter, "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified section or portion thereof, whether directly or indirectly by reason of any reference elsewhere herein to any such specified Section or portion thereof or by reason of any reference in any such specified section or portion thereof to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of any Series shall be unaffected thereby.

9.4. CONDITIONS TO LEGAL DEFEASANCE OR COVENANT DEFEASANCE.

The following shall be the conditions to application of Section 9.2 or Section 9.3 to the outstanding Securities of a Series:

(1) the Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 7.10 who shall agree to comply with the provisions of this Article 9 applicable to it) as funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities, (A) money in an amount, or (B) U.S. Government Obligations or Foreign Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and

which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, the principal of, and accrued interest and premium, if any, on, the outstanding Securities of such Series at the Stated Maturity of such principal, interest or premium, if any, or on dates for payment and redemption of such principal, interest and premium, if any, selected in accordance with the terms of this Indenture and of the Securities of such Series;

(2) no Event of Default or Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit, or shall have occurred and be continuing at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period under any Bankruptcy Law applicable to the Company in respect of such deposit as specified in the Opinion of Counsel identified in paragraph (8) below (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(3) such Legal Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest for purposes of the TIA with respect to any securities of the Company;

(4) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute default under, any other agreement or instrument to which the Company is a party or by which it is bound;

(5) the Company shall have delivered to the Trustee an Opinion of Counsel stating that, as a result of such Legal Defeasance or Covenant Defeasance, neither the trust nor the Trustee will be required to register as an investment company under the Investment Company Act of 1940, as amended;

(6) in the case of an election under Section 9.2, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling to the effect that or (ii) there has been a change in any applicable Federal income tax law with the effect that, and such opinion shall confirm that, the Holders of the outstanding Securities of such Series or Persons in their positions will not recognize income, gain or loss for Federal income tax purposes solely as a result of such Legal Defeasance and will be subject to Federal income tax on the same amounts, in the same manner, including as a result of prepayment, and at the same times as would have been the case if such Legal Defeasance had not occurred;

(7) in the case of an election under Section 9.3, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of the outstanding Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such Covenant Defeasance, and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(8) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Article 9 relating to either the Legal Defeasance under Section 9.2 or the Covenant Defeasance under Section 9.3 (as the case may be) have been complied with;

(9) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit under clause (1) was not made by the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(10) the Company shall have paid, or duly provided for payment under terms mutually satisfactory to the Company and the Trustee, all amounts then due to the Trustee pursuant to Section 7.7.

9.5. DEPOSITED MONEY AND U.S. AND FOREIGN GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS.

All money, U.S. Government Obligations and Foreign Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 9.4 in respect of the outstanding Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal, accrued interest and premium, if any, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations and Foreign Government Obligations deposited pursuant to Section 9.4 or the principal, interest and premium, if any, received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

Anything in this Article 9 to the contrary notwithstanding, but subject to payment of any of its outstanding fees and expenses, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money, U.S. Government Obligations or Foreign Government Obligations held by the Trustee as provided in Section 9.4 which, in the opinion of a nationally-recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

9.6. REINSTATEMENT.

If the Trustee or Paying Agent is unable to apply any money, U.S. Government Obligations or Foreign Government Obligations in accordance with Section 9.1, 9.2, 9.3 or 9.4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 9 until such time as the Trustee or Paying Agent is permitted to apply all such money, U.S. Government Obligations or Foreign Government Obligations, as the case may be, in accordance with Section 9.1, 9.2, 9.3 or 9.4; PROVIDED, HOWEVER, that if the Company has made any payment of principal of, or accrued interest or premium, if any, on, any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money, U.S. Government Obligations or Foreign Government Obligations held by the Trustee or Paying Agent.

9.7. MONEYS HELD BY PAYING AGENT.

In connection with the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee, or, if sufficient moneys have been deposited pursuant to Section 9.1, be paid to the Company, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

9.8. MONEYS HELD BY TRUSTEE.

Any moneys deposited with the Trustee or any Paying Agent or then held by the Company in trust for the payment of the principal of, or interest or premium, if any, on, any Security that are not applied but remain unclaimed by the Holder of such Security for two years after the date upon which the principal of, or interest or premium, if any, on, such Security shall have respectively become due and payable shall be repaid to the Company upon Company Request, or if such moneys are then held by the Company in trust, such moneys shall be released from such trust; and the Holder of such Security entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease. After payment to the Company or the release of any money held in trust by the Company, Securityholders entitled to the money must look only to the Company for payment as general creditors, unless applicable abandoned property law designates another Person.

ARTICLE 10 – MISCELLANEOUS

10.1. TRUST INDENTURE ACT CONTROLS.

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required TIA provision shall control. If any provision of this Indenture modifies or excludes any provision of the TIA which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

10.2. NOTICES.

Any notice or communication shall be given in writing and delivered in Person, sent by facsimile (and receipt confirmed by telephone or electronic transmission report), delivered by commercial courier service or mailed by first-class mail, postage prepaid, addressed as follows:

If to the Company:

Velo3D, Inc.
511 Division St.
Campbell, CA 95008
Attention: Chief Financial Officer

Copy to:

Fenwick & West LLP
902 Broadway
New York, NY 10010
Fax: [*]
Attention: Per Chilstrom

If to the Trustee:

U.S. Bank Trust Company, National Association
1 California Street, Suite 1000
San Francisco, CA 94111

Attn: D. Jason (Velo3D, Inc.)
E-mail: [*]

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice or communication to the Company or the Trustee shall be deemed to have been given or made as of the date so delivered if personally delivered; when receipt is confirmed by telephone or electronic transmission report, if sent by facsimile; and three Business Days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee).

Any notice or communication mailed to a Securityholder shall be mailed to such Securityholder by first-class mail, postage prepaid, at such Securityholder's address shown on the register kept by the Registrar.

Failure to deliver, or any defect in, a notice or communication to a Securityholder shall not affect its sufficiency with respect to other Securityholders. If a notice or communication to a Securityholder is mailed in the manner provided above, it shall be deemed duly given, three Business Days after such mailing, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

If the Company delivers a notice or communication to Securityholders, it shall deliver a copy to the Trustee and each Agent at the same time.

In the case of Global Securities, notices or communications to be given to Securityholders shall be given to the Depository, in accordance with its applicable policies as in effect from time to time.

In addition to the manner provided for in the foregoing provisions, notices or communications to Securityholders may be given by the Company by release made to Reuters Economic Services and Bloomberg Business News.

10.3. COMMUNICATIONS BY HOLDERS WITH OTHER HOLDERS.

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

10.4. CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

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

(1) an Officers' Certificate (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

10.5. STATEMENT REQUIRED IN CERTIFICATE AND OPINION.

Each certificate and opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 4.4) shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

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

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

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

10.6. RULES BY TRUSTEE AND AGENTS.

The Trustee may make reasonable rules for action by or at meetings of Securityholders. The Registrar, Paying Agent and Service Agent may make reasonable rules for their functions.

10.7. BUSINESS DAYS; LEGAL HOLIDAYS; PLACE OF PAYMENT.

A "Business Day" is a day that is not a Legal Holiday. A "Legal Holiday" is a Saturday, a Sunday, a federally-recognized holiday or a day on which banking institutions are not authorized or required by law, regulation or executive order to be open in the State of New York or a Place of Payment.

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. "Place of Payment" means the place or places where the principal of, and interest and premium, if any, on, the Securities of a Series are payable as specified as contemplated by Section 2.2. If the regular record date is a Legal Holiday, the record date shall not be affected.

10.8. GOVERNING LAW.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

10.9. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Company or any Subsidiary thereof. No such indenture, loan, security or debt agreement may be used to interpret this Indenture.

10.10. NO RECOURSE AGAINST OTHERS.

A director, officer, employee, stockholder or incorporator, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture. Each Securityholder by accepting a Security waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Securities.

10.11. SUCCESSORS.

All covenants and agreements of the Company in this Indenture and the Securities shall bind the Company's successors and assigns, whether so expressed or not. All agreements of the Trustee, any additional trustee and any Paying Agents in this Indenture shall bind their respective successors and assigns.

10.12. MULTIPLE COUNTERPARTS.

The parties may sign multiple counterparts (which may include counterparts delivered by any standard form of telecommunication) of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronics Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterparty so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any such communication sent to the Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to the Trustee by the authorized representative)), in English. The Company agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

10.13. TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

10.14. SEVERABILITY.

Each provision of this Indenture shall be considered separable, and if for any reason any provision which is not essential to the effectuation of the basic purpose of this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and a Holder shall have no claim therefor against any party hereto.

10.15. SECURITIES IN A FOREIGN CURRENCY OR IN EUROS.

Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate delivered pursuant to Section 2.2 with respect to a particular Series of Securities, whenever for purposes of this Indenture any action may be taken by the Holders of a specified percentage in aggregate principal amount of Securities of all Series or all Series affected by a particular action at the time outstanding and, at such time, there are outstanding Securities of any Series which are denominated in a coin or currency other than Dollars (including Euros), then the principal amount of Securities of such Series which shall be deemed to be outstanding for the purpose of taking such action shall be that amount of Dollars that could be obtained for such amount at the Market Exchange Rate at such time. For purposes of this Section 10.15, "Market Exchange Rate" shall mean the noon Dollar buying rate in New York City for cable transfers of that currency as published by the Federal Reserve Bank of New York; PROVIDED, HOWEVER, in the case of Euros, Market Exchange Rate shall mean the rate of exchange determined by the Commission of the European Union (or any successor thereto) as published in the Official Journal of the European Union (such publication or any successor publication, the "Journal"). If such Market Exchange Rate is not available for any reason with respect to such currency, the Trustee shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York or, in the case of Euros, the rate of exchange as published in the Journal, as of the most recent available date, or quotations or, in the case of Euros, rates of exchange from one or more major banks in New York City or in the country of issue of the currency in question or, in the case of Euros, in Luxembourg or such other quotations or, in the case of Euros, rates of exchange as the Trustee, upon consultation with the Company, shall deem appropriate. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a Series denominated in currency other than Dollars in connection with any action taken by Holders of Securities pursuant to the terms of this Indenture.

All decisions and determinations of the Trustee regarding the Market Exchange Rate or any alternative determination provided for in the preceding paragraph shall be in the Trustee's sole discretion, and shall, in the absence of manifest error, be conclusive to the extent permitted by law for all purposes and irrevocably binding upon the Company and all Holders.

10.16. JUDGMENT CURRENCY.

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

10.16. FORCE MAJEURE.

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

10.17. WAIVER OF JURY TRIAL.

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

10.18 U.S.A PATRIOT ACT.

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

VELO3D, INC.

By: /s/ Benny Buller
Name: Benny Buller
Title: Chief Executive Officer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ David Jason
Name: David Jason
Title: Vice President

Exhibit 4.2

VELO3D, INC.,
Company
TO
U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
Trustee
SUPPLEMENTAL INDENTURE
Dated as of August 14, 2023
Supplement to Indenture Dated
as of August 14, 2023
Senior Convertible Note

SUPPLEMENTAL INDENTURE, dated as of August 14, 2023 (this "Supplemental Indenture") to the Indenture dated as of August 14, 2023, (the "Indenture"), between Velo3D, Inc., a Delaware corporation (herein called the "Company"), having its registered office at 511 Division Street., Campbell, California 95008, and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the "Trustee"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Indenture.

RECITALS OF THE COMPANY

WHEREAS, the Company has heretofore made, executed and delivered to the Trustee the Indenture, providing for the issuance from time to time of the Company's debt securities to be issued in one or more series;

WHEREAS, pursuant to the terms of the Indenture and this Supplemental Indenture, the Company has duly authorized the creation and issuance of its Senior Convertible Note due 2026 (the "Note") in an aggregate principal amount not to exceed $105,000,000;

WHEREAS, Section 8.1 of the Indenture provides that, without the consent of any Securityholders, the Company, when authorized by a Board Resolution, and the Trustee may amend, restate or supplement the Indenture or the Securities of one or more Series to provide for the issuance of, and establish the form and terms and conditions of, Securities of any Series as permitted by the Indenture;

WHEREAS, this Supplemental Indenture is authorized by the resolutions adopted by the Board of Directors of the Company at the meeting duly called and held on August 9, 2023 and all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms and to make the Note, when executed by the Company and authenticated and delivered by the Trustee or an authenticating agent, the valid obligation of the Company, have been done and performed, and the execution and delivery of this Supplemental Indenture has been duly authorized in all respects;

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH

For and in consideration of the provisions set forth herein, it is mutually agreed, for the equal and proportionate benefit of all Securityholders, from time to time, as follows:

1. *Establishment*

There is hereby established a new series of Securities to be issued under the Indenture and this Supplemental Indenture, to be designated as the Note. The Note shall be in substantially the form set forth in Annex A hereto.

Upon execution of this Supplemental Indenture, the Note in an initial aggregate principal amount of $70,000,000 shall be executed by the Company and delivered to the Trustee, and the Trustee shall thereupon authenticate and deliver such Note in accordance with a written order of the Company. The Company shall also be entitled to issue additional Notes in an aggregate principal amount up to $35,000,000 which shall have identical terms as the initial Note issued on the date hereof, other than with respect to the date of issuance.

2. Covenants

In addition to the covenants set forth in Articles 4 and 5 of the Indenture, the covenants that apply to the Note are set forth in the form of Note attached as Annex A hereto. To the extent of any inconsistency between, on the one hand, the Indenture and this Supplemental Indenture and on the other hand, the attached form of Note, the attached form of Note will modify or amend any provision of this Supplemental Indenture and the Indenture in so far as it applies to this series of Securities.

3. *Miscellaneous Provisions*

Other Terms of Indenture. Except insofar as herein otherwise expressly provided, all provisions, terms and conditions of the Indenture are in all respects ratified and confirmed and shall remain in full force and effect.

Terms Defined. All terms defined in the Indenture shall have the same meanings when used herein.

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

Governing Law. This Supplemental Indenture shall be governed by and construed in accordance with the law of the State of New York.

Further Instruments. The parties hereto will execute and deliver such further instruments and do such further acts and things as may reasonably be required to carry out the intent and purpose of this Supplemental Indenture.

Trust Indenture Act. If any provision of this Supplemental Indenture limits, qualifies or conflicts with another provision that is required to be included in this Supplemental Indenture by the Trust Indenture Act of 1939, as amended, the required provision shall control.

Counterparts. This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF 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 Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

The Trustee. The Trustee makes no representation or warranty as to the validity or sufficiency of this Supplemental Indenture or with respect to the recitals contained herein, all of which recitals are made solely by the other parties hereto.

[Signature Page Follows]

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

VELO3D, INC.

By: /s/ Benyamin Buller

Name: Benyamin Buller

Title: Chief Executive Officer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ David Jason

Name: David Jason

Title: Vice President

Exhibit 4.3

Velo3D, Inc.

Form of Senior Secured Convertible Note due 2026

Velo3D, Inc.

Senior Secured Convertible Note due 2026

Certificate No. A-[ ]

Velo3D, Inc., a Delaware corporation (the "**Company**"), for value received, promises to pay to [ ] (the "**Initial Holder**"), or its registered assigns, one hundred fifteen percent (115%) of the principal sum of [ ] ($[ ]) (such principal sum, the "**Principal Amount**," and one hundred fifteen percent (115%) of such Principal Amount, the "**Maturity Principal Amount**;" *provided* that each of the Principal Amount and the Maturity Principal Amount is subject to reduction as provided herein) on August 1, 2026, and to pay any outstanding interest thereon, as provided in this Note, in each case, as provided in and subject to the other provisions of this Note, including the earlier redemption, repurchase or conversion of this Note.

This Note has been issued pursuant to the Indenture, dated as of [ ], 2023 (the "**Base Indenture**"), by and between the Company and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the " **Trustee**"), as amended and supplemented by the First Supplemental Indenture, dated as of [ ], 2023 (the "**Supplemental Indenture**" and, the Base Indenture as amended and supplemented by the Supplemental Indenture, the "**Indenture**"), by and between the Company and the Trustee. The terms of this Note include those stated in the Indenture.

Unless otherwise indicated, references herein to "dollars" or "$" are to U.S. dollars.

Additional provisions of this Note are set forth on the other side of this Note.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, Velo3D, Inc. has caused this instrument to be duly executed as of the date set forth below.

Velo3D, Inc.

Date: [ ] By: __

Name: [ ]
Title: [ ]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Dated as of [ ]

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

Date: [ ] By: __

Authorized Signatory

Velo3D, Inc.

Senior Secured Convertible Note due 2026

This Note (this "**Note**") is issued by Velo3D, Inc., a Delaware corporation (the "**Company**"), and is one of a series of Notes that may be authenticated and delivered for original issue under the Indenture referred to below and pursuant to the Securities Purchase Agreement referred to below in an aggregate principal amount not to exceed one hundred five million dollars $105,000,000 and designated as the Company's "Senior Secured Convertible Notes due 2026" (collectively, the "**Notes**")

This Note is subject to the terms of the Indenture.

Section 1. Definitions.

Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture to the extent defined therein.

"**Affiliate**" has the meaning set forth in Rule 144 under the Securities Act.

"**ATM Issuance**" means an Equity Issuance made pursuant to an ATM Program, other than an Equity Issuance in which a single identified investor or group of identified investors purchases in excess of three million dollars ($3,000,000) in the aggregate of Common Stock or warrants exercisable for any class of Common Stock in connection with any such Equity Issuance .

"**ATM Program**" means an "at-the-market" offering within the meaning of Rule 415(a)(4) of the Securities Act.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issue Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

"**Authorized Denomination**" means, with respect to the Notes, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof, or, if such principal amount then-outstanding is less than $1,000, then such outstanding principal amount.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Combination Event**" has the meaning set forth in **Section 9**.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order

to close or be closed, or, with respect to any payment on this Note, the Place of Payment; *provided*, *however*, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

"**Capital Lease**" means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"**Cash**" means all cash and liquid funds.

"**Cash Equivalents**" means, as of any date of determination, any of the following: (i) securities issued or directly and fully guaranteed or insured by the government of the United States, Canada, Japan, the United Kingdom, Switzerland or any country that is a member of the European Union or any agency or instrumentality thereof, in each case maturing not more than two years from the date of acquisition; (ii) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $250,000,000 and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency); (iii) repurchase obligations for underlying securities of the types described in clauses (i) and (ii) above entered into with any financial institution meeting the qualifications specified in clause (ii) above; (iv) commercial paper issued by a Person (other than an Affiliate of the Company) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), and in each case maturing within one year after the date of acquisition; (v) readily marketable direct obligations issued by any state or commonwealth of the United States of America or the District of Columbia or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition; (vi) Indebtedness issued by Persons (other than an Affiliate of the Company) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition; and (vii) investment funds investing at least 95% of their assets in Cash and securities of the types described in clauses (i) through (vi) above.

"**Cash Sweep Amount**" means, with respect to any Cash Sweep Financing, fifteen percent (15.0%) of the gross proceeds from such financing; *provided*, *however*, that in no event shall the aggregate amount of the gross proceeds of any Cash Sweep Financing that the Company is required to redeem in respect of this Note and all Other Notes exceed fifteen percent (15.0%) of the gross proceeds of such Cash Sweep Financing.

"**Cash Sweep Certification**" has the meaning set forth in **Section 4(D)(ii)**.

"**Cash Sweep Financing**" means any Equity Issuance other than (i) issuances of solely Common Stock at a price per share above the Conversion Price and (ii) ATM Issuances; provided, however, that the issuance of shares of Common Stock pursuant to the Notes shall not constitute a Cash Sweep Financing.

"**Cash Sweep Notice**" has the meaning set forth in **Section 4(D)(iii)**.

"**Cash Sweep Payment**" has the meaning set forth in **Section 4(D)(i)**.

"**Collateral**" has the meaning set forth in **Section 8(Y)**.

"**Collateral Agent**" means High Trail Investments ON LLC in its capacity as collateral agent for the Trustee, the Holder and each Other Holder, together with any successor thereto in such capacity.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the common stock, par value $0.00001 per share, of the Company, subject to **Section 7(I)**.

"**Common Stock Change Event**" has the meaning set forth in **Section 7(I)(i)(4)**.

"**Compliance Certificate**" has the meaning set forth in **Section 8(J)(ii)**.

"**Contingent Obligation**" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (A) any Indebtedness or other obligations of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (B) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (C) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"**Conversion Consideration**" has the meaning set forth in **Section 7(E)(i)**.

"**Conversion Date**" means the first Business Day on which the requirements set forth in **Section 7(C)(i)** o r **Section 7(D)(i)** (as applicable) to convert this Note are satisfied.

"**Conversion Price**" means, as of any time, an amount equal to (A) one thousand dollars ($1,000) *divided by* (B) the Conversion Rate in effect at such time.

"**Conversion Rate**" initially means 475.1722 ***[NTD: with respect to any Subsequently Purchased Notes, such amount shall be after giving effect to the adjustment contained in the proviso following immediately after this bracketed language]*** shares of Common Stock per $1,000 Principal Amount of Notes[; *provided*, *however*, that the Conversion Rate shall adjust to an amount (rounded to the nearest fourth decimal place) equal to a fraction (1) whose numerator is $1,000; and (2) whose denominator is one hundred ten percent (110%) of the average of the three Daily VWAPs during the three Trading Day period beginning on August 15, 2023 and ending on and including August 17, 2023 in the event that such amount calculated with respect to such three (3) Trading Day average is higher than the Conversion Rate then in effect; *provided*, *further*, that the Conversion Rate will not be adjusted pursuant to the foregoing proviso to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock][1]; *provided*, [*however/further]*, that the Conversion Rate is subject to adjustment pursuant to **Section 7**; *provided*, *further*, that whenever this Note refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

"**Conversion Settlement Date**" has the meaning set forth in **Section 7(E)(iii)**.

"**Copyright License**" means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"**Copyrights**" means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof, or of any other country.

"**Covering Price**" has the meaning set forth in **Section 7(E)(iv)(1)**.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock on The New York Stock Exchange (or the principal, in terms of volume, Eligible Exchange on which the Common Stock is listed for trading) as displayed under the heading "Bloomberg VWAP" on Bloomberg page "VLD <EQUITY> VAP" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Interest**" has the meaning set forth in **Section 10(D)**.

[1] **NTD**: include with respect to the Initial Purchased Note.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(A) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(B) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the Company or a Subsidiary of the Company; provided that any such conversion or exchange will be deemed an incurrence of Indebtedness or Disqualified Stock, as applicable); or

(C) is redeemable at the option of the holder thereof, in whole or in part,

(D) in the case of each of clauses (A), (B) and (C), at any point prior to the one hundred eighty-first (181st) day after the Maturity Date.

"**DTC**" means The Depository Trust Company.

"**Eligible Exchange**" means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Stock Market, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"**Equity Conditions**" will be deemed to be satisfied as of any date if all of the following conditions are satisfied as of such date and on each of the thirty (30) previous Trading Days: (A) the shares issuable pursuant to this Note are Freely Tradable; (B) the Holder is not in possession of any material non-public information provided by or on behalf of the Company; (C) the issuance of such shares will not be limited by **Section 7(J)**; (D) the Company is in compliance with **Section 7(E)(i)** and such shares will satisfy **Section 7(F)(ii)**; (E) no pending, proposed or intended Fundamental Change has occurred that has not been abandoned, terminated or consummated; (F) the daily dollar trading volume (as reported on Bloomberg) of the Common Stock on The New York Stock Exchange (or the principal, in terms of volume, Eligible Exchange on which the Common Stock is listed for trading) is not less than three million five hundred thousand dollars ($3,500,000); and (G) no Default will have occurred and be continuing which has not been waived and no Event of Default will have occurred which has not been waived.

"**Equity Interest**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including preferred stock or membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Equity Issuance**" shall mean (a) any issuance or sale by the Company or any of its Subsidiaries of any Equity Interests (including any Equity Interests issued upon exercise or conversion of any Equity Rights) or any Equity Rights, or (b) the receipt by the Company or any of its Subsidiaries of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution), in each case for bona fide capital-raising purposes and other than (i) any issuance of Equity Interests upon the exercise of any Equity Rights outstanding as of the date hereof provided, that such issuance is made pursuant to the terms of such Equity Rights in effect on the date hereof and such Equity Rights are not amended to increase the number of such Equity Interests or to decrease the exercise price, exchange price or

conversion price of Equity Rights, (ii) Equity Interests issuable upon the exercise of any Equity Rights or upon the lapse of forfeiture restrictions on awards made pursuant to an Approved Stock Plan (as defined in the Securities Purchase Agreement) (including Equity Interests withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise, vesting, settlement or lapse of forfeiture restrictions) or (iii) Common Stock issuable upon the exercise of stock options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders, whether now in effect or hereafter implemented.

"**Equity Rights**" shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights, convertible debt, or other equity-linked securities or agreements of any kind for the issuance or sale, of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**Event of Default**" has the meaning set forth in **Section 10(A)**.

"**Event of Default Acceleration Amount**" means, with respect to the delivery of a notice pursuant to **Section 10(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to the greater of (A) the sum of (i) one hundred and ten percent (110%) of the Maturity Principal Amount of this Note excluding interest (or such lesser principal amount accelerated pursuant to such notice) and (ii) the accrued and unpaid interest on this Note and (B) the sum of (i) one hundred fifteen percent (115%) of the product of (a) the Conversion Rate in effect as of the Trading Day immediately preceding the date that the Holder delivers such notice pursuant to **Section 10(B)(ii)**; (b) the total then outstanding Principal Amount (expressed in thousands) of this Note; and (c) the greater of (x) the highest Daily VWAP per share of Common Stock occurring during the five (5) consecutive VWAP Trading Days ending on, and including, the VWAP Trading Day immediately before the date the Holder delivers such notice pursuant to **Section 10(B)(ii)** and (y) the highest Daily VWAP per share of Common Stock occurring during the five (5) consecutive VWAP Trading Days ending on, and including, the VWAP Trading Day immediately before the date the applicable Event of Default occurred and (ii) the accrued and unpaid interest on this Note.

"**Event of Default Notice**" has the meaning set forth in **Section 10(C)**.

"**Event of Default Stock Payment**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Date**" means any date on which the Holder delivers an Event of Default Stock Payment Notice pursuant to **Section 5(C)** hereunder.

"**Event of Default Stock Payment Delivery Date**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Notice**" has the meaning set forth in **Section 5(C)**.

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the

relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Excess Shares**" has the meaning set forth in **Section 7(J)(i)**.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**Expiration Date**" has the meaning set forth in **Section 7(G)(i)(5)**.

"**Expiration Time**" has the meaning set forth in **Section 7(G)(i)(5)**.

"**Forced Conversion**" has the meaning set forth in **Section 7(D)(i)**.

"**Forced Conversion Trigger**" means (A) the Last Reported Sale Price exceeds one hundred and seventy five percent (175%) of the Conversion Price on at least twenty (20) VWAP Trading Days in any thirty (30) consecutive VWAP Trading Day period beginning on any VWAP Trading Day after the Issue Date and ending on the date upon which the Company Conversion Notice is delivered by the Company to the Holder and (B) the Equity Conditions are satisfied on the date the Company Conversion Notice is delivered by the Company to the Holder.

"**Freely Tradable**" means, with respect to any shares of Common Stock issued or issuable pursuant to this Note, that (A) such shares are (or, when issued, will be) issued by the Company pursuant to an effective registration statement or Section 3(a)(9) under the Securities Act and would not constitute "restricted securities" within the meaning of Rule 144 under the Securities Act and without any requirement for registration under any state securities or "blue sky" laws; (B) such shares are (or, when issued, will be) (i) represented by book-entries at DTC and identified therein by an "unrestricted" CUSIP number; (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (iii) listed and admitted for trading, without suspension or material limitation on trading, on an Eligible Exchange; and (C) no delisting or suspension by such Eligible Exchange has been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (x) a writing by such Eligible Exchange or (y) the Company falling below the minimum listing maintenance requirements of such Eligible Exchange.

"**Fundamental Change**" means any of the following events:

(E) a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than (x) the Company or its Wholly Owned Subsidiaries, (y) the employee benefit plans of the Company or its Wholly Owned Subsidiaries, or (z) the Holder or any of its Affiliates (including an "group" including the Holder or any of its Affiliates) files any report with the Commission indicating that such person or group has become the direct or indirect "beneficial owner" (as defined below) of shares of the Company's common equity representing more than fifty percent (50%) of the voting power of all of the Company's then-outstanding common equity;

(F) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than solely to one or more of the Company's Wholly Owned Subsidiaries); or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to

receive, other securities, cash or other property (other than a subdivision or combination, or solely a change in par value, of the Common Stock); *provided*, *however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly "beneficially owned" (as defined below) all classes of the Company's common equity immediately before such transaction directly or indirectly "beneficially own," immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**; or

(G) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i)** or **(ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a "**beneficial owner**" and whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Fundamental Change Notice**" has the meaning set forth in **Section 6(C)**.

"**Fundamental Change Repurchase Date**" means the date as of which this Note must be repurchased for cash in connection with a Fundamental Change, as provided in **Section 6(B)**.

"**Fundamental Change Repurchase Price**" means, with respect to this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change, a cash amount equal to the greater of (A) one hundred (100%) of the Maturity Principal Amount of this Note excluding interest (or such lesser principal amount accelerated pursuant to such notice), plus accrued and unpaid interest on this Note to be so repurchased and (B) the sum of (i) one hundred ten percent (110%) of the product of (a) the Conversion Rate in effect as of the Trading Day immediately preceding the effective date of such Fundamental Change; (b) the total then outstanding Principal Amount (expressed in thousands) of this Note; and (c) the average of the five (5) Daily VWAPs per share of Common Stock occurring on the later of (i) the five (5) VWAP Trading Day period immediately before the effective date of such Fundamental Change and (ii) the five (5) VWAP Trading Day period immediately after any public announcement of such Fundamental Change, which includes, but is not limited to, public disclosure on a Form 8-K or otherwise and (ii) the accrued and unpaid interest on this Note.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time; provided the definitions set forth in this Note and any financial calculations required thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

"**Holder**" means the person in whose name this Note is registered on the books of the Registrar, which initially is the Initial Holder.

The term "**including**" means "including without limitation," unless the context provides otherwise.

"**Holder Conversion Notice**" has the meaning set forth in **Section 7(C)(i)**.

"**Indebtedness**" means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services, including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

"**Indenture**" means that certain Indenture, dated as of [ ], 2023, by and between the Company and the Trustee, as amended and supplemented by the First Supplemental Indenture, dated as of [ ], 2023, by and between the Company and the Trustee.

"**Independent Investigator**" has the meaning set forth in **Section 8(R)**.

"**Initial Holder**" has the meaning set forth in the cover page of this Note.

"**Intellectual Property**" means all of the Company's Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; the Company's applications therefor and reissues, extensions, or renewals thereof; and the Company's goodwill associated with any of the foregoing, together with the Company's rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

"**Interest Payment Date**" means (A) each January 1, April 1, July 1 and October 1 of each calendar year, beginning on [October 1, 2023][2]; and (B) if not otherwise included in clause (A), the Maturity Date.

"**Investment**" means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets to solely the extent of the amount in excess of the fair market value.

"**Investment Grade Securities**" means: (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents); (2) securities that have a rating equal to or higher than "Baa3" (or equivalent) by Moody's or "BBB-" (or equivalent) by S&P, or an equivalent rating by another internationally recognized rating agency, but excluding any debt securities or loans or advances between and among the Company and its Subsidiaries; (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2), which fund may also hold immaterial amounts of cash pending investment or distribution; and (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"**Issue Date**" means [ ], 20[ ].

"**Last Reported Sale Price**" of the shares of Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the shares of Common Stock are then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the

[2] **NTD**: include with respect to the Initial Purchased Note; Subsequently Purchased Notes to include the next occurring interest payment date after the issue date of such Notes

Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company.

"**License**" means any Copyright License, Patent License, Trademark License or other license of rights or interests.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest; provided, that for the avoidance of doubt, licenses, strain escrows and similar provisions in collaboration agreements or research and development agreements that do not create or purport to create a security interest, encumbrance, levy, lien or charge of any kind shall not be deemed to be Liens for purposes of this Note.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal, in terms of volume, Eligible Exchange (or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional securities exchange on which the Common Stock is listed for trading) on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"Market Stock Payment Price" means, with respect to any Event of Default Stock Payment Date, an amount equal to one hundred percent (100%) of the lowest of the ten (10) Daily VWAPs immediately prior to such Event of Default Stock Payment Date.

"**Maturity Date**" means August 1, 2026.

"**Maturity Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Maturity Principal Amount of this Note will be subject to reduction pursuant to **Section 4**, **Section 5**, **Section 6, and Section 7**.

"**Maximum Percentage**" has the meaning set forth in **Section 7(J)(i)**.

"**Moody's**" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"**Note Documents**" means the Securities Purchase Agreement, this Note, the Security Agreements and the other Transaction Documents.

"**Obligation**" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Note Document after the commencement of a bankruptcy proceeding, whether or not a claim for such interest is allowed) of the Company, any Security Agreements or any other Note Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**Open of Business**" means 9:00 a.m., New York City time.

The term "**or**" is not exclusive, unless the context expressly provides otherwise.

"**Other Holder**" means any person in whose name any Other Note is registered on the books of the Registrar.

"**Other Notes**" means any Notes that are of the same series as this Note and that are represented by one or more certificates other than the certificate representing this Note.

"**Partial Redemption Date**" means, with respect to this Note, (A) each of [January 1, 2024, April 1, 2024, July 1, 2024,][3] October 1, 2024, January 1, 2025, April 1, 2025, July 1, 2025, October 1, 2025, January 1, 2026, April 1, 2026 and July 1, 2026 and (B) if not otherwise included in **clause (A)**, the Maturity Date.

"**Partial Redemption Notice**" has the meaning set forth in **Section 4(A)**.

"**Partial Redemption Payment**" means, for any date that is a Partial Redemption Date, an amount equal to one hundred fifteen percent (115%) of twelve and a half percent (12.5%) of the Principal Amount as of the Issue Date of this Note and all other Notes issued on the Issue Date, as determined by Holder in its sole discretion; *provided*, *however*, that the Company shall not be required to partially redeem more than such amount in aggregate in respect of this Note and all Other Notes issued on the same Issue Date that have been elected to be partially redeemed by the Holder and the Other Holders on any Partial Redemption Date; *provided*, *further*, that the Holder, all of the Other Holders and the Company may agree to increase the size of any Partial Redemption Payment by mutual written consent and notice to the Trustee.

"**Patent License**" means any written agreement granting any right with respect to any invention covered by a Patent that is in existence or a Patent application that is pending, in which agreement the Company now holds or hereafter acquires any interest.

"**Patents**" means all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country.

"**Permitted Indebtedness**" means (A) Indebtedness evidenced by the Notes; (B) Indebtedness actually disclosed pursuant to the Securities Purchase Agreement as of the date of the Securities Purchase Agreement; (C) Indebtedness to trade creditors incurred in the ordinary course of business consistent with past practices; (D) Indebtedness that also constitutes a Permitted Investment; (E) Subordinated Indebtedness of the Company; (F) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed two hundred fifty thousand dollars ($250,000) at any time outstanding; (G) Indebtedness consisting of capital and operating lease obligations and Indebtedness secured by Liens permitted under clause (M) of the definition of "Permitted Liens" hereunder; provided, however, all of such Indebtedness under this clause (G), plus all Indebtedness secured by Liens permitted under clause (M) of the definition of "Permitted Liens" (without duplication) shall not exceed One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate; and (H) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (G).

[3] **NTD**: include with respect to the Initial Purchased Note; Subsequently Purchased Notes to include these dates to the extent applicable date occurs after the issue date of such Notes.

"**Permitted Intellectual Property Licenses**" means (A) Intellectual Property licenses actually disclosed pursuant to the Securities Purchase Agreement as of the date of the Securities Purchase Agreement, and (B) non-perpetual Intellectual Property licenses granted in the ordinary course of business on arm's length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during an Event of Default or continuance of a Default.

"**Permitted Investment**" means: (A) Investments actually disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date; (B) Cash and Cash Equivalents; (C) Investments accepted in connection with Permitted Transfers; (D) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of the Company's business; (E) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers in the ordinary course of business and consistent with past practice, provided that this clause (E) shall not apply to Investments of the Company in any Subsidiary thereof; (F) Investments consisting of (i) loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Company pursuant to employee stock purchase plans or other similar agreements approved by the Company's Board of Directors and (ii) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, provided that the aggregate of all such loans outstanding may not exceed two hundred fifty thousand dollars ($250,000) at any time; (G) Investments in Wholly Owned Subsidiaries; (H) Permitted Intellectual Property Licenses; and (I) additional Investments that do not exceed one million dollars ($1,000,000) in the aggregate in any twelve (12) month period.

"**Permitted Liens**" means any and all of the following: (A) Liens in favor of Holder or the Collateral Agent; (B) Liens actually or deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date; (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers' compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company's business and not interfering in any material respect with the business of the licensor; (H) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (I) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (J) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (K) easements, zoning restrictions, rights-of-way

and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (L) Liens on Cash or Cash Equivalents securing obligations permitted under clauses (C) and (F) of the definition of Permitted Indebtedness; (M) purchase money Liens, or Liens in respect of equipment leases, (i) on equipment acquired or held by the Company incurred for financing the acquisition or lease of the equipment securing no more than One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate amount outstanding; provided, however, all of the Indebtedness securing the Liens permitted under this clause (M), plus all Indebtedness permitted under clause (G) of the definition of "Permitted Indebtedness" (without duplication) shall not exceed One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate, or (ii) existing on equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the equipment; and (N) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (B) through (J) and (N) above (other than any Indebtedness repaid with the proceeds of this Note); provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

"**Permitted Transfers**" means (A) dispositions of Cash, Cash Equivalents or Investment Grade Securities in the ordinary course of business and consistent with past practice for fair value consideration in the form of Cash, Cash Equivalents or Investment Grade Securities, (B) dispositions of inventory, goods and other assets, leases, assignments or subleases of any real or personal property, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business and consistent with past practice, (C) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (D) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (E) transfers consisting of Permitted Investments in Wholly Owned Subsidiaries under clause (G) of Permitted Investments; (F) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars ($50,000) in the aggregate in any twelve (12) month period; (G) dispositions in connection with Permitted Liens; or (H) the disposition of all or substantially all of the assets of the Company and its Subsidiaries in a manner permitted pursuant to **Section 9** and any disposition that constitutes a Fundamental Change.

"**Person**" or "**person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Principal Amount of this Note will be subject to reduction (A) pursuant to **Section 4**, **Section 5**, **Section 6,** and **Section 7**.

"**Reference Property**" has the meaning set forth in **Section 7(I)(i)(4)**.

"**Reference Property Unit**" has the meaning set forth in **Section 7(I)(i)(4)**.

"**Registrar**" has the meaning set forth in the Indenture.

"**Related Parties**" has the meaning set forth in **Section 22**.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 7(J)(i)**.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section 6**.

"**Required Holders**" means holders of a majority of the aggregate principal amount of the Notes, so long as any Notes remain outstanding; *provided*, that such majority must include High Trail Investments ON LLC or HB SPV I Master Sub LLC, so long as High Trail Investments ON LLC or HB SPV I Master Sub LLC or any of their affiliates hold any Notes or are otherwise entitled to receive Underlying Shares.

"**Required Reserve Amount**" has the meaning in **Section 8(Q)**.

"**Requisite Stockholder Approval**" means the stockholder approval contemplated by Section 312.03(b) of the NYSE Listed Company Manual with respect to the issuance of shares of Common Stock upon conversion of the Notes in excess of the limitations imposed by such rule; *provided*, *however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of The New York Stock Exchange, such stockholder approval is no longer required for the Company to settle all conversions of the Notes by delivering shares of Common Stock without limitation pursuant to **Section 7(B)**.

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**S&P**" means Standard & Poor's Ratings Services or any successor to the rating agency business thereof.

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, stock exchange or market on which the Common Stock is then listed or traded. If the Common Stock is not so listed or traded, then "Scheduled Trading day" means a Business Day.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Securities Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of August [ ], 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC providing for the issuance of the Notes. The Trustee shall not been deemed to have any knowledge of or have any obligation to monitor the terms of the Securities Purchase Agreement.

"**Share Delivery Date**" any (i) Event of Default Stock Payment Delivery Date or (ii) Conversion Settlement Date.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Spin-Off**" has the meaning set forth in **Section 7(G)(i)(3)(b)**.

"**Spin-Off Valuation Period**" has the meaning set forth in **Section 7(G)(i)(3)(b)**.

"**Stated Interest**" has the meaning set forth in **Section 4(B)**.

"**Stated Interest Rate**" means, as of any date, a rate per annum equal to six percent (6.0%).

"**Stock Payment Determination Date**" means (i) with respect to an Event of Default Stock Payment, the date of delivery of the related Event of Default Stock Payment Notice, and (ii) with respect to the delivery of Conversion Consideration, the related Conversion Date.

"**Subordinated Indebtedness**" means Indebtedness subordinated to the Notes pursuant to a written agreement between the Holder and the applicable lender in amounts and on terms and conditions satisfactory to the Holder in its sole discretion.

"**Subsidiary**" means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Successor Corporation**" has the meaning set forth in **Section 9(A)**.

"**Successor Person**" has the meaning set forth in **Section 7(I)(i)**.

"**Tender/Exchange Offer Valuation Period**" has the meaning set forth in **Section 7(G)(i)(5)**.

"**Trademark License**" means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"**Trademarks**" means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional securities exchange on which the Common Stock is listed for trading; and (B) there is no Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Transaction Documents**" means, collectively, the Securities Purchase Agreement, the Notes, the Perfection Certificate, the Security Agreements (as defined in the Securities Purchase Agreement), the Indenture, each Lock-Up and Voting Agreement (as defined in the Securities Purchase Agreement), and the Irrevocable Transfer Agent Instructions (as defined in the Securities Purchase Agreement) and each of the other agreements and instruments entered into or

delivered by any of the parties hereto in connection with the transactions contemplated by the Securities Purchase Agreement and thereby, as may be amended from time to time.

"**Trust Indenture Act**" means the U.S. Trust Indenture Act of 1939, as amended.

"**Trustee**" means U.S. Bank Trust Company National Association in its capacity as trustee under the Indenture.

"**UCC**" means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York.

"**Undelivered Shares**" has the meaning set forth in **Section 7(E)(iv)**.

"**VWAP Market Disruption Event** " means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal, in terms of volume, Eligible Exchange on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day** " means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional securities exchange on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

"**Withheld Shares**" has the meaning set forth in **Section 7(J)(ii)**.

Section 2. Persons Deemed Owners.

The Holder of this Note will be treated as the owner of this Note for all purposes.

Section 3. Registered Form.

This Note, and any Other Note issued in exchange therefor or in substitution thereof, will be in registered form, without coupons.

Section 4. Partial Redemption Payments; Interest; Maturity Date Payment; Prepayment.

(A) *Partial Redemption Payments.* If the Holder wishes to elect to require the Company to redeem all or a portion of this Note (in an Authorized Denomination) for a Partial Redemption Payment, the Holder shall deliver to the Company (with a copy to the Trustee) a

written notice of any such election, including the applicable amount of the Partial Redemption Payment (a "**Partial Redemption Notice**"), at least ten (10) Trading Days prior to the applicable Partial Redemption Date in order to make an effective election. Such notice may be canceled by the Holder at any time prior to the receipt of the applicable Partial Redemption Payment from the Company and the Holder shall also have the right to convert such Partial Redemption Payment (or any applicable portion thereof) into Common Stock pursuant to **Section 7** hereof at any time prior to the receipt of the applicable Partial Redemption Payment from the Company. If the Holder or any Other Holder elects to redeem all or a portion of any Other Notes for a Partial Redemption Payment on the same Partial Redemption Date, the Trustee shall the select the redemption portions of the principal of this Note and such Other Notes (in Authorized Denominations) on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate. The Company shall pay the Holder the Partial Redemption Payment (or applicable portion thereof) by wire transfer of immediately available funds on the applicable Partial Redemption Date. Any Partial Redemption Payment (or applicable portion thereof) paid pursuant to this **Section 4(A)** shall reduce the Principal Amount by such paid amount divided by one and fifteen hundredths (1.15). If this Note (or any portion of this Note) is to be redeemed pursuant to this **Section 4(A)**, then, from and after the date the related Partial Redemption Payment (or applicable portion thereof) is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

(B) *Interest*. Except as provided in **Section 10(D)**, this Note will accrue interest (the "**Stated Interest**") at a rate per annum equal to the Stated Interest Rate. Stated Interest on this Note will (i) accrue on the Principal Amount of this Note; (ii) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the Issue Date) to, but excluding, the date of payment of such Stated Interest; (iii) be paid to Holder in cash on each Interest Payment Date in accordance with **Section 5(A)**; (iv) with respect to the amount of interest then accrued on the portion of the Principal Amount being redeemed in connection with a Cash Sweep Payment, be paid to the Holder in arrears as of the date of such Cash Sweep Payment in accordance with this **Section 4**, as applicable; (v) with respect to the amount of interest then accrued on the portion of the Principal Amount being redeemed on a Partial Redemption Date, be paid to the Holder in arrears as of each such date in accordance with this **Section 4**, as applicable; (vi) with respect to the amount of interest then accrued on the portion of the Principal Amount being repurchased on a Fundamental Change Repurchase Date, be paid to the Holder in arrears as of each such date in accordance with **Section 6**, as applicable; and (vi) be computed on the basis of a 360-day year comprised of twelve 30-day months.

(C) *Maturity Date Payment*. On the Maturity Date, the Company will pay the Holder an amount in cash equal to the Maturity Principal Amount for the then-outstanding Principal Amount of this Note plus any accrued and unpaid interest on this Note.

(D) *Cash Sweep Payments*.

(i) For purposes of this Note, any payment made to the Holder pursuant to **Section 4(D)** shall be referred to as a **"Cash Sweep Payment"**. All Cash Sweep Payments shall be accompanied by accrued and unpaid interest on the amount repaid.

(ii) Concurrently with the completion of any Cash Sweep Financing, the Company shall certify to Holder in writing (i) the amount of the applicable Cash Sweep Financing and (ii) the calculation of the potential Cash Sweep Amount with respect to such Cash Sweep Financing (including a certification that such Cash Sweep Amount was calculated in accordance with the terms hereof) (such certification a "**Cash Sweep Certification**"); provided, however, that, unless consented to by the Holder in writing, in

the event that the extent of such Cash Sweep Financing and Cash Sweep Amount is such that the information required in such certification would constitute material non-public information regarding the Company, then the Company shall also concurrently publicly disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(iii) The Holder shall have the right to require the Company, exercisable by delivery of written notice to the Company (with a copy to the Trustee) of exercise of such right (a "**Cash Sweep Notice**"), to redeem all or a portion of this Note in cash within three (3) Business Days following the delivery of such Cash Sweep Notice (regardless of whether the Company actually delivers a Cash Sweep Certification) for all or a portion of the Cash Sweep Amount with respect to such Cash Sweep Financing. If the Holder or any Other Holder elects to redeem all or a portion of any Other Notes for all or a portion of the Cash Sweep Amount with respect to the same Cash Sweep Financing, the Trustee shall then select the redemption portions of the principal of this Note and such Other Notes on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate. The Company shall pay the Holder the Cash Sweep Payment by wire transfer of immediately available funds. Any Cash Sweep Payment paid pursuant to this **Section 4(D)** shall reduce the Principal Amount by such paid amount divided by one and fifteen hundredths (1.15). If this Note (or any portion of this Note) is to be redeemed pursuant to this **Section 4(D)**, then, from and after the date the related Cash Sweep Payment is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

(E) *Prepayment*. The Company may not prepay this Note without the written consent of the Required Holders.

Section 5. Method of Payment; When Payment Date is Not a Business Day.

(A) *Method of Payment*. The Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to the account of the Holder as set forth in a written notice of an account of such Holder delivered by the Holder to the Company at least one (1) Business Day before the date such amount is due.

(B) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on this Note as provided in this Note is not a Business Day, then, notwithstanding anything to the contrary in this Note, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

(C) *Event of Default Stock Payments*. If an Event of Default occurs and the Company fails to pay the Event of Default Acceleration Amount when due in accordance with this Note, then the Holder may elect to receive such unpaid portion of the Event of Default Acceleration Amount, entirely or partially, in shares of Common Stock (an "**Event of Default Stock Payment**"), and shall deliver to the Company (with a copy to the Trustee) a written notice of such election stating which portion thereof the Holder has elected to receive in shares of Common Stock (an "**Event of Default Stock Payment Notice**"). On or before the second (2nd) Business Day following the date of delivery of any Event of Default Stock Payment Notice hereunder (the "**Event of Default Stock Payment Delivery Date**"), the Company shall issue and deliver to the Holder, a number of validly issued, fully paid and Freely Tradable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing the Event of Default Acceleration Amount (or applicable portion thereof) by the Market Stock Payment Price as of the date of delivery of the Event of Default Stock Payment Notice; *provided*, that, if the Company fails to timely issue and deliver to the Holder such shares of Common Stock, then the Holder may revoke its election to receive shares of Common Stock and

elect to receive such Event of Default Acceleration Amount (or any portion thereof) in cash at any time prior to delivery of such shares of Common Stock. Any portion of the Event of Default Acceleration Amount not paid in shares of Common Stock because the Holder did not elect, or effectively revoked its election, to receive shares of Common Stock for such Event of Default Acceleration Amount (or applicable portion thereof) will be paid in cash; provided, that the Holder may deliver multiple Event of Default Stock Payment Notices in accordance with this **Section 5(C)** to the extent that any portion of the Event of Default Acceleration Amount remains unpaid when due in accordance with this Note.

Section 6. Required Repurchase of Note upon a Fundamental Change.

(A) *Repurchase Upon Fundamental Change*. Subject to the other terms of this **Section 6**, if a Fundamental Change occurs, then the Holder will have the right to require the Company to repurchase this Note (or any portion of this Note in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to the Holder the related Fundamental Change Notice pursuant to **Section 6(C)**; and (y) the effective date of such Fundamental Change.

(C) *Fundamental Change Notice*. No later than the fifth (5th) Business Day before the occurrence of any Fundamental Change, the Company will send to the Holder (with a copy to the Trustee) a written notice (the "**Fundamental Change Notice**") thereof (provided, however, in no event shall such notice be required prior to the actual public announcement of such Fundamental Change), stating the expected date such Fundamental Change will occur. No later than the fifth (5^{th}) Business Day after the date of delivery of the Fundamental Change Notice, the Holder shall notify the Company in writing whether it will require the Company to repurchase this Note and specify the Fundamental Change Repurchase Date.

(D) *Effect of Repurchase*. If this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then, from and after the date the related Fundamental Change Repurchase Price is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

Section 7. Conversion.

(A) *Right to Convert*.

(i) *Generally.* Subject to the provisions of this **Section 7**, the Holder may, at its option, convert this Note, including any portion constituting a Partial Redemption Payment, into Conversion Consideration.

(ii) *Conversions in Part.* Subject to the terms of this **Section 7**, this Note may be converted in part, but only in an Authorized Denomination. Provisions of this **Section 7** applying to the conversion of this Note in whole will equally apply to conversions of any permitted portion of this Note.

(B) *When this Note May Be Converted.*

(i) *Generally*. The Holder may convert this Note immediately at any time until the Close of Business on the second (2nd) Scheduled Trading Day immediately

before the Maturity Date. For the avoidance of doubt, the ability of the Holder to convert this Note shall not be delayed to give effect to any time required by the Trustee in which to reflect the issuance of this Note.

(ii) *Limitations and Closed Periods*. Notwithstanding anything to the contrary in this **Section 7**, if this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then in no event may this Note (or such portion) be converted after the Close of Business on the Scheduled Trading Day immediately before the related Fundamental Change Repurchase Date; provided, that the limitations contained in this **Section 7(B)(ii)** shall no longer apply to this Note (or such applicable portion) if the applicable Fundamental Change Repurchase Price is not delivered on the Fundamental Change Repurchase Date in accordance with **Section 6**.

(C) *Conversion Procedures*.

(i) *Generally*. To convert this Note, the Holder must (1) complete, sign and deliver to the Company (with a copy to the Trustee) the conversion notice attached to this Note on **Exhibit A** or portable document format (.pdf) version of such conversion notice (at which time such conversion will become irrevocable) (a "**Holder Conversion Notice**"); and (2) pay an amounts due pursuant to **Section 7(C)(iii)**. For the avoidance of doubt, the Holder Conversion Notice may be delivered by e-mail in accordance with **Section 14**. If the Company fails to deliver, by the related Conversion Settlement Date, any shares of Common Stock forming part of the Conversion Consideration of the conversion of this Note, the Holder, by notice to the Company, may rescind all or any portion of the corresponding Holder Conversion Notice at any time until such Undelivered Shares are delivered.

(ii) *Holder of Record of Conversion Shares*. The person in whose name any shares of Common Stock is issuable upon conversion of this Note will be deemed to become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion, conferring, as of such time, upon such person, without limitation, all voting and other rights appurtenant to such shares.

(iii) *Taxes and Duties.* If the Holder converts this Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon such conversion; *provided*, *however*, that if any tax or duty is due because such Holder requested such shares to be issued in a name other than that of such Holder, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of such Holder.

(D) *Right of Company to Convert the Note.*

(i) *Generally*. If the Forced Conversion Trigger occurs, then, subject to **Section 7(J)**, the Company may provide written notice to the Holder (with a copy to the Trustee) in substantially the form attached hereto as **Exhibit B** (a "**Company Conversion Notice**") electing to convert all (but, for the avoidance of doubt, not less than all) of the Principal Amount into Conversion Consideration (a "**Forced Conversion**") and certifying that the Equity Conditions are satisfied on the date the Company Conversion Notice was delivered to the Holder; *provided* that (x) no Forced Conversion will be effected unless (i) the Equity Conditions are satisfied on each VWAP Trading Day from the date of the Company Conversion Notice until the corresponding Conversion Consideration is delivered and (ii) the Last Reported Sale Price exceeded one hundred and seventy five percent (175%) of the Conversion Price, on twenty (20) of the

thirty (30) consecutive VWAP Trading Days during the thirty (30) VWAP Trading Day period ending on and including the date the Company Conversion Notice was delivered to the Holder and during the thirty (30) VWAP Trading Day period ending on and including the date the Company delivers the Conversion Consideration pursuant to such Forced Conversion, and (y) if the Company receives a Holder Conversion Notice prior to the date the Company delivers the Company Conversion Notice and any Conversion Shares due thereunder remain undelivered by the Company, the Forced Conversion may not occur until after such Conversion Shares are delivered to the Holder.

(ii) *Effect of Forced Conversion*. A Forced Conversion will have the same effect as a conversion of the applicable outstanding Principal Amount of this Note effected at a Holder's election pursuant to **Section 7(A)** with a Conversion Date occurring on the Business Day upon which the Company Conversion Notice is delivered to the Holder (*provided*, for the avoidance of doubt, that the conditions set forth in **Section 7(D)(i)** are satisfied on such date) and a Conversion Settlement Date occurring on the Business Day referred to in **Section 7(E)(iii)**.

(E) *Settlement upon Conversion*.

(i) *Generally*. The consideration (the "**Conversion Consideration**") due in respect of each one thousand dollars ($1,000) Principal Amount of this Note, including any portion constituting a Partial Redemption Payment required to be paid by the Company on the next Partial Redemption Date, to be converted will consist of the following:

(1) subject to **Section 7(E)(ii)**, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion; and

(2) cash in an amount equal to the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date for such conversion.

(ii) *Fractional Shares*. The total number of shares of Common Stock due in respect of any conversion of this Note pursuant to this **Section 7**, including any portion constituting a Partial Redemption Payment required to be paid by the Company on the next Partial Redemption Date, will be determined on the basis of the total Principal Amount of this Note to be converted with the same Conversion Date; *provided*, *however*, that if such number of shares of Common Stock is not a whole number, then such number will be rounded up to the nearest whole number.

(iii) *Delivery of the Conversion Consideration*. The Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of this Note, including any portion constituting a Partial Redemption Payment required to be paid by the Company on the next Partial Redemption Date, to the Holder on or before the second (2nd) Business Day (or, if earlier, the standard settlement period for the primary Eligible Exchange (measured in terms of trading volume for its Common Stock) on which the Common Stock is traded) immediately after the Conversion Date for such conversion (the "**Conversion Settlement Date**").

(iv) *Company Failure to Timely Deliver Stock Payments*. If (x) the Company shall fail for any reason or for no reason on or prior to the applicable Share Delivery Date to deliver shares of Common Stock in accordance with **Section 5(C)**, **Section 7(C)** or **Section 7(D)** (such shares to which Holder is entitled referred to as the "**Undelivered Shares**"); and (y) the Holder (whether directly or indirectly, including by any broker

acting on the Holder's behalf or acting with respect to such Undelivered Shares) purchases any shares of Common Stock (whether in the open market or otherwise) to cover any such Undelivered Shares (whether to satisfy any settlement obligations with respect thereto of the Holder or otherwise), then, without limiting the Holder's right to pursue any other remedy available to it (whether hereunder, under applicable law or otherwise), the Holder will have the right, exercisable by notice to the Company, to cause the Company to either:

(1) pay, on or before the second (2nd) Business Day after the date such notice is delivered, cash to the Holder in an amount equal to the aggregate purchase price (including any brokerage commissions and other out-of-pocket costs) incurred to purchase such shares (such aggregate purchase price, the "**Covering Price**"); or

(2) promptly deliver, to the Holder, such Undelivered Shares in accordance with this Note, together with cash in an amount equal to the excess, if any, of the Covering Price over the product of (x) the number of such Undelivered Shares; and (y) the Daily VWAP per share of Common Stock on the applicable Stock Payment Determination Date relating to such conversion.

To exercise such right, the Holder must deliver notice of such exercise to the Company, specifying whether the Holder has elected clause (1) or (2) above to apply. If the Holder has elected clause (1) to apply, then the Company's obligation to deliver the Undelivered Shares in accordance with this Note will be deemed to have been satisfied and discharged to the extent the Company has paid the Covering Price in accordance with clause (1). Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock as required pursuant to the terms hereof. In addition to the foregoing, if the Company fails for any reason to deliver Common Stock to the Holder by the applicable Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each one thousand dollars ($1,000) of Undelivered Shares (based on the Daily VWAP on the applicable Share Delivery Date), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Conversion Settlement Date until the cash amount set forth in **Section 7(E)(iv)(1)** is paid to the Holder or the shares of Common Stock are delivered to the Holder pursuant to **Section 7(E)(iv)(2)**.

(v) *Effect of Conversion*. If this Note is converted in full, then, from and after the date the Conversion Consideration therefor is issued or delivered in settlement of such conversion, this Note will cease to be outstanding and all interest will cease to accrue on this Note.

(F) *Common Stock Issued upon Conversion*.

(i) *Status of Conversion Shares; Listing*. Each share of Common Stock delivered pursuant to this Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any Lien or adverse claim (except to the extent of any Lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each share of Common Stock issued pursuant to this Note, when delivered, to be admitted for listing on such exchange or quotation on such system.

(ii) *Transferability of Conversion Shares*. Any shares of Common Stock issued pursuant to this Note will be issued in the form of book-entries at the facilities of DTC, identified therein by an "unrestricted" CUSIP number.

(G) *Adjustments to the Conversion Rate.*

(i) *Events Requiring an Adjustment to the Conversion Rate*. The Conversion Rate will be adjusted from time to time as follows:

(1) *Stock Dividends, Splits and Combinations*. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 7(I)** will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or the Open of Business on such effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 7(G)(i)(1)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) *Rights, Options and Warrants*. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which the provisions set forth in **Section 7(G)(v)** will apply) entitling such holders, for a period

of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS+X}{OS+Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the Ex-Dividend Date for the distribution of such rights, options or warrants not occurred.

For purposes of this **Section 7(G)(i)(2)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors in good faith.

(3) *Spin-Offs and Other Distributed Property*.

(a) *Distributions Other than Spin-Offs*. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(v) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required pursuant to **Section 7(G)(i)(1)** or **Section 7(G)(i)(2)**;

(w) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required pursuant to **Section 7(G)(i)(4)**;

(x) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 7(G)(v)**;

(y) Spin-Offs for which an adjustment to the Conversion Rate is required pursuant to **Section 7(G)(i)(3)(b)**; and

(z) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 7(I)** will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Board of Directors in good faith), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, *however*, that if *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, the Holder will receive, for each $1,000 Principal Amount of this Note held by this Holder on the record date for such distribution, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(b) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interest, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to a Common Stock Change Event, as to which **Section 7(I)** will apply), and such Capital Stock or equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "**Spin-Off Valuation Period**") beginning on, and including, such Ex-Dividend Date (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

The adjustment to the Conversion Rate pursuant to this **Section 7(G)(i)(3)(b)** will be calculated as of the Close of Business on the last Trading Day of the Spin-Off Valuation Period but will be given effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off, with retroactive effect. If this Note is converted and the Conversion Date occurs during the Spin-Off Valuation Period, then, notwithstanding anything to the contrary in this Note, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last day of the Spin-Off Valuation Period.

To the extent any dividend or distribution of the type set forth in this **Section 7(G)(i)(3)(b)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(4) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, *however*, that if D is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Rate, the Holder will receive, for each $1,000 Principal Amount of this Note held by the Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, the amount of cash that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(5) *Tender Offers or Exchange Offers*. If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of

Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Board of Directors in good faith) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the time (the "**Expiration Time**") such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the Expiration Time;

AC = the aggregate value (determined as of the Expiration Time by the Board of Directors in good faith) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, *however*, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 7(G)(i)(5)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Rate pursuant to this **Section 7(G)(i)(5)** will be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but will be given effect immediately after the Expiration Time, with retroactive effect. If this Note is converted and the Conversion Date occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Note, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last day of the Tender/Exchange Offer Valuation Period.

To the extent such tender or exchange offer is announced but not consummated (including as a result of the Company being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(ii) *No Adjustments in Certain Cases*.

(1) *Where the Holder Participates in the Transaction or Event Without Conversion* . Notwithstanding anything to the contrary in **Section 7(G)(i)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 7(G)(i)** (other than a stock split or combination of the type set forth in **Section 7(G)(i)(1)** or a tender or exchange offer of the type set forth in **Section 7(G)(i)(5)**) if the Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being the Holder of this Note, in such transaction or event without having to convert this Note and as if the Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate Principal Amount (expressed in thousands) of this Note held by this Holder on such date.

(2) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section 7(G)** and **Section 7(I)**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(a) except as otherwise provided in **Section 7(G)**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(b) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(c) the issuance of any shares of Common Stock, restricted stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(d) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Issue Date (other than an adjustment pursuant to **Section 7(G)(i)(3)(a)** in connection with the separation of rights under the Company's stockholder rights plan existing, if any, as of the Issue Date);

(e) repurchases of shares of Common Stock, including structured or derivative transactions, that are not pursuant to a tender offer as contemplated by **Section 7(G)(i)(5)**;

(f) solely a change in the par value of the Common Stock; or

(g) accrued and unpaid interest on this Note.

(iii) *Adjustments Not Yet Effective.* Notwithstanding anything to the contrary in this Note, if:

(1) this Note is to be converted;

(2) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 7(G)(i)** has occurred on or before the Conversion Date for such conversion, but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date;

(3) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock; and

(4) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date. In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such conversion until the second (2nd) Business Day after such first date.

(iv) *Conversion Rate Adjustments where the Converting Holder Participates in the Relevant Transaction or Event.* Notwithstanding anything to the contrary in this Note, if:

(1) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 7(G)(i)**;

(2) this Note is to be converted;

(3) the Conversion Date for such conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(4) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock based on a Conversion Rate that is adjusted for such dividend or distribution; and

(5) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 7(C)(ii)**),

then (x) such Conversion Rate adjustment will not be given effect for such conversion; (y) the shares of Common Stock issuable upon such conversion based on such unadjusted Conversion Rate will not be entitled to participate in such dividend or distribution; and (z) there will be added, to the Conversion Consideration otherwise due upon such conversion, the same kind and amount of consideration that would have been delivered in such dividend or distribution with respect to such shares of Common Stock had such shares been entitled to participate in such dividend or distribution.

(v) *Stockholder Rights Plans*. If any shares of Common Stock are to be issued upon conversion of this Note and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the Holder of this Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Note upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 7(G)(i)(3)(a)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to readjustment in accordance with such Section if such rights expire, terminate or are redeemed.

(vi) *Limitation on Effecting Transactions Resulting in Certain Adjustments*. The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 7(G)(i)** or **Section 7(I)** to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(vii) *Equitable Adjustments to Prices*. Whenever any provision of this Note requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Rate), the Company will make proportionate adjustments, if any, to such calculations to account for any adjustment to the Conversion Rate pursuant to **Section 7(G)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period.

(viii) *Calculation of Number of Outstanding Shares of Common Stock*. For purposes of this **Section 7(G)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(ix) *Calculations*. All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(x) *Notice of Conversion Rate Adjustments*. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 7(G)(i)**, the Company will promptly send notice to the Holder containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

(H) *Voluntary Adjustments*.

(i) *Generally*. To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate on any portion of this Note for any period of time by any amount if (i) the Board of Directors determines in good faith that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event and (ii) such increase is irrevocable for the period of time specified by the

Board of Directors. The Company and the Holder agree that any such voluntary adjustment to the Conversion Rate and any conversion of any portion of this Note based upon any such voluntary adjustment shall not constitute material non-public information with respect to the Company.

(ii) *Notice of Voluntary Increases*. If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 7(H)(i)**, then, no later than the first Business Day following such determination, the Company will send notice to the Holder of such increase, the amount thereof and the period during which such increase will be in effect.

(I) *Effect of Certain Recapitalizations, Reclassifications, Consolidations, Mergers and Sales.*

(i) *Generally*. If there occurs:

(1) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(2) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(3) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(4) other similar event,

and, in each case, as a result of such occurrence, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities or other property (including cash or any combination of the foregoing) (such an event, a "**Common Stock Change Event**," and such other securities or other property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue fractional shares of securities or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Note, at the effective time of such Common Stock Change Event, (x) the Conversion Consideration due upon conversion of this Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 7** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (y) for purposes of **Section 7(A)**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (z) for purposes of the definition of "Fundamental Change," the term " Common Stock" and "common equity" will be deemed to mean the common equity, if any, forming part of such Reference Property. For these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of "Daily VWAP," substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not

consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify the Holder of such weighted average as soon as practicable after such determination is made.

At or before the effective date of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver such instruments or agreements that (x) provides for subsequent conversions of this Note in the manner set forth in this **Section 7(I)**; (y) provides for subsequent adjustments to the Conversion Rate pursuant to **Section 7(G)** and **Section 7(H)** in a manner consistent with this **Section 7(I)**; and (z) contains such other provisions as the Company reasonably determines are appropriate to preserve the economic interests of the Holder and to give effect to the provisions of this **Section 7(I)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such instruments or agreements and such instruments or agreements will contain such additional provisions the Company reasonably determines are appropriate to preserve the economic interests of the Holder.

(ii) *Notice of Common Stock Change Events*. As soon as practicable after learning the anticipated or actual effective date of any Common Stock Change Event, the Company will provide written notice to the Holder of such Common Stock Change Event, including a brief description of such Common Stock Change Event, its anticipated effective date and a brief description of the anticipated change in the conversion right of this Note.

(iii) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 7(I)**.

(J) *Limitations on Conversions.*

(i) *Beneficial Ownership Limitation*. Notwithstanding anything to the contrary contained herein, the Company shall not effect the conversion of any portion of this Note, or otherwise issue shares pursuant to this Note, and the Holder shall not have the right to convert any portion of this Note, pursuant to the terms and conditions of this Note and any such conversion or issuance shall be null and void and treated as if never made, to the extent that after giving effect to such conversion or issuance, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or issuance. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of, or otherwise pursuant to, this Note with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, unconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or

unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 7(J)(i)**. For purposes of this **Section 7(J)(i)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Note, in determining the number of outstanding shares of Common Stock the Holder may acquire in connection with this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent (as defined in the Securities Purchase Agreement) setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a notice from the Holder related to the conversion of this Note or any issuance of shares of Common Stock in connection with this Note at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall promptly notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such conversion or issuance of shares of Common Stock would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 7(J)(i)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be issued pursuant to such notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of, or otherwise pursuant to, this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares; provided, however that, the aggregate number of shares of Common Stock that would otherwise be required to be issued to the Holder pursuant to the terms of this Note shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be issued such shares (and any such shares declared or made on such initial issuance or on any subsequent issuance held similarly in abeyance) to the same extent as if there had been no such limitation. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; *provided that* (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any Other Holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note or receive shares pursuant to this Note pursuant to this paragraph shall have any effect on the

applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 7(J)(i)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 7(J)(i)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. The Holder hereby acknowledges and agrees that the Company shall be entitled to rely on the representations and other information set forth in any notice from the Holder related to the conversion of this Note or any issuance of shares of Common Stock in connection with this Note and shall not be required to independently verify whether any issuance of Common Stock pursuant to this Note would cause the Holder (together with the other Attribution Parties) to collectively beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding after giving effect to such conversion or otherwise trigger the provisions of this **Section 7(J)(i)**. The Trustee shall have no obligation to monitor any limitations on beneficial ownership in connection with this **Section 7(J)(i)**.

(ii) *Stock Exchange Limitations*. Notwithstanding anything to the contrary in this Note or any Other Note, until the Requisite Stockholder Approval is obtained, in no event will the number of shares of Common Stock issuable upon conversion or otherwise pursuant to this Note and all Other Notes, together with all other shares, if any theretofore issued upon conversion or otherwise pursuant to this Note and all Other Notes, including (for the avoidance of doubt) Event of Default Stock Payments exceed ***[insert # representing one share less share than 20% of the outstanding shares]*** shares in the aggregate. If any one or more shares of Common Stock are not delivered as a result of the operation of the preceding sentence (such shares, the "**Withheld Shares**"), then (1) on the date such shares of Common Stock are issuable hereunder (without effect to any limitations imposed under **Section 7(J)(i)**), the Company will pay to the Holder, in addition to the Conversion Consideration otherwise due upon such conversion or shares otherwise due to the Holder hereunder, cash in an amount equal to the product of (x) the number of such Withheld Shares; and (y) the Daily VWAP per share of Common Stock on the applicable Stock Payment Determination Date; and (2) to the extent the Holder purchases (in an open market transaction or otherwise) Common Stock to deliver in settlement of a sale by the Holder of such Withheld Shares, the Company will reimburse the Holder for (x) any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection with such purchases and (y) the excess, if any, of (A) the aggregate purchase price of such purchases over (B) the product of (I) the number of such Withheld Shares purchased by the Holder; and (II) the Daily VWAP per share of Common Stock on the applicable Stock Payment Determination Date.

Section 8. Affirmative and Negative Covenants.

(A) *Stay, Extension and Usury Laws*. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(B) *Corporate Existence.* Subject to **Section 9**, the Company will cause to preserve and keep in full force and effect:

(i) its corporate existence and the corporate existence of its Subsidiaries in accordance with the organizational documents of the Company or its Subsidiaries, as applicable; and

(ii) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

provided, *however*, that the Company need not preserve or keep in full force and effect any such rights (charter and statutory), license or franchise or existence of any of its Subsidiaries if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder; *provided further*, that any Subsidiary may merge into, amalgamate or consolidate with any other Subsidiary and any Subsidiary may liquidate or dissolve if all of its property passes to the Company or another Subsidiary.

(C) *Ranking*. All payments due under this Note shall rank (i) *pari passu* with all Other Notes, (ii) effectively senior to all unsecured obligations of the Company to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

(D) *Indebtedness; Amendments to Indebtedness*. The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness except by the conversion of Indebtedness into equity securities (other than Disqualified Stock) and the payment of cash in lieu of fractional shares in connection with such conversion; or (c) amend or modify any documents or notes evidencing any Indebtedness in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder. The Company shall not and shall not permit any Subsidiary to incur any Indebtedness that would cause a breach or Default under the Notes or prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(E) *Liens*. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

(F) *Investments*. The Company shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; *provided* that the Company may not make any Investment (including a Permitted Investment) or permit any of its Subsidiaries to make any Investment (including a Permitted Investment) if (i) any Event of Default has occurred hereunder or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 10(A)(ii)**, **Section 10(A)(iv)**, **Section 10(A)(vi)**, **Section 10(A)(ix)**, **Section 10(A)(x)**, **Section 10(A)(xi)** or **Section 10(A)(xiv)**.

(G) *Distributions*. The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant equity incentive, stock purchase or repurchase plans or awards granted thereunder or other similar agreements provided under plans approved by the Board of Directors; provided, however, in each case the repurchase or redemption price does not exceed

the original consideration paid for such stock or Equity Interest, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary of the Company may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company, or (c) lend money to any employees, officers or directors (except as permitted under clause (F) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of two hundred fifty thousand dollars ($250,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of two hundred fifty thousand dollars ($250,000) in the aggregate. If there are dividends or distributions made by the Company or any Subsidiary, within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 8(G)** for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the contrary, the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Required Holders or (B) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 10(A)(ii)**, **Section 10(A)(iv)**, **Section 10(A)(vi)**, **Section 10(A)(ix)**, **Section 10(A)(x)**, **Section 10(A)(xi)** or **Section 10(A)(xiv)**.

(H) *Transfers*. The Company shall not, and shall not allow any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any material portion of the assets of the Company and its Subsidiaries (taken as a whole), except for Permitted Transfers and Permitted Investments.

(I) *Taxes*. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(J) *Minimum Liquidity*.

(i) The Company and its Subsidiaries shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States in a minimum amount equal to thirty million dollars ($30,000,000) and, subject to **Section 8(Y)**, subject to one or more control agreements entered into in favor of the Collateral Agent (each a "**Controlled Account**").

(ii) On the first (1st) Business Day of each month (or, if earlier, immediately in the event an Event of Default has occurred as a result of a breach of **Section 8(J)(i)**, **Section 8(G)**, **Section 8(V)**, **Section 8(W)** or **Section 8(Z)** hereof), the Company shall provide to the Holder and the Trustee a certification, in the form attached hereto as **Exhibit C**, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying whether or not the Company has satisfied the requirements of **Section**

8(J)(i), **Section 8(G)**, **Section 8(W)** and **Section 8(Z)** during the immediately preceding calendar month (a "**Compliance Certificate**"), and on the day the Company files its Annual Report on Form 10-K or Quarterly Report on Form 10-Q, the Company shall provide to the Holder a Compliance Certificate certifying whether or not the Company has satisfied the requirements of **Section 8(V)** during the last calendar quarter reported in such Annual Report on Form 10-K or Quarterly Report on Form 10-Q. If the Company determines in its sole discretion that such information constitutes material non-public information, then the Company will so indicate in the certification provided pursuant to the preceding sentence and the Company will concurrently disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(K) *Change in Nature of Business*. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Issue Date or any business substantially related or incidental thereto.

(L) *Maintenance of Properties, Etc.* The Company shall maintain and preserve, and the Company shall cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful (as determined by the Company in good faith) to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply at all times in all material respects with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(M) *Maintenance of Intellectual Property*. The Company will take, and the Company shall cause each of its Subsidiaries to take, all actions necessary or advisable to maintain and preserve all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company or such Subsidiary that are necessary or material (as determined by the Company in good faith) to the conduct of its business in full force and effect.

(N) *Maintenance of Insurance.* The Company shall maintain, and the Company shall cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with customary business practice by companies in similar businesses similarly situated.

(O) *Transactions with Affiliates*. Neither the Company, nor any of its Subsidiaries, shall enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate (other than the Company or any of its Wholly Owned Subsidiaries), except transactions for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

(P) *Restricted Issuances.* The Company shall not, and shall cause its Subsidiaries not to, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities or incur any Indebtedness, in each case, that would cause a breach or Default under the Notes or that by its terms would prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including, without limitation, the payment of principal thereon.

(Q) *Share Reserve.* So long as this Note remains outstanding, the Company shall at all times have no less than a number of authorized but unissued shares of Common Stock equal to the sum of (i) fifty million (50,000,000) shares of Common Stock which shall not be exclusively reserved for issuance pursuant to the Notes and (ii) one hundred percent (100%) of a fraction, the numerator of which shall be the then outstanding principal amount of all Notes, and the denominator of which shall be the Conversion Price which shall be reserved for issuance pursuant to the terms of the Notes (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 8(Q)** be reduced other than in connection with any stock combination, reverse stock split or other similar transaction. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(R) *Independent Investigation.* At the request of the Required Holders at any time the Required Holders have determined in good faith that (i) an Event of Default has occurred or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default but the Company has not timely agreed to such determination in writing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Required Holders to investigate as to whether such Event of Default or event or circumstance has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such Event of Default or event or circumstance has occurred, the Independent Investigator shall notify the Company of such Event of Default or occurrence of such event or circumstance and the Company shall promptly deliver written notice to the Holder of such Event of Default if such Event of Default has occurred. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, any of the Company's officers, directors, key employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(S) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice

delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this **Section 8(S)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

(T) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company, the Holder will not have any obligations hereunder except those obligations expressly set forth herein (and in the Securities Purchase Agreement) and the Holder is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the Note and not as a fiduciary or agent of the Company. The Company agrees that it will not assert any claim against the Holder based on an alleged breach of fiduciary duty by the Holder in connection with the Note. The Company acknowledges that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(U) The Company shall cause this Note and any shares of Common Stock issuable pursuant to this Note to be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law, on and after the date that is six (6) months following the Issue Date. If this Note is to be transferred, the Holder shall notify the Company and surrender this Note to the Company (or provide the Company an affidavit in a form reasonably acceptable to the Company that this Note was lost, stolen or destroyed), whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note, registered as the Holder may request.

(V) The Company shall maintain at all times, to be tested as of the last day of each calendar quarter, revenue (calculated in accordance with GAAP) for such quarter, in an amount equal to at least the amount set forth on **Exhibit D**.

(W) So long as this Note remains outstanding, the Company shall at all times have access to an ATM Program, the terms of which have been approved by the Required Holders in accordance with the Securities Purchase Agreement with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least ten million dollars ($10,000,000). On or before December 31, 2023, the Company shall establish a new ATM program with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least seventy five million dollars ($75,000,000) as of December 31, 2023, and such ATM Program shall not be subsequently canceled, or amended or otherwise modified to reduce such amount, without the written consent of the Required Holders.

(X) The Company shall pay when due any and all fees and expenses owed by it under all deposit accounts located in the United States and subject to a control agreement entered into in favor of the Collateral Agent.

(Y) As of the Issue Date (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall have delivered to the Collateral Agent (i) a perfection certificate, in the form attached to the Securities Purchase Agreement as Exhibit C, which described in detail reasonably acceptable to the Collateral Agent the Collateral (as defined below) to be delivered (a "**Perfection Certificate**"), (ii) a U.S. Security Agreement, dated as of the Issue Date, among the grantors named therein and the secured party named therein (the "**Main Security Agreement**"), (iii) a U.S. Intellectual Property Security Agreement, dated as of the Issue Date, among the grantor(s) named therein and the security party named therein (the "**IP Security Agreement**") and (iv) UCC financing statements ("**UCC Financing Statements**"), each of (i) through (iv), in form and substance satisfactory to the Collateral Agent, which created a first lien security interest in all assets of the Company including, but not limited to, its intellectual property (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) (the "**Collateral**") and perfected a first lien security interest in all such assets of the Company other than the Company's non-U.S. assets and its bank accounts. As soon as reasonably practicable, but in any event before thirty (30) days after the Issue Date of the Initial Purchased Notes (as defined in the Securities Purchase Agreement) (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall deliver to the Collateral Agent (a) such additional security documents, including deposit account control agreements, in form and substance reasonably acceptable to the Collateral Agent (the "**Ancillary Security Documents**"), which perfect a first lien security interest in all remaining assets of the Company (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) and (b) with respect to such Ancillary Security Documents, customary legal opinions relating to such Ancillary Security Documents, in form and substance reasonably acceptable to the Collateral Agent.

(Z) At no time shall any Intellectual Property (regardless of the value of such Intellectual Property) or any other assets with a fair market value in excess of five million dollars ($5,000,000) in the aggregate be held by Subsidiaries of the Company formed in jurisdictions outside of the United States, unless the Holder shall have been previously granted a perfected first lien security interest in such assets pursuant to security documents, in form and substance reasonably acceptable to the Collateral Agent. Notwithstanding the foregoing, no assets shall be held by Subsidiaries of the Company formed in jurisdictions outside of the United States in the event that holding such assets in such Subsidiaries would be in violation of the Main Security Agreement, the IP Security Agreement or the Ancillary Security Documents.

Section 9. Successors.

The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person, other than the Holder or any of its Affiliates (a "**Business Combination Event**"), unless:

(A) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Holder and the Trustee, at or before the effective time of such Business Combination Event, a supplement to this instrument) all of the Company's obligations under this Note; and

(B) immediately after giving effect to such Business Combination Event, no Event of Default will have occurred that has not been waived and no Default will have occurred and be continuing which has not been waived.

At the effective time of any Business Combination Event, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Note with the same effect as if such Successor Corporation had been named as the Company in this Note, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Note.

This **Section 9** will not apply to a sale, assignment, transfer, lease, conveyance or other disposition of property or assets between or among any of the Company and its Wholly Owned Subsidiaries.

Upon the occurrence of any Business Combination Event, the Company shall deliver the supplemental indenture, officers' certificate and opinion of counsel contemplated pursuant to Section 5.1(b) of the Base Indenture.

Section 10. Defaults and Remedies

(A) *Events of Default*. "**Event of Default**" means the occurrence of any of the following (whose occurrence, for the avoidance of doubt, may be waived, but may not be cured):

(i) a default in the payment when due of a Partial Redemption Payment (or applicable portion thereof), the Principal Amount, the Maturity Principal Amount, a Cash Sweep Payment or the Fundamental Change Repurchase Price under this Note;

(ii) a default for two (2) Business Days in the payment when due of the interest on this Note;

(iii) a default in the Company's obligation to issue shares pursuant to this Note;

(iv) a default in the Company's obligation to timely deliver a Fundamental Change Notice pursuant to **Section 6(C)**, Cash Sweep Certification in accordance with the requirements of **Section 4(D)** or Compliance Certificate, and such default continues for three (3) Business Days, or the delivery of a materially false or inaccurate Fundamental Change Notice, Cash Sweep Certification, Company Conversion Notice or Compliance Certificate;

(v) any failure to timely deliver an Event of Default Notice or a materially false or inaccurate certification as to whether any Event of Default has occurred or as to whether the Equity Conditions have been satisfied;

(vi) a default in any of the Company's obligations or agreements under this Note or the Transaction Documents (in each case, other than a default set forth in clauses **(i)** – **(v)** or **(vii)** – **(xviii)** of this **Section 10(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality qualifications, which may not be breached in any respect) of any Transaction Document as of the date when made (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date); *provided*, *however*, that if such default can be cured, then such default shall

not be an Event of Default unless the Company has failed to cure such default within ten (10) days after its occurrence;

(vii) any provision of any Transaction Document at any time for any reason (other than pursuant to the express terms thereof) ceases to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof is contested, directly or indirectly, by the Company or any of its Subsidiaries, or a proceeding is commenced by the Company or any of its Subsidiaries or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof;

(viii) the Company fails to comply with any covenant set forth in **Section 8(D)**, **Section 8(E)**, **Section 8(F)**, **Section 8 (G)**, **Section 8 (H)**, **Section 8 (J)**, **Section 8(P)**, **Section 8(Q)**, **Section 8(V)**, **Section 8(W)** or **Section 8(Y)** or **Section 8(Z)** of this Note;

(ix) the suspension from trading or failure of the Common Stock to be trading or listed on the Company's primary Eligible Exchange (measured in terms of trading volume for its Common Stock) on which the Common Stock is traded for a period of three (3) consecutive Trading Days;

(x) (i) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; or (ii) the occurrence of any breach or default under any terms or provisions of any other Indebtedness of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of two hundred fifty thousand dollars ($250,000) to become or be declared due prior to its stated maturity;

(xi) one or more final judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance pursuant to which the insurer has been notified and has not denied coverage), is rendered against the Company or any of its Subsidiaries and remains unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of ten (10) consecutive Trading Days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(xii) (A) the Company fails to timely file its quarterly reports on Form 10-Q or its annual reports on Form 10-K with the Commission in the manner and within the time periods required by the Exchange Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the Exchange Act shall be considered timely for this purpose), or (B) the Company withdraws or restates any such quarterly report or annual report previously filed with the Commission or (C) the Company at any time prior to the earlier to occur of (i) the issuance of all Notes pursuant to the Securities

Purchase Agreement and (ii) [_____], 2024[4] ceases to satisfy the eligibility requirements set forth under Section I.A of the General Instructions to Form S-3;

(xiii) In violation of **Section 8(Y)**, any security document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral, in each case, in favor of the Collateral Agent in accordance with the terms thereof, or any material provision of any such security document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xiv) any material damage to, or loss, theft or destruction of, any material portion of the Collateral (provided that any damage, loss, theft or destruction of the Collateral that reduces the value of such Collateral by two hundred and fifty thousand dollars ($250,000) or more shall be deemed to be material), whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect (as defined in the Securities Purchase Agreement). For clarity, an Event of Default under this **Section 10(A)(xiii)** will not require any curtailment of revenue;

(xv) at any time the shares of Common Stock issuable pursuant to this Note are not Freely Tradeable.

(xvi) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(xvii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

[4] **NTD**: insert one year anniversary of closing of Initial Purchased Notes.

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief with respect to the Company or any of its Significant Subsidiaries under any foreign Bankruptcy Law,

and, in each case under this **Section 10(A)(xvi)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(xviii) the Company's stockholders approve any plan for the liquidation or dissolution of the Company

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 10(A)(xvi)** or **Section 10(A)(xvii)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Maturity Principal Amount of, and all accrued and unpaid interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration*. If an Event of Default (other than an Event of Default set forth in **Section 10(A)(xvi)** or **Section 10(A)(xvii)** with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and has not been waived by the Holder, then the Holder, by notice to the Company, may declare this Note (or any portion thereof) to become due and payable on the Business Day immediately following the date of such notice for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default*. Promptly, but in no event later than one (1) Business Day after an Event of Default, the Company will provide written notice of such Event of Default to the Holder (an "**Event of Default Notice**"), which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) the date on which the Event of Default occurred and (iii) the date on which the Default underlying such Event of Default initially occurred, if different than the date on which the Event of Default occurred.

(D) *Default Interest*. If a Default or an Event of Default occurs, then in each case, to the extent lawful, interest ("**Default Interest**") will automatically accrue on the Principal Amount outstanding as of the date of such Default or Event of Default at a rate per annum equal to twelve percent (12.0%), from, and including, the date of such Default or Event of Default, as applicable, to, but excluding, the date such Default is cured and all outstanding Default Interest under this Note has been paid. Default Interest hereunder will be computed on the basis of a 360-day year comprised of twelve 30-day months and will be payable in arrears on the earlier of (i) the first day of each calendar month, (ii) the date such Default is cured, (iii) any Fundamental Change Repurchase Date, Conversion Settlement Date or any date that an Event of Default Acceleration Amount is paid by the Company to the Holder, and (iv) the Maturity Date.

Section 11. Registrar and Paying Agent.

Notwithstanding Section 2.4 of the Base Indenture, the Company hereby appoints itself as the Paying Agent for this Note. In connection with this Note, all references in the Base Indenture to the Trustee as the Paying Agent (including, without limitation, the obligation of the Paying Agent to hold assets in trust under Section 2.5 of the Base Indenture), shall instead be obligations of the Company in its capacity as Paying Agent

Section 12. Ranking.

All payments due under this Note shall rank (i) *pari passu* with all Other Notes, (ii) effectively senior to all unsecured obligations of the Company to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

Section 13. Replacement Notes.

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company from any loss that it may suffer if this Note is replaced.

Section 14. Notices.

Any notice or communication to the Company will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), electronic transmission (including e-mail) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

Velo3D, Inc.
511 Division Street
Campbell, CA 95008
Attention: William McCombe
Email address: bill.mccombe@velo3d.com

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

Fenwick & West LLP
902 Broadway
New York, NY 10010
Attention: Per Chilstrom
Email address: pchilstrom@fenwick.com

Notice to the Trustee shall be delivered as set forth in Section 10.2 of the Base Indenture.

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

Any notice or communication to the Holder will be by e-mail to its e-mail address, which initially are as set forth in the Securities Purchase Agreement. The Holder, by notice to the

Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is mailed in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Section 15. Successors and Assigns.

All agreements of the Company in this Note will bind its successors and will inure to the benefit of the Holder's successors and assigns.

Section 16. Severability.

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

Section 17. Headings, Etc.

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

Section 18. Amendments

Except as set forth in Section 8.2(a) of the Base Indenture, this Note may not be amended or modified unless in writing by the Company, the Trustee and the Required Holders, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. Notwithstanding the foregoing, the Company and the Trustee may amend or modify this Note, and may waive any provision hereof, without notice to or consent of the Holder or any Other Holder: (i) to provide for the conversion of this Note into Reference Property under **Section 7(I)**; or (ii) to provide for the assumption by a Successor Corporation of the obligations of the Company under this Note in accordance with **Section 9**. Section 8.1 of the Base Indenture shall not be applicable in connection with this Note.

Section 19. Governing Law; Waiver of Jury Trial.

All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed

or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

Section 20. Submission to Jurisdiction.

The Company (A) agrees that any suit, action or proceeding against it arising out of or relating to this Note may be instituted in the Court of Chancery of the State of Delaware; (B) waives, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has been brought in an inconvenient forum; and (C) submits to the nonexclusive jurisdiction of such court in any such suit, action or proceeding.

Section 21. Enforcement Fees.

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable and documented attorneys' fees and expenses.

Section 22. Collateral Agent.

(A) *Appointment; Authorization.* The Holder and the Trustee, together with any successors or assigns thereof, hereby irrevocably appoint, designate and authorize High Trail Investments ON LLC as collateral agent to take such action on their behalf under the provisions of this Note, each Security Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each Security Agreement, together with such powers as are reasonably incidental thereto. The provisions of this **Section 22** are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Agreement (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding any provision to the contrary contained elsewhere in this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent. The Collateral Agent shall act hereunder and under the Security Documents in accordance with the provisions of this Note and the Security Documents pursuant to the direction of the Required Holders or the Trustee.

(B) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through

its Affiliates, partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this **Section 22** shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(C) *Exculpatory Provisions.*

(i) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Agreements, and its duties shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing or an Event of Default has occurred; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers; and (iii) shall not, except as expressly set forth in the Security Agreements, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(ii) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(iii) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with this Notes, any Security Agreement or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto, or (e) any failure of the Company or any other party to this Note, any Security Agreements or any other agreement, instrument or document related hereto or thereto to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Note, any Security Agreement or any other agreement, instrument or document related to the hereto or thereto, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(D) *Reliance by Collateral Agent.* The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may

consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(E) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Holder and each Other Holder and the Company. If the Collateral Agent resigns under this Note, the Required Holders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Holder and each Other Holder after consulting with the Holder and each Other Holder. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this **Section 22** shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Holder, together with each Other Holder, shall perform all of the duties of the Collateral Agent hereunder until such time as the Required Holders shall appoint a successor agent as provided for above.

(F) *Non-Reliance on the Collateral Agent.* The Holder acknowledges that it has, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information it has deemed appropriate, made its own credit analysis and decision to enter into this Note. The Holder also acknowledges that it will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Note, any Security Agreement or any related agreement or any document furnished hereunder or thereunder.

(G) *Collateral Matters.* The Holder irrevocably authorizes the Collateral Agent to release any Lien granted to or held by the Collateral Agent under any Security Agreement (i) when all Obligations have been paid in full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under this Note and each other agreement, instrument or document related hereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with this Note and each other agreement, instrument or document related hereto); or (iii) if approved, authorized or ratified in writing by the Holder and each Other Holder. The Collateral Agent shall have the right, in accordance with the Security Agreements to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations.

(H) *Reimbursement by Holder and Other Holders.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(g) or 9(k) of the Securities Purchase Agreement to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Holder hereby agrees, jointly and severally with each Other Holder, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(I) *Marshaling; Payments Set Aside.* Neither the Collateral Agent nor the Holder shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Holder agrees to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Holder.

(J) *Payment Priorities.* If the Collateral Agent receives any proceeds of Collateral, the Collateral Agent shall deliver such proceeds to the Trustee for application in accordance with Section 6.10 of the Base Indenture.

Section 23. Calculations.

Except as otherwise expressly provided herein, the Collateral Agent shall be responsible for making all calculations called for under this Note or the Indenture. These calculations include, but are not limited to, determinations of the Cash Sweep Amount, Conversion Price, Conversion Rate, Daily VWAPs, Last Reported Sale Price, Fundamental Change Repurchase Price, Event of Default Acceleration Amount, Market Stock Payment Price, Partial Redemption Payments, and accrued interest on the Notes. The Collateral Agent shall make all these calculations in good faith and, absent manifest error, the Collateral Agent's calculations shall be final and binding on the Company and the Trustee. The Collateral Agent shall provide a schedule of its calculations to each of the Trustee, the Company and the Paying Agent (if no longer the Company), and the Trustee is entitled to rely conclusively upon the accuracy of the Collateral Agent's calculations without independent verification. The Collateral Agent shall forward its calculations to the Holder upon the request of that Holder at the sole cost and expense of the Company. For the avoidance of doubt, the Trustee shall have no obligation to calculate or verify the calculation of the accrued and unpaid interest on the Notes. The Trustee shall have no responsibility for calculations or determinations, or verifying the Collateral Agent's calculations or determination, of amounts, determining, or verifying the Collateral Agent's determination of, whether events requiring or permitting conversions of Notes have occurred, determining, or verifying the Collateral Agent's determination of, whether any adjustment is required with respect to conversion rights and, if so, how much, or for the delivery of the shares of Common Stock. The Trustee shall not be responsible for the Company's failure to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the Company's duties, responsibilities or covenants hereunder.

The following provisions of the Base Indenture are not applicable to this Note, unless so required pursuant to applicable law: Section 2.15, Article 3, Section 4.3, Section 4.5, Article 5, Section 6.1 through Section 6.4, Section 8.1 and Section 8.2.

Section 24. Trust Indenture Act.

If any provision of this Note contravenes the mandatory provisions of the Trust Indenture Act, the provisions of the Trust Indenture Act shall govern and control. The provisions of

Section 316(a)(1) of the Trust Indenture Act shall be excluded for the purposes of the Note and shall instead be governed by the terms hereof.

Section 25. Electronic Execution.

The words "execution," "signed," "signature," and words of similar import in the Note shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001-7006), the Electronic Signatures and Records Act of 1999 (N.Y. State Tech. §§ 301-309), or any other similar state laws based on the Uniform Electronic Transactions Act. All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any such communication sent to the Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to the Trustee by the authorized representative)), in English. The Company agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

* * *

Exhibit A

Form of Conversion Notice

Velo3D, Inc.

Senior Secured Convertible Note due 2026

Subject to the terms of this Note, by executing and delivering this Conversion Notice, the undersigned Holder of this Note directs the Company to convert the following Principal Amount of this Note: $_____,000 in accordance with the following details.
Shares of Common Stock to be delivered:

____

Accrued interest amount:

____

DTC Participant Number:

____

DTC Participant Name:

____

Date: __ __
(Legal Name of Holder)

By: __
Name:
Title:

Exhibit B

Form of Company Conversion Notice

Velo3D, Inc.

Senior Secured Convertible Notes due 2026

By executing and delivering this Company Conversion Notice, the Company hereby notifies the Holder of the Note of the Company's election to convert the entire principal amount of the Note identified by Certificate No. _____.

By delivering this Company Conversion Notice, the Company hereby represents and warrants that the Equity Conditions have been satisfied as of the date hereof.

Velo3D, Inc.

Date: ____ By: __

Name:
Title:

Exhibit C

Form of Covenant Compliance Certificate

The undersigned, the duly qualified and elected Chief Financial Officer of Velo3D, Inc., a Delaware corporation (the "**Company**"), does hereby certify in such capacity and on behalf of the Company, pursuant to the Senior Secured Convertible Note due 2026, issued [ ], 20[ ] (the "**Note**"), issued by the Company to [ ], that:

[(i) the Company satisfied the requirements of **Section 8(G)** of the Note during the calendar month ended [ ]; and

(ii) the Company satisfied the requirements of **Section 8(J)(i)** of the Note during the calendar month ended [ ].

(iii) the Company satisfied the requirements of **Section 8(W)** of the Note during the calendar month ended [ ].

(iv) the Company satisfied the requirements of **Section 8(Z)** of the Note during the calendar month ended [ ].][5]

[(v) the Company satisfied the requirements of **Section 8(V)** of the Note during the calendar quarter ended [ ].][6]

Capitalized terms used herein without definition shall have the meanings given to such terms in the Note.

VELO3D, INC.
By:
Name:
Title:

Date: _____

[5] Clauses (i-iv) shall only be included in Compliance Certificates delivered in connection with month ends.

[6] Clause (v) shall only be included in Compliance Certificates delivered on the day the Company files its Annual Report on Form 10-K or a Quarterly Report on Form 10-Q.

Exhibit D

Minimum Revenue Covenant

Calendar Quarter Ending	Minimum Revenue
6/30/2023	$23,500,000
9/30/2023	$24,000,000
12/31/2023	$27,000,000
3/31/2024	$25,000,000
6/30/2024	$28,000,000
9/30/2024	$30,000,000
12/31/2024	$34,000,000
3/31/2025	$34,000,000
6/30/2025	$36,000,000
9/30/2025	$37,000,000
12/31/2025	$37,000,000
3/31/2026	$37,000,000
6/30/2026	$37,000,000

Exhibit 5.1

FENWICK

902 Broadway
18th Floor
New York, NY 10010-6035

212.430.2600
Fenwick.com

August 14, 2023

Velo3D, Inc.

511 Division Street
Campbell, CA 95008

Ladies and Gentlemen:

We deliver this opinion with respect to certain matters in connection with the offering by Velo3D, Inc., a Delaware corporation (the " ***Company***"), of $70,000,000 aggregate principal amount of its Senior Secured Convertible Notes (the "***Notes***") (or up to $105,000,000 aggregate principal amount of Notes if the Buyers (as defined below) exercise their option to purchase additional Notes), convertible into shares (the "***Shares***" and, together with the Notes, the "***Securities***") of the Company's common stock, par value $0.00001 per share (the "***Common Stock***"), to be issued pursuant to (i) a Securities Purchase Agreement (the "***Purchase Agreement***"), dated as of August 10, 2023, by and among the Company and the buyers named therein (the "***Buyers***") and (ii) a Base Indenture, dated as of August 14, 2023 (the " ***Base Indenture***"), and the First Supplemental Indenture, dated August 14, 2023 (the "***Supplemental Indenture***" and, the Base Indenture as amended and supplemented by the Supplemental Indenture, the "***Indenture***"), each between the Company and U.S. Bank Trust Company, National Association, as trustee.

The Securities were registered pursuant to the registration statement on Form S-3 (File No. 333-268346) filed by the Company with the Securities and Exchange Commission (the "***Commission***") on November 14, 2022 and declared effective by the Commission on November 21, 2022 (the "***Registration Statement***"), the base prospectus dated November 14, 2022 relating to the Company's securities, which forms a part of, and is substantially in the form included in, the Registration Statement (the "***Base Prospectus***") and the prospectus supplement relating to the Shares dated August 10, 2023, filed by the Company with the Commission pursuant to Rule 424(b) under the Act on August 10, 2023 (the "***Prospectus Supplement***" and, together with the Base Prospectus, the "***Prospectus***").

As to matters of fact relevant to the opinions rendered herein, we have examined such documents, certificates and other instruments which we have deemed necessary or advisable, including a certificate addressed to use and dated the date hereof executed by the Company (the "***Management Certificate***"). In giving our opinion, we have also relied upon a good standing certificate regarding the Company issued by the Delaware Secretary of State dated August 8, 2023. We have not undertaken any independent investigation to verify the accuracy of any such information, representations or warranties or to determine the existence or absence of any fact, and no inference as to our knowledge of the existence or absence of any fact should be drawn from our representation of the Company or the rendering of the opinion set forth below. We have not considered parol evidence in connection with any of the agreements or instruments reviewed by us in connection with this letter.

In connection with our opinion expressed below, we have examined originals or copies of the Company's current Certificate of Incorporation, as amended, and Amended and Restated Bylaws, as amended (the "***Charter Documents***"), the Indenture and the Notes, certain corporate proceedings of the Company's board of directors (the "***Board***") and committees thereof and stockholders relating to the Purchase Agreement, the Indenture, the Notes, the Registration Statement and the Charter Documents, and such other agreements, documents, certificates and statements of the Company, its transfer agent and public or government officials, as we have deemed advisable, and have examined such questions of law as we have considered necessary. In our examination of documents for purposes of this letter, we have assumed, and express no opinion as to, the genuineness and authenticity of all signatures on original documents, the authenticity and completeness of all documents submitted to us as originals, that each document is what it purports to be, the conformity to originals of all documents submitted to us as copies or facsimile copies, the absence of any termination, modification or waiver of or amendment to any document reviewed by us (other than has been disclosed to us), the legal competence or capacity of all persons or entities (other than the Company) executing the same, the due authorization, execution and delivery of all documents by each party thereto (other than the Company) and the validity and binding

effect and enforceability of all documents upon each party thereto (except with respect to the Notes being valid and binding obligations of the Company, enforceable against the Company in accordance with their terms). We have also assumed the conformity of the documents filed with the Commission via the Electronic Data Gathering, Analysis and Retrieval System ("***EDGAR***"), except for required EDGAR formatting changes, to physical copies submitted for our examination.

The opinions in this letter are limited to the existing General Corporation Law of the State of Delaware now in effect and the existing laws of the State of New York now in effect (the "***Applicable Laws***"). We express no opinion with respect to any other laws, including as to whether (or the extent to which) any other laws apply, and we express no opinion to the extent that the laws of any jurisdiction other than the Applicable Laws are applicable to any agreement. To the extent an agreement is governed by the laws of any jurisdiction other than the Applicable Laws, our opinions relating to such agreement are based solely upon the plain meaning of its language as though the Applicable Laws applied, without regard to interpretation or construction that might be indicated by the laws stated as governing such agreement.

In connection with our opinions expressed below, we have assumed that, (i) at or prior to the time of the issuance and delivery of any of the Notes, and as of each and every time any of the Shares are issued pursuant to the Notes, there will not have occurred any change in the law or the facts affecting the validity of the Notes or the Shares, as applicable, (ii) at the time of the offer, sale and delivery of any Notes, and as of each and every time Shares are issued pursuant to the Notes, no stop order suspending the Registration Statement's effectiveness will have been issued and remain in effect, (iii) no future amendments will be made to the Charter Documents or changes will be made to actions of the Board, the committees thereof or the Company's stockholders that would be in conflict with or inconsistent with the Company's right and ability to issue the Notes or the Shares, as applicable, (iv) as of each and every time any Shares are issued pursuant to the Notes, the Company will have a sufficient number of authorized and unissued and unreserved shares of Common Stock (after taking into account all other outstanding securities of the Company which may require the Company to issue shares of Common Stock) to be able to issue all such Shares, and (v) the Buyers will timely pay in full to the Company all amounts they have agreed to pay to purchase such Notes, as approved by the Board or a duly authorized committee thereof.

This opinion is qualified by, and is subject to, and we render no opinion with respect to, the following limitations and exceptions to the enforceability of the Notes:

1. The effect of the laws of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance, assignment for the benefit of creditors, and other similar laws now or hereinafter in effect relating to or affecting the rights and remedies of creditors, including the effect of statutory or other laws regarding fraudulent transfers or preferential transfers.
2. The effect of general principles of equity and similar principles, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, public policy and unconscionability, and the possible unavailability of specific performance, injunctive relief, or other equitable remedies, regardless of whether considered in a proceeding in equity or at law.
3. The enforceability of provisions in any agreement relating to indemnity or contribution, to the extent enforcement of such provisions are overly broad or contrary to public policy or indemnify a party against liability for future conduct or the party's own fraud or wrongful, reckless or negligent acts or omissions.
4. Any provision purporting to (i) waive rights to trial by jury, or service of process in connection with any litigation arising out of or pertaining to any agreement, (ii) change or waive the rules of evidence, make determinations conclusive or fix the method or quantum of proof or (iii) waive broadly or vaguely stated rights, unknown future rights, the benefits of statutory, regulatory or constitutional rights, or rights to damages or rights which may not be waived on statutory or public policy grounds.
5. Any provision purporting to (i) exclude conflict of law principles under any law or (ii) select certain courts as the venue, or establish a particular jurisdiction as the forum, for the adjudication of any controversy.

Based upon the foregoing, we are of the opinion that:

(i) the Notes, when executed, issued and authenticated in accordance with the terms of the Indenture and paid for and delivered in accordance with the terms of the Purchase Agreement, will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms; and

(ii) the Shares, when issued, paid for and delivered pursuant to the Notes in accordance with the terms of the Notes, will be validly issued, fully paid and non-assessable.

We consent to the use of this opinion as an exhibit to the Company's Current Report on Form 8-K to be filed with the Commission and further consent to all references to us, if any, in the Registration Statement, the Prospectus and any amendments or supplements thereto. We do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

This opinion is intended solely for your use in connection with issuance and sale of the Securities subject to the Registration Statement and is not to be relied upon for any other purpose. In providing this letter, we are opining only as to the specific legal issues expressly set forth above, and no opinion shall be inferred as to any other matter or matters. This opinion is rendered on, and speaks only as of, the date of this letter first written above, and does not address any potential change in facts or law that may occur after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention, whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

/s/ Fenwick & West LLP

FENWICK & WEST LLP

Certain information in this document indicated with "[*]" has been omitted from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of August 10 2023, is by and among Velo3D, Inc., a Delaware corporation with offices located at 511 Division Street, Campbell, CA 95008 (the "**Company**"), and each of the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**").

RECITALS

A. The Company has authorized a new series of Senior Secured Convertible Notes in the form attached hereto as **Exhibit A** (the "**Notes**"), that it wishes to issue and sell to the Buyers at the Initial Closing (as defined below) and, at the Buyers' election, any Subsequent Closing (as defined below), upon the terms and conditions stated in this Agreement, which such Notes shall under certain circumstances entitle the Buyers to receive shares of the Company's common stock, par value $0.00001 per share (together with any capital stock into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock, the "**Common Stock**") (such underlying shares of Common Stock issuable pursuant to the terms of the Notes, the "**Underlying Shares**"). The Notes will be issued pursuant to that certain Base Indenture (the "**Base Indenture**"), to be dated as of the Initial Closing Date (as defined below), between U.S. Bank Trust Company, National Association, as trustee (in such capacity, together with its successors and permitted assigns, the "**Trustee**"), and a First Supplemental Indenture (together with the Base Indenture, the "**Indenture**") with respect to the Notes substantially in the forms attached hereto as **Exhibits B-1** and **B-2**, respectively, to be dated as of the Initial Closing Date, by and between the Company, the Trustee and the collateral agent named therein.

B. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, (i) the aggregate principal amount of Initial Purchased Notes (as defined below) set forth opposite such Buyer's name in column (3) on the Schedule of Buyers and (ii) the aggregate principal amount of Subsequently Purchased Notes (as defined below) set forth opposite such Buyer's name in column (5) on the Schedule of Buyers.

C. At or before the Initial Closing, the parties set forth on the Schedule of Lock-Up Parties attached hereto shall execute and deliver a Lock-Up and Voting Agreement, in the form attached hereto as **Exhibit D** (each, a "**Lock-Up and Voting Agreement**") pursuant to which such parties agree (i) for a period of ninety (90) days from the date hereof to not, without the prior written consent of the Buyers and subject to certain exceptions contained therein, (x) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act (as defined below) with respect to any of the foregoing or publicly disclose the intention to undertake any of the foregoing or (y) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (x) or (y) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise; and (ii) to vote their shares of the Company's Common Stock in favor of providing the Requisite Stockholder Approval (as defined in the Notes).

D. The Notes and Underlying Shares are collectively referred to herein as the "**Securities**."

E. The Company and each Buyer is executing and delivering this Agreement with respect to the Initial Purchased Notes (as defined below) and the Subsequently Purchased Notes (as defined below) in reliance upon the effective registration statement on Form S-3 (Commission File No. 333-268346) (as amended, the "**Registration Statement**") filed by the Company with the United States Securities and Exchange Commission (the "**SEC**") pursuant to the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "**1933 Act**"), for the registration of the Initial Purchased Notes and the Subsequently Purchased Notes, as such Registration Statement may be amended and supplemented from time to time (including pursuant to Rule 462(b) of the 1933 Act), including all documents filed as part thereof or incorporated by reference therein, and including all information deemed to be a part thereof at the time of effectiveness pursuant to Rule 430B of the 1933 Act, and the prospectus supplement and accompanying base prospectus (together, the "**Prospectus Supplement**") complying with Rule 424(b) of the 1933 Act that is delivered by the Company to each Buyer in connection with the execution and delivery of this Agreement, including the documents incorporated by reference therein, and that is filed with the SEC.

F. The effective time of this Agreement shall be 3:59 p.m. New York time, on the date of this Agreement..

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF PURCHASED SECURITIES.

(a) Purchase of Initial Purchased Notes. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7(a), as applicable, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Initial Closing Date the following Securities:

(i) the aggregate principal amount of Notes as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers (the "**Initial Purchased Notes**").

(b) Initial Closing. The closing (the "**Initial Closing**") of the purchase of the Initial Purchased Notes by the Buyers shall occur by electronic transmission or other transmission as mutually acceptable to the parties. The date and time of the Initial Closing (the "**Initial Closing Date**") shall be 10:00 a.m., New York time, on the second (2nd) Business Day on which the conditions to the Initial Closing set forth in Sections 6 and 7(a) are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer). As used herein "**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in the City of New York are authorized or required by law or executive order to close or be closed; *provided*, *however*, for clarification, commercial banks in the City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in the City of New York are open for use by customers on such day.

(c) Initial Securities Purchase Price. The aggregate purchase price for the Initial Purchased Notes to be purchased by each Buyer at the Initial Closing (the "**Initial Securities Purchase Price**") shall be the sum of the amounts set forth opposite such Buyer's name in column (4) on the Schedule of Buyers.

(d) Form of Payment for Initial Purchased Notes. On the Initial Closing Date, (i) each Buyer shall pay its respective Initial Securities Purchase Price to the Company for the Initial Purchased Notes to be issued and sold to such Buyer at the Initial Closing Date (net of expenses payable pursuant to Section 4(g)), by wire transfer of immediately available funds in accordance with a Flow of Funds Letter (as defined below) with respect to the Initial Purchased Notes and (ii) the Company shall:

(i) cause the Trustee to deliver to each Buyer the aggregate principal amount of the Initial Purchased Notes as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, duly executed on behalf of the Company and the Trustee and registered on the books and records of the Trustee in the name of such Buyer or its designee.

(e) Purchase of Subsequently Purchased Notes at Buyer's Election. For one or more Subsequent Closings, the Buyers may deliver to the Company a written notice (an "**Election Notice**") setting forth a principal amount of additional Notes (the "**Subsequently Purchased Notes**" and, together with the Initial Purchased Notes, the **"Purchased Securities**"), that the Buyers desire to purchase, and which the Company shall issue and sell, at such Subsequent Closing. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7(b), as applicable, and in reliance upon the effective Registration Statement the Company agrees to issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company at such Subsequent Closing, the aggregate principal amount of Subsequently Purchased Notes as is set forth on such Election Notice, provided that the maximum aggregate principal amount of Subsequently Purchased Notes issued pursuant to this Agreement to any Buyer shall not exceed the aggregate principal amounts as is set forth opposite such Buyer's name in column (5) on the Schedule of Buyers.

(f) Subsequent Closings. The closing of the purchase of Subsequently Purchased Notes (each, a "**Subsequent Closing**" and together with the Initial Closing, each a "**Closing**") by the Buyers pursuant to an Election Notice shall occur by electronic transmission or other transmission as mutually acceptable to the parties. The date and time of a Subsequent Closing (each, a "**Subsequent Closing Date**" and together with the Initial Closing Date, each a "**Closing Date**") shall be 10:00 a.m., New York time, on the date upon which the conditions to such Subsequent Closing set forth in Sections 6 and 7(b) are satisfied or waived (or such other date as is set forth by the Buyers in the Election Notice); *provided*, that in no event will any Election Notice be delivered after the date that is one (1) year from the Initial Closing Date.

(g) Securities Purchase Price. The aggregate purchase price for any issuance of Subsequently Purchased Notes to be purchased by each Buyer at any Subsequent Closing (the "**Subsequent Securities Purchase Price**") shall be one hundred percent (100%) of the aggregate principal amount of Subsequently Purchased Notes set forth on the Election Notice and allocated among the Buyers based on such Buyer's pro rata portion of the aggregate principal amount of Notes purchased hereunder, but in no event will the aggregate purchase price for all issuances of Subsequently Purchased Notes exceed the amount set forth opposite such Buyer's name in column (6) on the Schedule of Buyers.

(h) Form of Payment for Subsequently Purchased Notes. On each Subsequent Closing Date, (i) each Buyer shall pay its respective Subsequent Securities Purchase Price to the Company for the Subsequently Purchased Notes to be issued and sold to such Buyer at such Subsequent Closing Date (net of expenses payable pursuant to Section 4(g)) pursuant to the applicable Election Notice, by wire transfer of immediately available funds in accordance with the Flow of Funds Letter delivered at the Initial Closing (unless the Company shall have previously supplied the Buyers with updated wire transfer information) with respect to such Subsequently Purchased Notes and (ii) the Company shall cause the Trustee to deliver to each Buyer the aggregate principal amount of Subsequently Purchased Notes pursuant to the

applicable Election Notice, duly executed on behalf of the Company and the Trustee and registered on the books and records of the Trustee in the name of such Buyer or its designee.

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

Each Buyer, severally and not jointly, represents and warrants to the Company with respect to only itself that, as of the date hereof and as of the Initial Closing Date and each Subsequent Closing Date, if any:

(a) Organization; Authority. Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to conduct its business as currently conducted and enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have had (i) the opportunity to review the Registration Statement and the Prospectus Supplement, the Transaction Documents and the SEC Documents (as defined below) and has been afforded the opportunity to ask such questions of the Company as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby. Such Buyer did not learn of the investment in the Securities as a result of any general solicitation or general advertising. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. Such Buyer is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, except for statements, representations and warranties contained in this Agreement, in making its investment or decision to invest in the Company.

(c) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(d) Validity; Enforcement. This Agreement and the Security Agreements (as defined below) (only with respect to each Subsequent Closing Date) have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar

laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(e) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the Security Agreements (only with respect to each Subsequent Closing Date) and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that, as of the date hereof and as of the Initial Closing Date and each Subsequent Closing Date, if any:

(a) Compliance with Registration Requirements. The Registration Statement has become effective under the 1933 Act. The Company has complied, to the SEC's satisfaction with all requests of the SEC for additional or supplemental information, if any. No stop order suspending the effectiveness of the Registration Statement is in effect and no proceedings for such purpose have been instituted or, to the knowledge of the Company, are pending or contemplated or threatened by the SEC. At the time each of the Registration Statement and the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (the "**2022 Annual Report**") was filed with the SEC, the Company met the then-applicable requirements for use of Form S-3 under the 1933 Act. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, at the time they were or hereafter are filed with the SEC, or became effective under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), as the case may be, complied and will comply with in all material respects with the requirements of the 1934 Act.

(b) Disclosure. The Prospectus Supplement when filed complied in all material respects with the 1933 Act. Each of the Registration Statement and any post-effective amendment thereto, at the time it became or becomes effective, complied and will comply in all material respects with the 1933 Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Trust Indenture Act**"), and did not, and at any Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided*, that the Company makes no representation or warranty with respect to that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act. The Indenture, when filed with the SEC, complied in all material respects with the requirements of the Trust Indenture Act and was duly qualified as an indenture under the Trust Indenture Act. The Prospectus Supplement (including any prospectus wrapper), as of its date, did not, and at any Closing Date, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. There are no contracts or other documents required to be described in the Prospectus Supplement or to be filed as an exhibit to the Registration Statement which have not been described or filed as required. No event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries (as defined below) or any of their respective businesses, properties, liabilities,

prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-3 filed with the SEC relating to an issuance and sale by the Company of any shares of Common Stock and which has not been publicly announced, (ii) could have a material adverse effect on any Buyer's investment hereunder or (iii) could have a Material Adverse Effect (as defined below).

(c) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing (if a good standing concept exists in such jurisdiction) under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing (if a good standing concept exists in such jurisdiction) in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or its Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents. Other than the Persons (as defined below) set forth on Schedule 3(c), the Company has no significant Subsidiaries within the meaning of Rule 1-02(w) of Regulation S-X. The Company's Permitted Investments (as defined in the Notes) are also set forth on Schedule 3(c). "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary.**" For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(d) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Initial Purchased Notes and the Subsequently Purchased Notes, if any, and the reservation for issuance and the issuance of the Underlying Shares as of the Initial Closing and each Subsequent Closing, if any), have been duly authorized by the Company's board of directors (the "**Board of Directors**") or a duly authorized committee thereof, and (other than (i) such filings, consents or authorizations as have been obtained, taken, given or made, (ii) any filings as may be required by any state securities agencies, (iii) filings necessary to perfect the Liens (as defined below) granted under the Security Agreements, and (iv) a Supplemental Listing Application with NYSE (as defined below) and (v) filings as may be required in connection with obtaining the Requisite Stockholder Approval (clauses (i) through (v), collectively, the "**Required Filings**"), no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or their stockholders (other than the Requisite Stockholder Approval) or other governing body in connection therewith. This Agreement has been, and the other Transaction Documents to which it is a party will be duly executed and delivered by the Company prior to the Initial Closing, and each constitutes a legal,

valid and binding obligation of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law (the "**Enforceability Exceptions**"). "**Transaction Documents**" means, collectively, this Agreement, the Notes, the Perfection Certificate (as defined below), the Security Agreements, the Indenture, each Lock-Up and Voting Agreement, and the Irrevocable Transfer Agent Instructions (as defined below) and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time; *provided*, that solely for representations and warranties made as of the Initial Closing Date pursuant to **Section 2** and **Section 3** hereof, Transaction Documents shall not include the Ancillary Security Documents.

(e) Issuance of Securities. The issuance of the Securities is duly authorized and when issued and delivered in accordance with the terms of the Transaction Documents, the Securities shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof. As of the Initial Closing Date and each Subsequent Closing Date, if any, the Company shall have not less than a number of authorized but unissued shares of Common Stock equal to the sum of (i) fifty million (50,000,000) shares of Common Stock, which shall not be exclusively reserved for issuance pursuant to the Notes and (ii) one hundred percent (100%) of a fraction the numerator of which shall be the then outstanding Principal Amount (as defined in the Notes) of all Notes issued pursuant to this Agreement, and the denominator of which shall be the Conversion Price (as defined in the Notes), which shall be reserved for issuance pursuant to the Notes (which such reservation shall be for the sole benefit of and exclusive availability for the Buyers). The Underlying Shares (upon issuance in accordance with the Notes), will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights or Liens with respect to the issuance thereof, with the holders being entitled to all rights accorded to a holder of Common Stock.

(f) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes and the Underlying Shares, and the reservation of Common Stock for issuance of the Underlying Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined below), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) assuming the accuracy of the representations and warranties in Section 2, result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations, and the rules and regulations of The New York Stock Exchange ("**NYSE**") and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, assuming, with respect to clauses (ii) and (iii) above, the making of the Required Filings and except in the case of clauses (ii) and (iii) above, for such breaches, violations or conflicts as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(g) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the Required Filings, filings necessary to perfect the Liens granted under the Security Agreements and such consents, authorizations, filings or registrations the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. Other than the Required Filings, all consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Initial Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of the requirements of NYSE and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock. "**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(h) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule thereto), collectively, "**Rule 144**") of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" (as defined for purposes of Rule 13d-3 of the 1934 Act) of more than 4.99% of the shares of any voting class of the Company's Common Stock. The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(i) No Placement Agent. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent, other than Credit Suisse Securities (USA) LLC (the "**Placement Agent**"), in connection with the offer or sale of the Securities. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and reasonable and documented out-of-pocket expenses) arising in connection with any claim for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby.

(j) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require approval of stockholders of the Company in connection with the offering of the Securities for purposes of the 1933 Act or under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf has taken or will take any action or steps that would cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(k) Dilutive Effect. The Company understands and acknowledges that the number of Underlying Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Underlying Shares pursuant to the terms of the Notes in accordance with the terms thereof and this Agreement is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(l) Application of Takeover Protections. The Company and its Board of Directors or a duly authorized committee thereof have taken or will take prior to the Initial Closing Date all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill, stockholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities.

(m) Financial Statements. During the one (1) year prior to the date hereof and each Closing Date with respect to which this representation is being made, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC (other than Section 16 ownership filings) pursuant to the reporting requirements of the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose) (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Buyers or their respective representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate).

No other information provided by or on behalf of the Company to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in material compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent auditors that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(n) Absence of Certain Changes. Since the date of the Company's audited financial statements contained in the 2022 Annual Report, there has been no Material Adverse Effect. Since the date of the Company's audited financial statements contained in the 2022 Annual Report, except as set forth on Schedule 3(n), neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business, (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business or (iv) made any revaluation of any of their respective assets, including, without limitation, writing down the value of capitalized inventory or writing off notes or accounts receivable or any sale of assets other than in the ordinary course of business.

(o) Insolvency. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof and as of the Initial Closing Date and each Subsequent Closing Date, if any, and after giving effect to the transactions contemplated hereby to occur on the Initial Closing Date and each Subsequent Closing Date, if any, will not be Insolvent (as defined below). For purposes of this Section 3(o), "**Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature.

(p) Listing and Trading. Regulatory Permits. Since September 30, 2021, (i) the Common Stock has been listed or designated for quotation on NYSE, (ii) trading in the Common Stock has not been suspended by the SEC or NYSE and (iii) the Company has received no communication, written or oral, from the SEC or Nasdaq regarding the suspension or delisting of

the Common Stock from NYSE. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be likely to have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(q) Foreign Corrupt Practices. Neither the Company, any of the Company's Subsidiaries, nor any director or officer thereof, nor, to the Company's knowledge, any employee or agent or any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act or any other applicable anti-bribery or anti-corruption laws (individually and collectively, "**Anti-Corruption Laws**"), nor, to the Company's knowledge, has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

Neither of the Company nor any of its Subsidiaries will use, directly or indirectly, any part of the proceeds of the offering in any manner that would constitute a violation of Anti-Corruption Laws.

(r) Sarbanes-Oxley Act. The Company and each of its Subsidiaries is in material compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(s) Transactions With Affiliates. Except as set forth on Schedule 3(s), no current or former employee, partner, director, officer or shareholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently or has been (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or shareholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock or ordinary shares, as applicable, of a company whose securities are traded on or quoted through an Eligible Market (as defined below)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, shareholder or director of the Company or

any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company or its Subsidiaries, as the case may be, and (iii) for other standard employee benefits made generally available to all employees or executives (including share option agreements outstanding under any share option plan approved by the Board of Directors of the Company).

(t) Equity Capitalization.

(i) Authorized and Outstanding Capital Stock. As of the date of this Agreement and as of the Initial Closing, the authorized capital stock of the Company consists of (A) 500,000,000 shares of Common Stock, of which, 192,747,463 are issued and outstanding and 41,660,092 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Notes) exercisable or exchangeable for, or convertible into, shares of Common Stock, and (B) 10,000,000 shares of preferred stock, par value $0.00001 per share, of which no shares are issued and outstanding.

(ii) Valid Issuance; Available Shares; Affiliates. All of the Company's outstanding shares are duly authorized and have been validly issued and are fully paid and non-assessable. Schedule 3(t)(ii) sets forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities (other than the Initial Purchased Notes and the Subsequently Purchased Notes, if any) as of the date hereof and as of the Initial Closing and (B) as of the date hereof and as of the Initial Closing, owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding shares of Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, as of the date hereof and the Initial Closing Date, no Person owns 10% or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% stockholder for purposes of federal securities laws). "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock and any RSUs or any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities (collectively, "**Options**")) or any of its Subsidiaries.

(iii) Existing Securities; Obligations. Except as set forth on Schedule 3(t)(iii): (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) other than (i) pursuant to the Business Combination Agreement, (ii) the Company's outstanding warrants (the "**Warrants**"), (iii) stock options, restricted stock units ("**RSUs**"), performance stock units, deferred stock units, rights and other stock-based awards awarded to employees, directors and consultants of the Company under equity incentive and employee stock purchase plans adopted by the Board of Directors of the Company and described in the SEC Documents and (iv) pursuant to this Agreement and following the Initial Closing, the Notes, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the

Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) other than pursuant to the Amended and Restated Registration Rights Agreement, dated September 29, 2021, by and among the Company and holders party thereto and the Warrants, there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (D) other than the Warrants and, following the Initial Closing, the Notes, there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(u) Organizational Documents. The Company has furnished to the Buyers true, correct and complete copies of the Company's Certificate of Incorporation, as amended, and as in effect on the date hereof and each Closing Date (the "**Certificate of Incorporation**") and the Company's Amended and Restated Bylaws, each in effect on the date hereof and each Closing Date (collectively, the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

(v) Indebtedness and Other Contracts. Except as set forth on Schedule 3(v), neither the Company nor any of its Subsidiaries (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) has any financing statements securing obligations in any amounts filed against the Company or any of its Subsidiaries or with respect to any of their respective assets; (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses consistent with past practices and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication, (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be

secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(w) Litigation. There is no material action, suit, arbitration, proceeding, inquiry or investigation before or by NYSE, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries (or pending or threatened by the Company or any of its Subsidiaries), the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as set forth in Schedule 3(w). To the knowledge of the Company, no director, officer or employee of the Company or any of its Subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending, contemplated or anticipated, any inquiry or investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. After reasonable inquiry of its officers (as defined in Rule 16a-1(f) promulgated under the 1934 Act) and members of its Board of Directors, the Company is not aware of any fact which might result in or form the basis for any such action, suit, arbitration, investigation, inquiry or other proceeding. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(x) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for, and neither the Company nor any of its Subsidiaries has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(y) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. To the knowledge of the Company, no executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company

and its Subsidiaries are in material compliance with all applicable federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(z) Title. Each of the Company and its Subsidiaries holds good title to, or a valid leasehold interest in, all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries that is material to the business of the Company (the "**Real Property**"). Except as set forth on Schedule 3(z), the Real Property is free and clear of all Liens and is not subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except for (a) Liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and, subject to the Enforceability Exceptions, enforceable leases with such exceptions as are not material and do not interfere in any material respect with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(aa) Fixtures and Equipment. Each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company and its Subsidiaries to conduct their respective businesses (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair (ordinary wear and tear excepted), are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to the date hereof and each Closing Date. Except as set forth on Schedule 3(aa), each of the Company and its Subsidiaries owns all of its Fixtures and Equipment free and clear of all Liens except for (i) Liens for current taxes not yet due, (ii) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto and (iii) other Permitted Liens (as defined in the Notes).

(ab) Intellectual Property Rights. The Company and each of its Subsidiaries owns or possesses adequate rights or licenses to use all material trademarks, trade names, service marks, service mark registrations, service names, patents, patent applications, other patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted and as presently proposed to be conducted. Except as set forth on Schedule 3(bb), none of the Company's or its Subsidiaries' Intellectual Property Rights, which are necessary to conduct their respective businesses, have expired, terminated or been abandoned, or are expected to expire, terminate or be abandoned, within three years from the date of this Agreement. To the knowledge of the Company, and except as set forth on Schedule 3(bb), neither the Company nor any of its Subsidiaries has, (i) infringed, misappropriated, diluted or violated the Intellectual Property Rights of others, (ii) violated any material term or provision of any contract concerning Intellectual Property Rights, (iii) violated any material right of any person (including any right to privacy or publicity), or (iv) conducted its business in a manner that would constitute unfair competition or unfair trade practices under the laws of any jurisdiction. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding Intellectual Property Rights of others that would reasonably be expected to have a Material Adverse Effect on the Company. The Company is not aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The

Company and each of its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all trade secrets within the Intellectual Property Rights of the Company that are materially necessary to conduct their respective businesses. To the knowledge of the Company, no third party is infringing, violating or misappropriating any Company owned Intellectual Property Rights, and there is no claim pending or proceeding regarding any such actual or alleged infringement, misappropriation or other violation of any Company owned Intellectual Property Rights. All former and current employees, contractors and consultants of the Company who have contributed to the creation or development of the Company owned Intellectual Property Rights have executed a valid and enforceable agreement containing an irrevocable assignment to the Company of all of their ownership and other rights therein, including to any invention, improvement or discovery. The Company has not distributed, incorporated or otherwise used any "Open Source Code" (also known as "free software" (as defined by the Free Software Foundation) or "open source software" (as defined by the Open Source Initiative) or has not otherwise distributed publicly software under terms that permit modification and redistribution of such software) in a manner that would require that any of the proprietary software owned by the Company or included in a Company product or service: (i) be made available or distributed in source code form; (ii) be licensed for the purpose of making derivative works; (iii) be licensed under terms that allow reverse engineering, reverse assembly or disassembly of any kind; or (iv) be redistributable at no charge. The Company is in compliance with the terms and conditions of all licenses for free or Open Source Code.

(ac) Environmental Laws. (i) The Company and its Subsidiaries (A) are in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, except in each of the foregoing clauses (A), (B) and (C), where the failure to so comply or having such permits, licenses or other approval would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws or regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous materials, substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of, or exposure to, Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(ad) No Hazardous Materials:

(A) to the Company's knowledge, have been disposed of or otherwise released from any Real Property of the Company or any of its Subsidiaries in violation of any Environmental Laws; or

(B) to the Company's knowledge, are present on, over, beneath, in or upon any Real Property or any portion thereof in quantities that would constitute a violation of any Environmental Laws or in quantities, a manner or location that would reasonably be expected to require remedial action pursuant to any Environmental Laws. No prior use by the Company or any of its Subsidiaries of any Real Property has occurred that violates any Environmental Laws, which violation would have a Material Adverse Effect.

(i) To the Company's knowledge, neither the Company nor any of its Subsidiaries knows of any other Person that has stored, treated, recycled, disposed of or

otherwise located on any Real Property any Hazardous Materials, including, without limitation, such substances as asbestos and polychlorinated biphenyls.

(ii) To the knowledge of the Company, none of the Real Property is on any federal or state "Superfund" list or Comprehensive Environmental Response, Compensation and Liability Information System ("**CERCLIS**") list or any state environmental agency list of sites under consideration for CERCLIS, nor subject to any environmental related Liens.

(iii) Neither the Company nor its Subsidiaries is subject to any pending or, to the Company and its Subsidiaries' knowledge, threatened claim or proceeding to any Environmental Laws, except for any claims or proceeding that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(ae) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect) and (ii) has timely paid all taxes and other governmental assessments and charges, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company or for cases in which the failure to pay would not have a Material Adverse Effect. There is no tax deficiency that has been determined adversely to the Company or any of its Subsidiaries which has had a Material Adverse Effect, nor does the Company or its Subsidiaries have any knowledge or notice of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its Subsidiaries and which could reasonably be expected to have a Material Adverse Effect.

(af) Internal Accounting and Disclosure Controls. Except as set forth on Schedule 3(ff), the Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth on Schedule 3(ff), the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as set forth on Schedule 3(ff), since the filing of the Company's 2022 Annual Report, neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(ff) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off

balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(ag) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities and the application of the proceeds thereof, will not be, an "investment company," or a company controlled by an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(ah) Acknowledgement Regarding Buyers' Trading Activity. It is understood and acknowledged by the Company that (i) prior to August 11, 2023 and following August 17, 2023, none of the Buyers have been asked by the Company or any of its Subsidiaries to agree, nor has any Buyer agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Buyer, and counterparties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Buyer's knowledge of the transactions contemplated by the Transaction Documents; (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Buyer may rely on the Company's obligation to timely deliver shares of Common Stock as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that prior to August 11, 2023 and following August 17, 2023, one or more Buyers may have engaged and may after August 17, 2023 engage in Hedging Arrangements (as defined below) (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times prior to or during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Underlying Shares deliverable with respect to the Securities are being determined, and such Hedging Arrangements (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the Hedging Arrangements are being conducted. The Company acknowledges that such aforementioned Hedging Arrangements do not constitute a breach of this Agreement, the Notes or any other Transaction Document or any of the documents executed in connection herewith or therewith. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, each Buyer hereby agrees not to engage in any such Hedging Arrangements beginning on, and including, August 11, 2023 and ending on, and including, August 17, 2023. "**Hedging Arrangements**" means any forward, futures, swap, collar, put, call, floor, cap, option or other contract or trading activity that are intended to benefit from, or reduce or eliminate the risk of, fluctuations in price, but shall not include the location and/or reservation of borrowable shares or the conversion of the Notes or trading in Underlying Shares received upon any such conversion.

(ai) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) other than the fees to be paid to the Placement Agent, sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) other than pursuant to an ATM Sales Agreement, paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(aj) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the

Buyers, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the Company and each Subsidiary shall so certify upon any Buyer's request.

(ak) Transfer Taxes. All stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with; *provided*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any Underlying Shares pursuant to the Notes in a name other than that of the Buyer of such Notes, and the Company shall not be required to issue or deliver such Underlying Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(al) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(am) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or affiliates, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office to influence official action or secure an improper advantage, except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(an) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, but not limited, to (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V. The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations.

(ao) Sanctions. None of the Company, any of its Subsidiaries or any director or officer or, to the knowledge of the Company and its Subsidiaries, employee, agent or other person acting for or on behalf of the foregoing is the subject or target of any economic or financial sanctions imposed, administered or enforced by the United States (including the U.S. Department of the Treasury Office of Foreign Assets Control and the U.S. Department of State) or other relevant sanctions authority (collectively, "**Sanctions**" and each such Person, a "**Sanctioned Person**"). The operations of the Company and its Subsidiaries are, and have been conducted within the past

five (5) years, in compliance with applicable Sanctions. Neither the Company nor any of its Subsidiaries will, directly or indirectly, use any part of the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund or facilitate any dealings or transactions with, involving or for the benefit of any Sanctioned Person, or otherwise in any manner that would constitute or give rise to a violation of any Sanctions by any Person (including any Person participating in the offering, whether as buyer, underwriter, advisor, investor or otherwise).

(pp) Management. During the past five year period, no current or former officer or director of the Company, to the knowledge of the Company, has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(ap) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable equity incentive plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. To the Company's knowledge, no stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(aq) Cybersecurity. The information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases used or owned by, or leased or licensed to, the Company or any of its Subsidiaries (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its Subsidiaries as currently conducted free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company and its Subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA"**); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its Subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(ar) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its Subsidiaries have taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679) (collectively, the "**Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. Neither the Company nor any Subsidiary: (i) has

received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(as) Margin Stock. The application of the proceeds received by the Company from the issuance, sale and delivery of the Notes as described in the Transaction Documents will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve system or any other regulation of such Board of Governors.

(at) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Buyers has relied on and will rely on the foregoing representations in effecting transactions in securities of the Company. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(au) ATM Sales Program. The Company has access to an ATM Sales Program (as defined below), the terms of which have been approved by the Required Holders, and, as of the date hereof and the Closing Date with respect to which this representation is being made, the ATM Sales Program has aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least twenty million dollars ($20,000,000).

(av) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

4. COVENANTS.

(a) Best Efforts. Each Buyer shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Blue Sky. The Company shall, on or before the Initial Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyers at the Initial Closing and each Subsequent Closing, if any, pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Initial Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyers. Notwithstanding the foregoing, the Company will not be obligated to qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to so qualify, file any general consent to service of process in

any such jurisdiction or subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(c) Reporting Status. Until the earlier of (i) the date upon which the Buyers shall have sold all of the Securities issuable pursuant to this Agreement and (ii) the date upon which no Notes remain outstanding and no further Notes may be issued pursuant to this Agreement (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose), and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

(d) Use of Proceeds. The Company will use the net proceeds from the sale of the Securities for working capital, general corporate purposes and the repayment of Indebtedness outstanding under the SVB Loan Agreement (as defined below), but not, directly or indirectly for (i) the redemption or repurchase of any securities or repayment of any Indebtedness of the Company or any of its Subsidiaries (other than Indebtedness incurred under the Transaction Documents) or (ii) the settlement of any outstanding litigation. "**SVB Loan Agreement**" means that that certain Third Amended and Restated Loan and Security Agreement dated as of May 14, 2021, between the Company and Silicon Valley Bank, a division of First-Citizens Bank & Trust Company (successor by purchase to the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bridge Bank, N.A. (as successor to Silicon Valley Bank), as amended by a certain First Loan Modification Agreement dated as of May 13, 2022, as further amended by a certain Second Loan Modification Agreement dated as of June 13, 2022, as further amended by a certain Third Loan Modification Agreement dated as of July 11, 2022, as further amended and affected by a certain Joinder and Fourth Loan Modification Agreement dated as of July 25, 2022, and as affected and amended by that certain Letter Agreement dated as of April 7, 2023, and as further amended by a certain Fifth Loan Modification Agreement dated as of May 5, 2023.

(e) Financial Information. The Company agrees to send the following to each Buyer during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any interim reports or any consolidated balance sheets, income statements, stockholders' equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8-K and any registration statements (other than on Form S-8 or Form S-4) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, e-mail copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(f) Listing. The Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Underlying Shares upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all Underlying Shares from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall maintain the Common Stock's listing or authorization for quotation (as the case may be) on the NYSE, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall

take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall pay for the reasonable and documented due diligence and legal fees and expenses incurred by the Buyers in connection with the structuring, documentation, negotiation, and closing of the transactions contemplated by the Transaction Documents (and the enforcement thereof by the Buyers), including, without limitation, all reasonable and documented consultant fees, all reasonable and documented legal fees and disbursements of Latham & Watkins LLP, counsel to the Buyers, and due diligence and regulatory filings in connection therewith (the "**Transaction Expenses**") and such Transaction Expenses, to the extent they have not already been paid to the Buyer, may be withheld by the Buyers from its Initial Securities Purchase Price and Subsequent Securities Purchase Price at the Initial Closing and each Subsequent Closing, respectively; *provided*, *however*, that the Transaction Expenses (whether paid directly or withheld) through the Initial Closing shall not exceed an aggregate amount of two hundred fifty thousand dollars ($250,000) excluding costs related to any intercreditor agreements with the Company's existing lender as of the date hereof. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, The Depository Trust Company ("**DTC**") fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and reasonable and documented out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by a Buyer in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. Promptly after 4:00 p.m., New York time, but no later than 5:00 p.m., New York time, on the date of this Agreement, the Company shall issue a press release (a "**Press Release**") reasonably acceptable to the Buyers disclosing all the material terms of the transactions contemplated by the Transaction Documents. The Company agrees that the issuance of a Press Release for an Election Notice shall not be required as the delivery of an Election Notice shall not constitute material, nonpublic information. No later than 5:30 p.m., New York time, on the fourth (4^{th}) Business Day after the date of this Agreement, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (the "**8-K Filing**"). From and after the issuance of the Press Release, the Company shall have disclosed all material, non-public information (if any) provided to any of the Buyers by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents. In addition, effective upon the issuance of the Press Release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral,

between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, shall have terminated and none of the Buyers have been subject to any such obligation since the issuance of the Press Release.

(ii) Limitations on Disclosure. Other than as required under the Transaction Documents (but subject to any other disclosure obligations of the Company with respect thereto), the Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide any Buyer with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof unless prior thereto such Buyer shall have consented in writing to the receipt of such information and agreed with the Company to keep such information confidential. If any material, non-public information is required to be provided by the Company or any of its Subsidiaries to any Buyer pursuant to the Transaction Documents, the Company shall obtain each Buyer's prior written consent prior to providing such information to such Buyer, and if any Buyer fails to provide such written consent, the Company shall not be deemed to be in breach of any of the Transaction Documents as a result of the failure to provide such information. To the extent that the Company delivers any material, non-public information to a Buyer without such Buyer's prior written consent in breach of the foregoing sentence, the Company hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information, provided that the Buyer shall remain subject to applicable law. Subject to the foregoing, neither the Company, its Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby, except the Press Release and the 8-K filing; *provided*, *however*, the Company shall be entitled, without the prior approval of any Buyer, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) above, each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Buyer (which may be granted or withheld in such Buyer's sole discretion), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Buyer in any filing, announcement, release or otherwise, except in the 8-K Filing and as otherwise may be required by applicable law or regulations. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that no Buyer shall have (unless expressly agreed to by a particular Buyer after the date hereof in a written definitive and binding agreement executed by the Company and such particular Buyer (it being understood and agreed that no Buyer may bind any other Buyer with respect thereto)), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

(j) Additional Issuance of Securities.

(i) The Company agrees that for the period commencing on the date hereof and ending on the date immediately following the ninetieth (90th) calendar day after the Initial Closing Date (such period, the "**Restricted Period**"), neither the Company nor any of its Subsidiaries shall directly or indirectly issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or register or amend any outstanding registration statements or file any shelf registration statements or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the 1933 Act)), any Convertible

Securities, any preferred stock or any purchase rights. Notwithstanding the foregoing, this Section 4(j)(i) shall not apply during the Restricted Period in respect of (A) the issuance of Options or Convertible Securities issued under any Approved Stock Plan, so long as (i) the aggregate number of shares issued and issuable pursuant thereto does not exceed 5% of the Common Stock issued and outstanding immediately prior to the date hereof and (ii) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Buyers, (B) any shares of Common Stock issued by the Company upon the conversion, exercise, or settlement of (or otherwise pursuant to the terms of) Convertible Securities (other than standard options to purchase Common Stock or other incentive equity awards issued pursuant to an Approved Stock Plan that are covered by clause (A) above) outstanding on the date hereof and referred to in the Registration Statement (other than standard options to purchase Common Stock or other incentive equity awards issued pursuant to an Approved Stock Plan that are covered by clause (A) above); *provided*, that the conversion, exercise or other method of issuance (as the case may be) of any such Convertible Security is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Convertible Security that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Convertible Securities (other than standard options to purchase Common Stock or other incentive equity awards issued pursuant to an Approved Stock Plan that are covered by clause (A) above) is not lowered, none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock or other incentive equity awards issued pursuant to an Approved Stock Plan that are covered by clause (A) above) are otherwise materially changed in any manner that adversely affects any of the Buyers, (C) the issuances of the Underlying Shares, (D) any sale or issuance of securities under an agreement, the terms of which have been approved by the Required Holders, providing for an "at-the-market" offering within the meaning of Rule 415(a)(4) of the Securities Act (an "**ATM Sales Agreement**") other than a sale or issuance in which a single identified investor or group of identified investors purchases in excess of three million dollars ($3,000,000) in the aggregate of Common Stock, which shall include that certain Sales Agreement, dated as of February 6, 2023, by and between the Company and Needham & Company, LLC and any replacement thereof, (E) any sale or issuance of securities pursuant to that certain Business Combination Agreement, dated as of March 22, 2021, by and among JAWS Spitfire Acquisition Corporation, Spitfire Merger Sub, Inc. and the Company, as amended by Amendment No. 1 to the Business Combination Agreement, dated as of July 20, 2021, by and among JAWS Spitfire Acquisition Corporation, Spitfire Merger Sub, Inc. and the Company, as in effect as of the date hereof and without giving effect to any amendment, modification, waiver or supplement thereto (the "**Business Combination Agreement**"); *provided*, that the sale or issuance of any such securities is made solely pursuant to the Business Combination Agreement that was in effect on the date immediately prior to the date of this Agreement, the issuance price of any such securities is not lowered, none of such securities are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such securities are otherwise materially changed in any manner that adversely affects any of the Buyers or (F) the issuance of securities of the Company or any Subsidiary of the Company as consideration in acquisitions, divestitures, partnerships, licenses, collaborations or strategic transactions approved by the board of directors or a majority of the members of a committee of directors of the Company or applicable Subsidiary established for such purpose, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries or controlled affiliates, an operating company or an asset in a

business synergistic with the business of the Company and/or its Subsidiaries and shall provide to the Company and/or its Subsidiaries additional benefits in addition to the investment of funds, but shall not include a transaction in which a Subsidiary of the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities (the "**Strategic Investment**"). An "**Approved Stock Plan**" means any security-based compensation plan which has been approved by the Board of Directors of the Company prior to the date hereof, pursuant to which Common Stock, options to purchase Common Stock and other incentive equity awards may be issued to any employee, officer, consultant or director for services provided to the Company in their capacity as such, and not for the purpose of raising capital, pursuant to any consulting agreement, advisory agreement or independent contractor agreement approved by the Board of Directors or the compensation committee thereof.

(ii) So long as any Notes remain outstanding or during any period of time when a Subsequent Closing could still potentially occur, the Company and each Subsidiary shall be prohibited from effecting, or entering into an agreement directly or indirectly to effect a Variable Rate Transaction. "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities (other than the Notes), or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to customary adjustments for stock splits, stock dividends, stock combinations, recapitalizations and similar events or (ii) enters into any agreement (including, without limitation, an equity line of credit) whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights); *provided*, that for avoidance of doubt, neither the entry into an ATM Sales Agreement nor the Business Combination Agreement nor the issuance of shares of Common Stock pursuant thereto shall be considered a "Variable Rate Transaction."

(iii) So long as any Notes remain outstanding, the Company will not, without the prior written consent of the Required Holders (as defined below), issue any Notes (other than to the Buyers as contemplated hereby) and the Company shall not issue any other securities that would cause a breach or default under the Notes.

(iv) Each Buyer shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any issuance prohibited by this Section 4(j), which remedy shall be in addition to any right to collect damages.

(k) Compliance with Laws. None of the Company or any of its Subsidiaries shall violate any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(l) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(m) Restriction on Redemption and Cash Dividends. So long as any of the Notes are outstanding or during any period of time when a Subsequent Closing could still potentially

occur, except as otherwise permitted under the Notes, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Required Holders (other than as required by the Notes or as required by the terms thereof as in effect on the date hereof); *provided*, *however*, that such written consent shall not be required for any repurchases, forfeitures, withholdings or transfers of securities pursuant to a net exercise of a Convertible Security to cover the payment of the exercise prices or the payment of withholding of taxes associated with the exercise, settlement or vesting of equity awards under any equity compensation plan of the Company or repurchases of securities upon an employee's, contractor's or consultant's termination of services.

(n) Corporate Existence. So long as any Notes remain outstanding, the Company shall not be party to any Fundamental Change (as defined in the Notes) unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Notes.

(o) Issuance Procedures. The terms of the Notes set forth the totality of the procedures required of the Buyers in order to receive shares of Common Stock pursuant to the Notes. No additional legal opinion, other information or instructions shall be required of the Buyers to receive shares of Common Stock pursuant to the Notes. The Company shall honor conversion of the Notes, and shall deliver the Underlying Shares in accordance with the terms, conditions and time periods set forth in the Notes. Except as explicitly set forth in the Notes, no legal opinion, information or instructions shall be required of the Buyers to receive Underlying Shares pursuant to the Notes. The Company shall deliver the Underlying Shares in accordance with the terms, conditions and time periods set forth in the Notes.

(p) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(q) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require stockholder approval under the rules and regulations of NYSE and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of NYSE, with the issuance of Securities contemplated hereby.

(r) Stockholder Approval. At the next annual meeting of the stockholders following the Initial Closing or, if earlier, via a special meeting of stockholders within seventy-five (75) days of a written request (of which an email request may be sufficient) from the Buyers (the "**Stockholder Meeting**"), the Company agrees to hold a stockholder vote for the purpose of obtaining the Requisite Stockholder Approval. The Company will prepare and file with the SEC a proxy statement to be sent to the Company's stockholders in connection with the Stockholder Meeting (the "**Proxy Statement**"). The Proxy Statement shall include the Board of Directors' recommendation that the holders of shares of the Company's Common Stock vote in favor of the Requisite Stockholder Approval. The Company shall use its best efforts to obtain approval of the Requisite Stockholder Approval. If the Requisite Stockholder Approval is not obtained at or prior to the Stockholder Meeting, the Company will hold a special meeting of the stockholders of the Company for the purposes of obtaining such Requisite Stockholder Approval no less often than every ninety (90) days following the date of the Stockholder Meeting until the Requisite Stockholder Approval is obtained, and the Board of Directors will recommend that the holders of shares of the Company's Common Stock vote in favor of the Requisite Stockholder Approval at each such meeting.

(s) Press Releases. The Company shall not, and shall not permit any of its Subsidiaries to, issue or disseminate to the public (by advertisement, press release or otherwise), submit for publication or otherwise cause or seek to publish any information naming any of the Buyers without the prior written consent of such Buyer; *provided*, that nothing in the foregoing shall be construed to prohibit the Company from making any disclosure, submission or filing (i) which it is required to make by applicable law or pursuant to judicial process, (ii) pursuant to Section 4(j) or as otherwise required by federal securities law in connection with the filing of final Transaction Documents with the SEC, or (iii) to the extent such disclosure is required by law or NYSE regulations; *provided*, *further*, that (i) such filing or submission shall contain only such information as is necessary to comply with applicable law or judicial process and (ii) unless specifically prohibited by applicable law or court order, the Company shall promptly notify the Buyers of the requirement to make such submission or filing and provide the Buyers with a copy thereof.

(t) Share Reserve. So long as any of the Notes remain outstanding, the Company shall at all times have not less than a number of authorized but unissued shares of Common Stock equal to the sum of (i) fifty million (50,000,000) shares of Common Stock, which shall not be exclusively reserved for issuance pursuant to the Notes and (ii) one hundred percent (100%) of a fraction the numerator of which shall be the then outstanding Principal Amount of all Notes issued pursuant to this Agreement, and the denominator of which shall be the Conversion Price, which shall be reserved for issuance pursuant to the Notes (which such reservation shall be for the sole benefit of and exclusive availability for the Buyers) (collectively, the "**Required Reserve Amount**"); *provided*, that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(t) be reduced other than in connection with any stock combination, reverse stock split or other similar transaction. The amounts set forth in the definition of Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the holders of the Notes based on the number of shares of Common Stock issuable pursuant to the Notes held by each holder thereof on the date of issuance of the Notes (without regards to any limitations on issuance of shares contained therein) (collectively, the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the remaining holders of the Notes, pro rata based on the number of shares of Common Stock issuable pursuant to the Notes then held by such holders thereof (without regard to any limitations on exercise). If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(u) Legends. Certificates and any other instruments evidencing the Purchased Securities or the Underlying Shares, shall not bear any restrictive or other legend.

(v) Lock-Up and Voting Agreements. The Company may not amend, modify or waive the terms of the Lock-Up and Voting Agreements in any respect without the prior written consent of the Required Holders.

(w) Not an Underwriter. Neither the Company nor any Subsidiary or affiliate thereof shall identify any Buyer as being an underwriter or potentially being an "underwriter" in any disclosure to, or filing with, the SEC, NYSE or any other Eligible Market. No Buyer shall be

required to agree or admit that it is, or may be, acting as an "underwriter" in connection with the transactions contemplated hereby or agree to be named as an underwriter or as potentially being an underwriter in any public disclosure or filing with the SEC, the NYSE or any other Eligible Market, nor shall any Buyer be required to make any representations to, or undertake any obligations to, the SEC in connection with any registration statement filed by the Company. Any Buyer being deemed an underwriter, or potentially to be an underwriter, by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Transaction Document.

(x) Security Agreements. At the Initial Closing (which period may be extended in the reasonable discretion of the Collateral Agent (as defined in the Notes)), the Company or relevant Subsidiary of the Company shall deliver to the Collateral Agent (i) a perfection certificate, in the form attached hereto as **Exhibit C**, which describes in detail reasonably acceptable to the Collateral Agent the Collateral (as defined below) to be delivered (a "**Perfection Certificate**"), (ii) a U.S. Security Agreement, to be dated the Initial Closing Date, among the grantors named therein and the secured party named therein (the "**Main Security Agreement**"), (iii) a U.S. Intellectual Property Security Agreement, to be dated the Initial Closing Date, among the grantor(s) named therein and the security party named therein (the "**IP Security Agreement**") and (iv) UCC financing statements ("**UCC Financing Statements**"), each of (i) through (iv), in form and substance satisfactory to the Collateral Agent, which create a first lien security interest in all assets of the Company including, but not limited to, its intellectual property (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) (the "**Collateral**") and shall perfect a first lien security interest in all such assets of the Company other than the Company's non-U.S. assets and its bank accounts. As soon as reasonably practicable, but in any event before thirty (30) days after the Initial Closing (which period may be extended in the reasonable discretion of the Collateral Agent (as defined in the Notes)), the Company or relevant Subsidiary of the Company shall deliver to the Collateral Agent (a) such additional security documents, including deposit account control agreements, in form and substance reasonably acceptable to the Collateral Agent, which perfect a first lien security interest in all remaining assets of the Company (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) (the "**Ancillary Security Documents**" and together with the Perfection Certificate, Main Security Agreement, the IP Security Agreement and UCC Financing Statements, the "**Security Agreements**") and (b) with respect to such Ancillary Security Documents delivered, customary legal opinions relating to such Ancillary Security Documents, in form and substance reasonably acceptable to the Collateral Agent.

(y) ATM Sales Program. The Company shall at all times have access to an ATM Sales Program, the terms of which have been approved by the Required Holders with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least ten million dollars ($10,000,000). On or before December 31, 2023, the Company shall establish a new ATM Sales Program with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least seventy five million dollars ($75,000,000) as of December 31, 2023, and such ATM Program shall not be subsequently canceled, or amended or otherwise modified to reduce such amount, without the written consent of the Required Holders. Each of the Buyers hereby approves the terms of the Company's ATM Sales Program and the related ATM Sales Agreement as in effect at the date of this Agreement, and agrees that its approval of any ATM Sales Program and related ATM Sales Agreement after the date of this Agreement will not be unreasonably withheld, conditioned or delayed.

(z) Registration Statement. Until the later of (i) the date that no additional Subsequently Purchased Notes may be issued pursuant to this Agreement and (ii) the date that is one (1) year from the Initial Closing Date, the Company shall maintain the effectiveness of the Registration Statement and shall maintain unused issuance capacity thereunder sufficient for delivery of all the Subsequently Purchased Notes issuable pursuant to this Agreement.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS.

(a) Register. The Company shall cause the Trustee to maintain at its principal executive offices (or such other office or agency of the Trustee as it may designate pursuant to the Indenture), a register for the registration of the Notes in which the Trustee shall record the name and address of the Person in whose name the Purchased Securities have been issued (including the name and address of each transferee), the aggregate amount of the Notes held by such Person and the number of Underlying Shares issuable pursuant to the Notes held by such Person. The Company shall cause the Trustee to keep the register open and available at reasonable times upon reasonable prior notice during business hours for inspection of any Buyer or its legal representatives. This provision shall be construed such that the Securities and the Notes are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any Treasury Regulations promulgated thereunder.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable) (the "**Transfer Agent**") in a form acceptable to each of the Buyers (the "**Irrevocable Transfer Agent Instructions**") to credit shares to each such Buyer's (or its designee's) account at DTC through its Deposit/Withdrawal At Custodian ("**DWAC**") System, provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program ("**FAST**") and the shares are then eligible for transfer through the DWAC System, or, if the Transfer Agent is not participating in FAST or if the shares are not then eligible for transfer through the DWAC system, issue and dispatch by overnight courier to the address as specified in the notice that the Company is electing to issue Common Stock pursuant to the terms of the Notes or that the Buyers are electing to receive Common Stock pursuant to the Notes, a certificate, registered in the name of such Buyer or its designee, for the Underlying Shares to which the Buyer is entitled, for the applicable Underlying Shares in such amounts as specified from time to time by the Company or the Buyers, as the case may be, pursuant to the terms of the Notes. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b) will be given by the Company to the Transfer Agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Purchased Securities, the Company shall permit the transfer and shall promptly instruct the Transfer Agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the removal of any legends on any of the Securities shall be borne by the Company.

(c) FAST Compliance. While any Notes remain outstanding, the Company shall maintain a transfer agent that participates in FAST.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL THE PURCHASED SECURITIES.

(a) The obligation of the Company hereunder to issue and sell the Purchased Securities to each Buyer at the Initial Closing and each Subsequent Closing, if any, is subject to the satisfaction, at or before the Initial Closing Date and each Subsequent Closing Date, if any, of

each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(i) Such Buyer shall have executed each of the other Transaction Documents (other than, solely with respect to the Initial Closing, the Ancillary Security Documents) to which it is a party and delivered the same to the Company.

(ii) Such Buyer and each other Buyer shall have delivered to the Company the purchase price for the Purchased Securities being purchased by such Buyer at such Closing by wire transfer of immediately available funds in accordance with a Flow of Funds Letter with respect to the Securities to be purchased at such Closing.

(iii) The representations and warranties of such Buyer shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the date of each such Closing as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the date of such Closing.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE THE PURCHASED SECURITIES.

(a) The obligation of each Buyer hereunder to purchase its Initial Purchased Notes at the Initial Closing is subject to the satisfaction, at or before the Initial Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to such Buyer each of the Transaction Documents (other than the Ancillary Security Documents) to which it is a party and the Company and the Trustee shall have duly executed and delivered to such Buyer the Initial Purchased Notes set forth across from such Buyer's name on the Schedule of Buyers at the Initial Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Fenwick & West LLP, the Company's counsel, dated as of the Initial Closing Date, in the form acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, dated as of the Initial Closing Date, in the form acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.

(iv) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company and each of its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Initial Closing Date, along with a bring-down letter certifying the good standing of the Company and each of its Subsidiaries as of the Initial Closing Date, along with a bring-

down letter certifying the good standing of the Company and each of its Subsidiaries as of the Initial Closing Date.

(v) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation of the Company as certified by the Delaware Secretary of State within ten (10) days of the Initial Closing Date.

(vi) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Initial Closing Date, as to (i) the resolutions consistent with Section 3(d) as adopted by the Company's Board of Directors or a duly authorized committee thereof in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Initial Closing.

(vii) Each and every representation and warranty of the Company shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Initial Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Initial Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Initial Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(viii) The Company shall have delivered to such Buyer a letter from the Transfer Agent certifying the number of shares of Common Stock outstanding on the Initial Closing Date immediately prior to the Initial Closing.

(ix) The Common Stock (A) shall be designated for quotation or listed (as applicable) on NYSE and (B) shall not have been suspended, as of the Initial Closing Date, by the SEC or NYSE from trading on NYSE nor shall suspension by the SEC or NYSE have been threatened, as of the Initial Closing Date, either (1) in writing by the SEC or NYSE or (2) by falling below the minimum maintenance requirements of NYSE.

(x) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Initial Purchased Notes, including without limitation, those required by NYSE, if any.

(xi) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(xii) Since the date of execution of this Agreement, no event or series of events shall have occurred that would have or result in a Material Adverse Effect.

(xiii) The Company shall have submitted a Supplemental Listing Application with NYSE relating to the issuance of the Underlying Shares as contemplated hereby.

(xiv) Such Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company,

setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company (a "**Flow of Funds Letter**") with respect to the Initial Purchased Notes.

(xv) The Company shall have delivered to such Buyer the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Company and its Subsidiaries and such search shall reveal no Liens on any of the Collateral or other assets of the Company and its Subsidiaries except, in the case of assets other than Collateral, for Permitted Liens.

(xvi) The Company shall have delivered to Buyer a duly completed and executed a Perfection Certificate, dated no earlier than five (5) days prior to the Initial Closing Date.

(xvii) The Company shall have established and in effect an ATM Sales Agreement in place pursuant to which the Company has the ability to issue and sell shares of Common Stock from time to time (an "**ATM Sales Program**"). The ATM Sales Program shall have aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least twenty million dollars ($20,000,000) as of the Initial Closing Date.

(xviii) All costs, fees, expenses (including, without limitation, legal fees and expenses) contemplated hereby to be payable to the Buyers shall have been paid to the extent due and, in the case of expenses of the Buyers that are reimbursable in accordance herewith, invoiced at least one day prior to the Initial Closing Date.

(xix) Such Buyer shall have received Lock-Up and Voting Agreements executed by (i) each member of the Company's Board of Directors and (ii) each of the officers (as defined in Rule 16a-1(f) promulgated under the 1934 Act) of the Company (all of (i) through (ii) of which are identified on the Schedule of Lock-Up Parties attached hereto).

(xx) Concurrently with the issuance the Initial Purchased Notes, the Company shall have repaid, or cause to be repaid, all of its outstanding indebtedness under the SVB Loan Agreement, and the Company shall have obtained and delivered payoff letters and releases relating to the SVB Loan Agreement to such Buyer in form and substance satisfactory to such Buyer.

(xxi) The Company or relevant Subsidiary of the Company shall deliver to the Buyer the Security Agreements (other than the Ancillary Security Documents), in form and substance satisfactory to the Buyer, which create a first lien security interest in the Collateral and perfect a first lien security interest in all assets of the Company other than the Company's non-U.S. assets and its bank accounts (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion).

(xxii) The Company shall have made a public announcement of its earnings for the three-month period ending on June 30, 2023 by no later than 5:00 p.m. New York City time on August 10, 2023.

(xxiii) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by the Transaction Documents (other than the Ancillary Security Documents) as such Buyer or its counsel may reasonably request.

(b) The obligation of each Buyer hereunder to purchase the Subsequently Purchased Notes at each Subsequent Closing is subject to the satisfaction, at or before each Subsequent Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Registration Statement shall remain effective and the Underlying Shares shall be Freely Tradeable (as defined in the Notes).

(ii) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to the Buyers the Subsequently Purchased Notes.

(iii) Such Buyer shall have received the opinion of Fenwick & West LLP, the Company's counsel, dated as of each Subsequent Closing Date, in the form acceptable to such Buyer.

(iv) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, dated as of each Subsequent Closing Date, in the form acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.

(v) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company and each of its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of each Subsequent Closing Date.

(vi) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation of the Company as certified by the Delaware Secretary of State within ten (10) days of each Subsequent Closing Date.

(vii) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of each Subsequent Closing Date, as to (i) the resolutions consistent with Section 3(d) as adopted by the Company's Board of Directors or a duly authorized committee thereof in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at each Subsequent Closing Date.

(viii) Each and every representation and warranty of the Company shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of each Subsequent Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to each Subsequent Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of each Subsequent Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(ix) The Company shall have delivered to such Buyer a letter from the Transfer Agent certifying the number of shares of Common Stock outstanding on each Subsequent Closing Date immediately prior to each Subsequent Closing.

(x) The Common Stock (A) shall be designated for quotation or listed (as applicable) on NYSE and (B) shall not have been suspended, as of each Subsequent Closing Date, by the SEC or NYSE from trading on NYSE nor shall suspension by the SEC or NYSE have been threatened, as of each Subsequent Closing Date, either (1) in writing by the SEC or NYSE or (2) by falling below the minimum maintenance requirements of NYSE.

(xi) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Subsequently Purchased Notes, including without limitation, those required by NYSE, if any.

(xii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(xiii) Since the date of execution of this Agreement, no event or series of events shall have occurred that would have or result in a Material Adverse Effect.

(xiv) The Company shall have delivered to such Buyer the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Company and its Subsidiaries and such search shall reveal no Liens on any of the Collateral or other assets of the Company and its Subsidiaries except, in the case of assets other than Collateral, for Permitted Liens.

(xv) The Company shall have delivered to Buyer a duly completed and executed Perfection Certificate, dated no earlier than five (5) days prior to each Subsequent Closing Date.

(xvi) The Company shall have an ATM Sales Program in effect which shall have aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least ten million dollars ($10,000,000) as of each Subsequent Closing Date.

(xvii) All costs, fees, expenses (including, without limitation, legal fees and expenses) contemplated hereby to be payable to the Buyers shall have been paid to the extent due and, in the case of expenses of the Buyers that are reimbursable in accordance herewith, invoiced at least one day prior to each Subsequent Closing Date.

(xviii) The Company shall have submitted a Supplemental Listing Application with NYSE relating to the issuance of the Subsequently Purchased Notes and the Underlying Shares as contemplated hereby.

(xix) Such Buyer shall have received a Flow of Funds Letter with respect to the Subsequently Purchased Notes.

(xx) The Company has been, and continues to remain, in full compliance with the terms and conditions of the Notes.

(xxvii) After giving pro forma effect to the Subsequent Closing proposed to occur on such Subsequent Closing Date, no Default shall occur or be continuing and no Event of Default shall occur.

(xxi) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by the Transaction Documents as such Buyer or its counsel may reasonably request.

8. TERMINATION.

In the event that the Initial Closing shall not have occurred with respect to a Buyer within five (5) Business Days of the date hereof, then such Buyer shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of such Buyer to any other party; *provided*, *however*, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Buyer's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Initial Purchased Notes shall be applicable only to such Buyer providing such written notice; *provided*, *further*, that no such termination shall affect any obligation of the Company under this Agreement to reimburse such Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts; Electronic Signatures. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

(c) Headings; Gender; Interpretation. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the

extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, the Company, its Subsidiaries, their affiliates and Persons acting on their behalf, including, without limitation, any transactions by any Buyer with respect to Common Stock or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; *provided*, *however*, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Buyer, or any instruments any Buyer received from the Company and/or any of its Subsidiaries prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Holders, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable; *provided*, that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Holders may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents and all holders of the Purchased Securities. From the date hereof and while any Purchased Securities are outstanding, the Company shall not be permitted to receive any consideration from a Buyer or a holder of Purchased Securities that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce the Company or any Subsidiary (i) to treat such Buyer or holder of Purchased Securities in a manner that is more favorable than to other similarly situated Buyers or holders of Purchased Securities, or (ii) to treat any Buyer(s) or holder(s) of Purchased Securities in a manner that is less favorable than the Buyer or holder of Purchased Securities that is paying such consideration; *provided*, *however*, that the determination of whether a Buyer has been treated more or less favorably than another Buyer shall disregard any securities of the Company purchased or sold by any Buyer. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing,

the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for each Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) nothing contained in any of the SEC Documents shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Holders**" means (I) prior to the Initial Closing Date, each Buyer entitled to purchase Initial Purchased Notes at the Initial Closing, and (II) on or after the Initial Closing Date, holders of a majority of the aggregate principal amount of the Notes, so long as any Notes remain outstanding, and if no Notes remain outstanding, holders of a majority of the Underlying Shares in the aggregate as of such time issued and held by the Buyers or issuable hereunder; *provided*, that such majority must include High Trail Investments ON LLC or HB SPV I Master Sub LLC, so long as High Trail Investments ON LLC or HB SPV I Master Sub LLC or any of their affiliates hold any Notes or are otherwise entitled to receive Underlying Shares.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Velo3D, Inc.
511 Division Street
Campbell, California 95008
Telephone: [*]
Attention: William McCombe
E-Mail: [*]

With a copy (for informational purposes only) to:

Fenwick & West LLP
902 Broadway
New York, NY 10010
Attention: Per Chilstrom
E-mail: [*]

If to the Transfer Agent:

Continental Stock Transfer & Trust Company
1 State Street, 30th Floor
New York, NY 10004
Attention: Erika Harris

Email: [*]
If to a Buyer, to (i) its e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers and (ii) to Eric Helenek, High Trail Capital, 80 River Street, Suite 4C, Hoboken, NJ 07030 (telephone: [*].

with a copy (for informational purposes only) to:

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Telephone: [*]
Attention: Michael E. Sullivan
E-mail: [*]

or to such other address, e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) electronically generated by the sender's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Purchased Securities. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Change (unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Notes). A Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Purchased Securities without the consent of the Company, provided such assignee agrees in writing to be bound by the provisions hereof that apply to Buyers in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Initial Closing and the Subsequent Closings. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification.

(i) In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each holder of any

Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents (including, without limitation, any hedging or similar activities in connection therewith), or (B) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, any hedging or similar activities in connection therewith or as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief); *provided*, *however*, that the Company will not be liable in any such case to a Buyer or its related Indemnitees to the extent that any such claim, loss, damage, liability or expense arise primarily out of or is based primarily upon (i) the inaccuracy of any representations and warranties made by such Buyer herein or (ii) the fraud, willful misconduct, gross negligence or bad faith of such Buyer or its related Indemnitees. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(k) of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 9(k), deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnitee; *provided*, *however*, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (iii) the named parties to any such Indemnified Liability (including, without limitation, any impleaded parties) include both such Indemnitee and the indemnifying party, and such Indemnitee shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitee and the indemnifying party (in which case, if such Indemnitee notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party), provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate

legal counsel for such Indemnitee. The Indemnitee shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnitee which relates to such Indemnified Liability. The indemnifying party shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; *provided*, *however*, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnitee under this Section 9(k), except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action. The indemnification required by this Section 9(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred. The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnitees against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for such Buyer (or its broker or other financial representative) to effect short sales or similar transactions in the future.

(m) Remedies. Each Buyer and in the event of assignment by Buyer of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would be inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual

damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the periods therein provided or if no period is prescribed, within a reasonable period of time, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to any Buyer hereunder or pursuant to any of the other Transaction Documents or any of the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the "**Judgment Currency**") an amount due in U.S. Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the Court of Chancery of the State of Delaware or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the "**Judgment Conversion Date**").

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2), there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the

applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of U.S. Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Buyers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Buyer confirms that each Buyer has independently participated with the Company and its Subsidiaries in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Buyer, and was done solely for the convenience of the Company and its Subsidiaries and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company, each Subsidiary and a Buyer, solely, and not between the Company, its Subsidiaries and the Buyers collectively and not between and among the Buyers.

(r) Performance Date. If the date by which any obligation under any of the Transaction Documents must be performed occurs on a day other than a Business Day, then the date by which such performance is required shall be the next Business Day following such date.

(s) Enforcement Fees. The Company agrees to pay all costs and expenses of the Buyers incurred as a result of enforcement of the Transaction Documents and the collection of any amounts owed to the Buyers hereunder (whether in cash, equity or otherwise), including, without limitation, reasonable attorneys' fees and expenses.

(t) Collateral Agent.

(i) *Appointment; Authorization.* The Buyers, together with any successors or assigns thereof, hereby irrevocably appoint, designate and authorize High Trail Investments ON

LLC as collateral agent to take such action on their behalf under the provisions of the Notes, each Security Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each Security Agreement, together with such powers as are reasonably incidental thereto. The provisions of this Section 9(t) are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Agreement (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding any provision to the contrary contained elsewhere in the Notes, any Security Agreement or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Notes, any Security Agreement or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent.

(ii) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates (as defined in the Notes), partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this Section 9(t) shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(iii) *Exculpatory Provisions.*

(A) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Agreements, and its duties shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing or an Event of Default has occurred; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers; and (iii) shall not, except as expressly set forth in the Security Agreements, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(B) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(C) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with the Notes, any Security Agreement or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) the performance or

observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of the Notes, any Security Agreement or any other agreement, instrument or document related to the Notes or Security Agreements, or (e) any failure of the Company or any other party to the Notes, any Security Agreements or any other agreement, instrument or document related to the Notes or Security Agreements to perform its obligations thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, the Notes, any Security Agreement or any other agreement, instrument or document related to the Notes or Security Agreements, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(iv) *Reliance by Collateral Agent.* The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(v) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Buyers and the Company. If the Collateral Agent resigns under the Notes, the Required Holders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Buyers after consulting with the Buyers. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Section 9(t) shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Buyers, shall perform all of the duties of the Collateral Agent hereunder until such time as Required Holders shall appoint a successor agent as provided for above.

(vi) *Non-Reliance on the Collateral Agent.* The Buyers acknowledges that they have, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they have deemed appropriate, made their own credit analysis and decision to enter invest in the Notes. The Buyers also acknowledges that they will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they shall from time to time deem appropriate, continue to make their own decisions in taking or not taking action under or based upon the Notes, any Security Agreement or any related agreement or any document furnished hereunder or thereunder.

(vii) *Collateral Matters.* The Buyers irrevocably authorize the Collateral Agent to release any Lien (as defined in the Notes) granted to or held by the Collateral Agent

under any Security Agreement (i) when all Obligations (as defined below) have been paid in full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under the Notes and each other agreement, instrument or document related thereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with the Notes and each other agreement, instrument or document related thereto); or (iii) if approved, authorized or ratified in writing by the Buyers. The Collateral Agent shall have the right, in accordance with the Security Agreements to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations. "**Obligation**" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Note Document (as defined below) after the commencement of a bankruptcy proceeding, whether or not a claim for such interest is allowed) of the Company, any Security Agreements or any other Note Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. "**Note Documents**" means this Agreement, the Notes, the Security Agreements and the other Transaction Documents.

(viii) *Reimbursement by Buyers.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(g) or 9(k) to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Buyers hereby agree, jointly and severally, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(ix) *Marshaling; Payments Set Aside.* Neither the Collateral Agent nor the Buyers shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens (as defined in the Notes) or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the extent of such recovery, the obligation under the Notes intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Buyers agree to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Buyers.

(u) Placement Agent. The Buyers acknowledge and agree that (i) Placement Agent is acting solely as placement agent in connection with the issue and sale of the Notes and is not acting as an underwriter or in any other capacity and is not and shall not be construed as a fiduciary in connection with the issue and sale of the Notes, (ii) the Placement Agent has not made any representation or warranty, whether express or implied, and has not provided any advice or recommendation in connection with the issue and sale of the Notes, and the Buyers have not relied upon any information provided by the Placement Agent, and (iii) the Placement Agent shall have no liability or obligation hereunder in respect of the issue and sale of the Notes. The parties agree that the Placement Agent shall be a third party beneficiary of Section 2 hereof.

[*signature pages follow*]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

VELO3D, INC.

By: /s/ Benyamin Buller
Name: Benyamin Buller
Title: Chief Executive Officer

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

HIGH TRAIL INVESTMENTS ON LLC

By: /s/ [*]*
Name: [*]
Title: Authorized Signatory

*Authorized Signatory
[*] Capital Management LP
Not individually, but solely as
Investment Advisor to High Trail
Investments ON LLC.

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

HB SPV I MASTER SUB LLC

By: /s/ [*]*
Name: [*]
Title: Authorized Signatory

*Authorized Signatory
[*] Capital Management LP
Not individually, but solely as
Investment Advisor to HB SPV I Master
Sub LLC.

SCHEDULE OF BUYERS

(1)	(2)	(3)	(4)	(5)	(6)	(8)
Buyer	**Address**	**Aggregate Principal Amount of Initial Purchased Notes**	**Aggregate Purchase Price of Initial Purchased Notes**	**Maximum Aggregate Principal Amount of Subsequently Purchased Notes**	**Maximum Aggregate Purchase Price of Subsequently Purchased Notes**	**Legal Representative's Address**
High Trail Investments ON LLC	High Trail Capital 80 River Street, Suite 4C Hoboken, NJ 07030 Attn: Eric Helenek E-Mail: [*]	$28,000,000	$28,000,000	$14,000,000	$14,000,000	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Telephone: [*] Attention: Michael E. Sullivan
HB SPV I Master Sub LLC	High Trail Capital 80 River Street, Suite 4C Hoboken, NJ 07030 Attn: Eric Helenek E-Mail: [*]	$42,000,000	$42,000,000	$21,000,000	$21,000,000	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Telephone: [*] Attention: Michael E. Sullivan
TOTAL		$70,000,000	$70,000,000	$35,000,000	$35,000,000	

SCHEDULE OF LOCK-UP PARTIES

Carl Bass
Benyamin Buller
William McCombe
Michael Idelchik
Adrian Keppler
Stefan Krause
Ellen Smith
Gabrielle Toledano
Matthew Walters
Renette Youssef
Bernard Chung

Exhibit A

Form of Senior Secured Convertible Note

Exhibit B-1

Form of Base Indenture

Exhibit B-2

Form of Supplemental Indenture

Exhibit C

Form of Perfection Certificate

Exhibit D

Form of Lock-Up and Voting Agreement

[See Attached]

VOTING AGREEMENT

This **VOTING AGREEMENT** (this "**Agreement**"), dated as of August 10, 2023, is entered into by and between the undersigned stockholder (the "**Stockholder**") of Velo3D, Inc., a Delaware corporation (the " **Company**"), and the Company. The Company and the Stockholder are each sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**" Capitalized terms that are used but not defined herein shall have the meaning ascribed to them in the Purchase Agreement (as defined below).

RECITALS

Concurrently with or following the execution of this Agreement, the Company has entered, or will enter, into a Securities Purchase Agreement (as the same may be amended from time to time, the "**Purchase Agreement**"), providing for, among other things, the sale to the Buyers of the Purchased Securities pursuant to the terms and conditions of the Purchase Agreement and the Transaction Documents.

In order to induce the Buyers to enter into the Purchase Agreement and the Transaction Documents, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Stockholder hereby makes certain representations, warranties, covenants, and agreements as set forth in this Agreement with respect to the shares of Common Stock Beneficially Owned (as defined below) by the Stockholder and set forth below the Stockholder's signature on the signature page hereto (the "**Original Shares**" and, together with any additional shares of Common Stock pursuant to Section 6 hereof, the "**Shares**").

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

10. Definitions.

When used in this Agreement, the following terms in all of their tenses, cases, and correlative forms shall have the meanings assigned to them in this Section 1.

(a) "**Beneficially Own**" or "**Beneficial Ownership**" has the meaning assigned to such term in Rule 13d-3 under the 1934 Act, and a Person's beneficial ownership of securities shall be calculated in accordance with the provisions of such rule (in each case, irrespective of whether or not such rule is actually applicable in such circumstance). For the avoidance of doubt, "Beneficially Own" and "Beneficial Ownership" shall also include record ownership of securities.

(b) "**Beneficial Owner**" shall mean the Person who Beneficially Owns the referenced securities.

11. Representations of Stockholder.

The Stockholder represents and warrants to the Company that:

(a) **Ownership of Shares**. The Stockholder: (i) is the Beneficial Owner of all of the Original Shares set forth below the Stockholder's signature on the signature pages hereto free and clear of any proxy, voting restriction, adverse claim, or other Liens, other than those created by this Agreement or under applicable federal or state securities laws; and (ii) has the sole voting power over all such Original Shares. Except pursuant to this Agreement, there are no options, warrants, or other rights, agreements, arrangements, or commitments of any character to which the Stockholder is a party relating to the pledge,

disposition, or voting of any such Original Shares and there are no voting trusts or voting agreements with respect to such Original Shares.

(b) **Disclosure of All Shares Owned**. The Stockholder does not Beneficially Own any shares of Common Stock other than: (i) the Original Shares set forth below the Stockholder's signature on the signature pages hereto; and (ii) any options, warrants, or other rights to acquire any additional shares of Common Stock or any security exercisable for or convertible into shares of Common Stock, set forth below the Stockholder's signature on the signature pages hereto (collectively, "**Options**").

(c) **Power and Authority; Binding Agreement.** If the Stockholder is an individual, the Stockholder has full power and authority and legal capacity to enter into, execute, and deliver this Agreement and to perform fully the Stockholder's obligations hereunder (including the proxy described in Section 3(b) below). If the Stockholder is not an individual, the Stockholder has requisite organizational power and authority to enter into, execute, and deliver this Agreement and to perform fully the Stockholder's obligations hereunder (including the proxy described in Section 3(b) below). This Agreement has been duly and validly executed and delivered by the Stockholder and constitutes the legal, valid, and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights.

(d) **No Conflict.** The execution and delivery of this Agreement by the Stockholder does not, and the consummation of the transactions contemplated hereby and the compliance with the provisions hereof will not, conflict with or violate any law applicable to the Stockholder or result in any breach of or violation of, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration, or cancellation of, or result in the creation of any Lien on any of the Shares attributable to the Stockholder pursuant to, any agreement or other instrument or obligation binding upon the Stockholder or any of the Shares attributable to the Stockholder.

(e) **No Consents.** No consent, approval, order, or authorization of, or registration, declaration, or filing with, any Governmental Entity or any other Person on the part of the Stockholder is required in connection with the valid execution and delivery of this Agreement. If the Stockholder is an individual, no consent of the Stockholder's spouse is necessary under any "community property" or other laws in order for the Stockholder to enter into and perform its obligations under this Agreement.

(f) **No Litigation.** There is no action, suit, investigation, or proceeding (whether judicial, arbitral, administrative, or other) pending against, or, to the knowledge of the Stockholder, threatened against or affecting, the Stockholder that could reasonably be expected to materially impair or materially adversely affect the ability of the Stockholder to perform the Stockholder's obligations hereunder or to consummate the transactions contemplated by this Agreement on a timely basis.

12. Agreement to Vote Shares; Irrevocable Proxy.

(a) **Agreement to Vote and Approve.** The Stockholder irrevocably and unconditionally agrees during the term of this Agreement, at any annual or special meeting of the Company called with respect to the approval contemplated by the Requisite Stockholder Approval (as defined in the Convertible Notes), and at every adjournment or postponement thereof, and on every action or approval by written consent or consents of the Company stockholders with respect to such matter, to vote or cause the holder of record to vote the Shares in favor of providing the Requisite Stockholder Approval. "**Convertible Notes**" means the Senior Secured Convertible Notes issued pursuant to the Purchase Agreement, as amended from time to time.

(b) **Irrevocable Proxy.** The Stockholder hereby appoints the Company and any designee of the Company, and each of them individually, until the Expiration Time (as defined below) (at which time this proxy shall automatically be revoked), its proxies and attorneys-in-fact, with full power of substitution and resubstitution, to vote or act by written consent during the term of this Agreement with respect to the Shares in accordance with Section 3(a). This proxy and power of attorney is given to secure the performance of the duties of the Stockholder under this Agreement. The Stockholder shall take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy. This proxy and power of attorney granted by the Stockholder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy, and shall revoke any and all prior proxies granted by the Stockholder with respect to the Shares. The power of attorney granted by the Stockholder herein is a durable power of attorney and shall survive the bankruptcy, death, or incapacity of the Stockholder. The proxy and power of attorney granted hereunder shall terminate upon the termination of this Agreement.

13. No Voting Trusts or Other Arrangement.

The Stockholder agrees that during the term of this Agreement the Stockholder will not, and will not permit any entity under the Stockholder's control to, deposit any of the Shares in a voting trust, grant any proxies with respect to the Shares, or subject any of the Shares to any arrangement with respect to the voting of the Shares other than agreements entered into with the Company.

14. Transfer and Encumbrance.

(a) Subject to Section 5(a), the Stockholder agrees that for a period commencing upon the execution of the Purchase Agreement and ending on the date that is ninety (90) days after the date of the Purchase Agreement (the "**Lock-Up Period**"), the Stockholder will not, (1) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock ("**Lock-Up Securities**") (including without limitation, Lock-Up Securities which may be deemed to be Beneficially Owned and securities which may be issued upon exercise of a stock option or warrant) or file any registration statement under the 1933 Act with respect to any of the foregoing or publicly disclose the intention to undertake any of the foregoing or (2) enter into any swap or other transaction that transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of the Lock-Up Securities, whether any such swap or transaction described in clause (1) or (2) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise (collectively a "**Transfer**"). Any attempted Transfer of Shares or any interest therein in violation of this Section 5 shall be null and void. The Stockholder acknowledges and agrees that the foregoing precludes the Stockholder from engaging in any hedging or other transactions designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition of any Lock-Up Securities, even if any such sale or disposition transaction or transactions would be made or executed by or on behalf of someone other than the Stockholder.

(b) The Stockholder may transfer Lock-Up Securities in connection with the vesting, conversion, settlement, exchange or exercise of restricted stock units, options, warrants or other rights to purchase or receive securities (including, in each case, a transfer to the Company by way of "net" or "cashless" exercise or a sale in the market to cover the payment of tax withholdings or remittance payments due in connection with such vesting, conversion, settlement, exchange or exercise), or in connection with the exercise or redemption of warrants or the conversion or redemption of convertible securities, in all such cases pursuant to equity awards or rights granted under a stock incentive plan, other equity award plan or stock purchase plan, or pursuant to the terms of warrants or convertible securities, provided that any Lock-Up Securities received upon such vesting, conversion, settlement, exchange, exercise or redemption, and after giving effect to such transfers to the Company or sale to cover transactions, shall be subject to the terms of this Agreement. A Transfer of Lock-Up Securities may be made to (i) a family member or trust or, if the Stockholder is a trust, to a trustor or beneficiary of the trust or the estate of a beneficiary of such trust, (ii) as one or more *bona fide* gifts or charitable contributions, or for *bona fide* estate planning, (iii) upon death by will, testamentary document or intestate succession, (iv) to a partnership, limited liability company or other entity of which the Stockholder or the family

members of the Stockholder are the legal and beneficial owners of all of the outstanding equity securities or similar interests or, if the Stockholder is such a partnership, limited liability company or other entity, as part of a distribution by the Stockholder to its partners, members or other equity holders or to the estate of any such partners, members or other equity holders, (v) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (i) through (iv) above, (vi) by operation of law, such as pursuant to a qualified domestic order, divorce settlement, divorce decree or separation agreement or (vii) to the Company from an employee of the Company upon death, disability or termination of employment, in each case, of such employee; provided that (A) in the case of clauses (i), (ii), (iii), (iv) and (v) above, the transferee agrees to be bound in writing by the terms of this Agreement prior to such Transfer, (B) such Transfer shall not involve a disposition for value and (C) no filing or public announcement by any party (donor, donee, transferor or transferee) under the 1934 Act shall be voluntarily made in connection with such Transfer and, if a filing or public shall be legally required under the 1934 Act during the Lock-Up Period, such filing or public announcement shall clearly indicate in the footnotes thereto the circumstances of such Transfer. For purposes of this Agreement, a "**family member**" shall mean any relationship by blood, marriage, domestic partnership or adoption, not more remote than first cousin.

A Transfer of Lock-Up Securities may also be made pursuant to a written trading plan that complied with Rule 10b5-1 under the 1934 Act as in effect at the time such plan was adopted (a "**10b5-1 Trading Plan**") and that was existing as of August 1, 2023 and is existing as of the date of this Agreement; provided that to the extent a public announcement or filing under the 1934 Act is required of the Stockholder or the Company regarding the Transfer, such announcement or filing shall include a statement to the effect that the Transfer occurred pursuant to such 10b5-1 Trading Plan. A Transfer of Lock-Up Securities may also be made pursuant to a *bona fide* third-party tender offer, merger, consolidation or other similar transaction that is approved the by the Board of Directors of the Company and made to all holders of the Company capital stock involving a Change of Control of the Company (for purposes hereof, "**Change of Control**" shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of shares of capital stock if, after such transfer, such person or group of affiliated persons would hold at least a majority of the outstanding voting securities of the Company (or the surviving entity).

Notwithstanding anything in this Section 5 to the contrary, the Stockholder may, during the Lock-Up Period, enter into a written 10b5-1 Trading Plan that complies with Rule 10b5-1 under the 1934 Act as in effect at the time such plan is adopted; *provided* that no direct or indirect offers, pledges, sales, contracts to sell, sales of any option or contract to purchase, purchases of any option or contract to sell, grants of any option, right or warrant to purchase, loans, or other transfers or disposals of any Lock-Up Securities may be effected pursuant to such plan during the Lock-Up Period; and *provided* that no public announcement or filing under the 1934 Act regarding the establishment of such plan shall be voluntarily made by or on behalf of the Stockholder or the Company during the Lock-Up Period.

15. Additional Shares.

The Stockholder agrees that all shares of Common Stock that the Stockholder purchases, acquires the right to vote, or otherwise acquires Beneficial Ownership of, after the execution of this Agreement and prior to the Expiration Time shall be subject to the terms and conditions of this Agreement and shall constitute Shares for all purposes of this Agreement. In the event of any stock split, stock dividend, merger, reorganization, recapitalization, reclassification, combination, exchange of shares, or the like of the capital stock of the Company affecting the Shares, the terms of this Agreement shall apply to the resulting securities and such resulting securities shall be deemed to be "Shares" for all purposes of this Agreement.

16. Termination.

This Agreement shall terminate upon the earliest to occur of (the " **Expiration Time**"): (a) the date on which the Purchase Agreement is terminated in accordance with its terms; (b) the termination of this Agreement by mutual written consent of the Parties; and (c) the date on which the Requisite

Stockholder Approval is obtained. Nothing in this Section 7 shall relieve or otherwise limit the liability of any Party for any intentional breach of this Agreement prior to such termination.

17. No Agreement as Director or Officer.

The Stockholder makes no agreement or understanding in this Agreement in its capacity as a director or officer of the Company or any of its subsidiaries (if the Stockholder holds such office), and nothing in this Agreement: (a) will limit or affect any actions or omissions taken by the Stockholder in its capacity as such a director or officer, and no such actions or omissions shall be deemed a breach of this Agreement; or (b) will be construed to prohibit, limit, or restrict the Stockholder from exercising its fiduciary duties as an officer or director to the Company or its stockholders.

18. Further Assurances.

The Stockholder agrees, from time to time, and without additional consideration, to execute and deliver such additional proxies, documents, and other instruments and to take all such further action as the Company may reasonably request to consummate and make effective the transactions contemplated by this Agreement.

19. Stop Transfer Instructions.

At all times commencing with the execution and delivery of this Agreement and continuing until the Expiration Time, in furtherance of this Agreement, the Stockholder hereby authorizes the Company or its counsel to notify the Company's transfer agent that there is a stop transfer order with respect to all of the Shares (and that this Agreement places limits on the voting and transfer of the Shares), subject to the provisions hereof and provided that any such stop transfer order and notice will immediately be withdrawn and terminated by the Company following the Expiration Time.

20. Specific Performance.

Each Party hereto acknowledges that it will be impossible to measure in money the damage to the other Party if a Party hereto fails to comply with any of the obligations imposed by this Agreement, that every such obligation is material and that, in the event of any such failure, the other Party will not have an adequate remedy at law or damages. Accordingly, each Party hereto agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is the appropriate remedy for any such failure and will not oppose the seeking of such relief on the basis that the other Party has an adequate remedy at law. Each Party hereto agrees that it will not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with the other Party's seeking or obtaining such equitable relief.

21. Amendment; Assignment.

No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Stockholder. No Party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party hereto, except that the Company may assign, in its sole discretion, all or any of its rights, interests and obligations hereunder to any of its "affiliates" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule thereto)) or to any party that acquires all of substantially all of the assets of the Company (whether by merger, sale of stock, sale of assets or otherwise). Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective permitted successors and assigns. Any assignment contrary to the provisions of this Section 12 shall be null and void.

22. Notices.

Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such

sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Velo3D, Inc.
511 Division St.
Campbell, CA 95008
Telephone: [*]
Attention: Bill McCombe
E-mail: [*]

With a copy (for informational purposes only) to:

Fenwick & West LLP
902 Broadway
New York, NY 10010
Telephone: [*]
Attention: Per Chilstrom
Email: [*]

If to the Stockholder, to the address, email address, or facsimile number set forth for the Stockholder on the signature pages hereof.

23. Miscellaneous.

The provisions of Sections 9(a), (b), (c), (d), (e), (g), (h), (l), (n), (o) and (p) of the Purchase Agreement shall apply to this Agreement, *mutatis mutandis*.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date first written above.

VELO3D, INC.

By: __
Name:
Title:

[STOCKHOLDER]

By: __
Name:
Number of Shares of Common Stock Beneficially Owned as of the date of this Agreement:
Number of Options Beneficially Owned as of the date of this Agreement:
Street Address:
City/State/Zip Code:
Email:

Exhibit 10.2

Up to $105,000,000

VELO3D, INC.

Senior Secured Convertible Notes

PLACEMENT AGENT AGREEMENT

August 10, 2023

Credit Suisse Securities (USA) LLC
As Placement Agent
c/o Credit Suisse Securities (USA) LLC,
Eleven Madison Avenue,
New York, N.Y. 10010-3629

Dear Sirs and Madams:

1. *Introductory.* Velo3D, Inc., a Delaware corporation ("**Company**"), proposes, pursuant to the terms of this Placement Agent Agreement (this "**Agreement**") and the securities purchase agreement (the "**Securities Purchase Agreement**") entered into with the purchasers named therein (collectively, the "**Purchaser**"), to sell to the Purchaser $70,000,000 aggregate principal amount of Senior Secured Convertible Notes ("**Firm Securities**"). The Company also agrees to sell to the Purchaser, at the option of the Purchaser (the "**Option**"), an aggregate of not more than $35,000,000 aggregate principal amount of Senior Secured Convertible Notes ("**Optional Securities**"). The Firm Securities and the Optional Securities are herein collectively called the "**Offered Securities**". The Offered Securities shall be convertible into shares of the Company's common stock, par value $0.00001 per share ("**Common Stock**", and any shares of Common Stock issuable upon the conversion of the Offered Securities, the "**Underlying Shares**"). Except as provided in the Offered Securities, the Offered Securities will be secured by a first priority lien on all assets of the Company including, but not limited to, its intellectual property (subject to prior liens and other customary exclusions, in each case acceptable to the Collateral Agent (as defined in the Offered Securities) in its sole discretion) (the "**Collateral**") in accordance with the Indenture (as defined below), the Offered Securties and the Security Documents (as defined below).

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the Placement Agent that:

(a) *Filing and Effectiveness of Registration Statement; Certain Defined Terms*. The Company has filed with the Commission a registration statement on Form S-3 (No. 333-268346) covering the registration of the Offered Securities under the Act, including a related preliminary prospectus or prospectuses. At any particular time, this initial registration statement, in the form then on file with the Commission, including all material then incorporated by reference therein, all information contained in the registration statement (if any) pursuant to Rule 462(b) and then deemed to be a part of the initial registration statement, and all 430B Information and 430C Information, that in any case has not then been superseded or modified, shall be referred to as the "**Initial Registration Statement**". The Company may also have filed, or may file with the Commission, a Rule 462(b) registration statement covering the registration of the Offered Securities. At any particular time, this Rule 462(b) registration statement, in the form then on file with the Commission, including the contents of the Initial Registration Statement incorporated by reference therein and including all 430B Information and all 430C Information, that in any case has not then been superseded or modified, shall be referred to as the "**Additional Registration Statement**".

As of the time of execution and delivery of this Agreement, the Initial Registration Statement has been declared effective under the Act and is not proposed to be amended. Any Additional Registration Statement has or will become effective upon filing with the Commission pursuant to Rule 462(b) and is not proposed to be amended. The Offered Securities all have been or will be duly registered under the Act pursuant to the Initial Registration Statement and, if applicable, the Additional Registration Statement.

For purposes of this Agreement:

"**430B Information**", with respect to any registration statement, means information included in a prospectus then deemed to be a part of such registration statement pursuant to Rule 430B(e) or retroactively deemed to be a part of such registration statement pursuant to Rule 430B(f).

"**430C Information**", with respect to any registration statement, means information included in a prospectus then deemed to be a part of such registration statement pursuant to Rule 430C.

"**Act**" means the Securities Act of 1933, as amended.

"**Applicable Time**" means 4:30 pm (Eastern time) on the date of the Securities Purchase Agreement.

"**Closing Date**" means any of the Initial Closing Date or each Optional Closing Date, if any.

"**Commission**" means the Securities and Exchange Commission.

"**Effective Time**" with respect to the Initial Registration Statement, means the time of the first contract of sale for the Offered Securities, or, if filed prior to the execution and delivery of the Securities Purchase Agreement, with respect to the Additional Registration Statement means the date and time as of which such Registration Statement was declared effective by the Commission or has become effective upon filing pursuant to Rule 462(c). If an Additional Registration Statement has not been filed prior to the execution and delivery of the Securities Purchase Agreement but the Company has advised the Placement Agent that it proposes to file one, "**Effective Time**" with respect to such Additional Registration Statement means the date and time as of which such Additional Registration Statement is filed and becomes effective pursuant to Rule 462(b).

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

"**Exchange Act Rules and Regulations**" means the rules and regulations of the Commission under the Exchange Act.

"**Final Closing Date**" means the Closing Date on which all of the Offered Securities have been sold.

"**Final Prospectus**" means the Statutory Prospectus that discloses the public offering price, other 430B Information and other final terms of the Offered Securities and otherwise satisfies Section 10(a) of the Act.

The Initial Registration Statement and any Additional Registration Statement, after the filing thereof, are referred to collectively as the "**Registration Statements**" and each is individually referred to as a "**Registration Statement**". A "**Registration Statement**" with reference to a particular time means the Initial Registration Statement and any Additional Registration Statement as of such time. A "**Registration Statement**" without reference to a time means such Registration Statement as of its Effective Time. For purposes of the foregoing definitions, 430B Information with respect to a Registration Statement shall be considered to be included in such Registration Statement as of the time specified in Rule 430B.

"**Indenture**" means that certain Indenture, to be dated as of the Initial Closing Date (as defined below), between the Company and the Trustee, as amended and supplemented by the First Supplemental Indenture thereto, to be dated as of the Initial Closing Date, between the Company and the Trustee.

"**Initial Closing Date**" means 9:00 a.m., New York City time, on August 14, 2023 or such other time thereafter as the Purchaser and the Company determine for the settlement and payment of the Firm Securities pursuant to the Securities Purchase Agreement.

"**Optional Closing Date**" means each time for the delivery of and payment for the Optional Securities, which may be the Initial Closing Date.

"**Placement Agent**" means Credit Suisse Securities (USA) LLC.

"**Rules and Regulations**" means the rules and regulations of the Commission under the Act.

"**Securities Laws**" means, collectively, the Sarbanes-Oxley Act of 2002, as amended and all rules and regulations promulgated thereunder or implementing the provisions thereof ("**Sarbanes-Oxley**"), the Act, the Exchange Act, the Rules and Regulations, the auditing principles, rules, standards and practices applicable to auditors of "issuers" (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board and, as applicable, the rules of The New York Stock Exchange ("**Exchange Rules**").

"**Security Documents**" means (i) as of the Initial Closing Date, except as provided in the Offered Securities, the Perfection Certificate, Main Security Agreement, the IP Security Agreement (each, as defined in the Securities Purchase Agreement) and UCC-1 financing statements and similar documents to protect and perfect a first priority security interest (subject to no liens except as provided in the Indenture and the Offered Securities) in the applicable Collateral and (ii) as of the thirtieth (30^{th}) day following the Initial Closing Date, except as provided in the Offered Securities, the documents referred to in clause (i) and the Ancillary Security Agreements (as defined in the Securities Purchase Agreement).

"**Statutory Prospectus**" with reference to a particular time means the prospectus included in a Registration Statement immediately prior to that time, including any document incorporated by reference therein and any 430B Information or 430C Information with respect to such Registration Statement. For purposes of the foregoing definition, 430B Information shall be considered to be included in the Statutory Prospectus as of the actual time that form of prospectus (including a prospectus supplement) is filed with the Commission pursuant to Rule 424(b) or Rule 462(c) and not retroactively.

"**Testing-the-Waters Communication**" means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Act or Rule 163B under the Act.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939.

"**Trustee**" means U.S. Bank Trust Company, National Association.

"**Written Testing-the-Waters Communication**" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Act.

Unless otherwise specified, a reference to a "rule" is to the indicated rule under the Act.

(b) *Compliance with Securities Act Requirements.* No order preventing or suspending the use of any Statutory Prospectus has been issued by the Commission, and no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued, and no proceeding for that purpose has been initiated or threatened by the Commission. At the time the Registration Statement initially became effective, at the time of each amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether by post effective amendment, incorporated report or form of prospectus), at the Effective Time relating to the Offered Securities and on each Closing Date, the Registration Statement, as amended or as supplemented, including the financial statements, if any, included or incorporated by reference therein, did and will comply in all material respects with all applicable requirements of the Act, the Exchange Act, the Exchange Act Rules and Regulations and the Rules and Regulations, did and will contain all statements required to be stated therein in accordance with the Act, the Exchange Act, the Exchange Act Rules and Regulations and the Rules and Regulations and did not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by the Placement Agent specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(c) hereof. The Final Prospectus and any amendment and supplement thereto, including the financial statements, if any, included or incorporated by reference therein, as of its date, at the time of the filing of the Final Prospectus pursuant to Rule 424(b) and on each Closing Date, will conform in all material respects to the requirements of the Act and the Rules and Regulations and did not, does not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any such document based upon written information furnished to the Company by the Placement Agent specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 8(c) hereof.

(c) *Ineligible Issuer Status.* As of the date hereof, the Company is an "ineligible issuer" in connection with the offering of the Offered Securities pursuant to Rules 164, 405 and 433 under the Act. Neither the Company nor any affiliate of the Company has prepared or had prepared on its behalf or used or referred to any "free writing prospectus" as defined in Rule 405 under the Act and has not distributed any written materials in connection with the offer or sale of the Offered Securities (other than through the Placement Agent as contemplated by this Agreement).

(d) *Emerging Growth Company Status*. From the time of the filing of the Initial Registration Statement with the Commission (or, if earlier, the first date on which the Company engaged

directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Act (an "**Emerging Growth Company**").

(e) *General Disclosure Package*. As of the Applicable Time, none of (i) the prospectus supplement, dated August 10, 2023, including the base prospectus, dated November 21, 2022 (which is the most recent Statutory Prospectus distributed to investors generally) and the other information, if any, stated in Schedule A to this Agreement to be included in the General Disclosure Package, all considered together (collectively, the "**General Disclosure Package**"), or (ii) any individual Written Testing-the-Waters Communication, when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus or any Written Testing-the-Waters Communication in reliance upon and in conformity with written information furnished to the Company by the Placement Agent specifically for use therein, it being understood and agreed that the only such information furnished by the Placement Agent consists of the information described as such in Section 8(c) hereof.

(f) *Incorporated Documents*. The documents that are or are deemed to be incorporated by reference in the Registration Statement or Final Prospectus or from which information is so incorporated by reference (the "**Incorporated Documents**"), when they became or become effective or were or are filed with the Commission, as the case may be, complied or will comply in all material respects with the requirements of the Act and the Exchange Act, as applicable, and the Rules and Regulations and the Exchange Act Rules and Regulations, as applicable; and any further documents filed and incorporated by reference subsequent thereto shall, when they are filed with the Commission, comply in all material respects with the requirements of the Act and the Exchange Act, as applicable, and the Rules and Regulations and the Exchange Act Rules and Regulations, as applicable. Each Incorporated Document did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain an untrue statement of a material fact or omit to state a material fact = necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) *Testing-the-Waters Communication*. The Company (i) has not alone engaged in any Testing-the-Waters Communication and (ii) has not authorized anyone other than the Placement Agent to engage in Testing-the-Waters Communications. The Company has not presented to any potential investors or otherwise distributed any Written Testing-the-Waters Communication.

(h) *Good Standing of the Company and its Subsidiaries.* The Company and each of its subsidiaries listed in Exhibit 21.1 to its most recent Annual Report on Form 10-K (collectively, the "**Subsidiaries**") are duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). The Company and each of its Subsidiaries has full power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it, except as otherwise disclosed in the Registration Statement and the Final Prospectus, and to conduct its business as described in the Registration Statement and the Final Prospectus. The Company and each of its Subsidiaries is duly licensed or qualified to do business and in good standing as a foreign corporation or such other entity in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned or leased by it makes such license or qualification necessary. All of the outstanding shares of capital stock of each Subsidiary have been duly authorized and validly issued, are fully paid and nonassessable and free of any preemptive or similar rights, and are wholly owned by the Company free and clear of all claims, liens, charges, security interests, rights of first refusal and encumbrances; there are no securities outstanding that are convertible into or exercisable or exchangeable for capital stock of any Subsidiary. The Subsidiaries are the Company's only significant subsidiaries (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the Commission). The Company and its Subsidiaries are not engaged in any discussions or a party to any agreement or understanding, written or oral, regarding the acquisition of an interest in any corporation, firm, partnership, joint venture, association or other entity where such discussions, agreements or understandings would require disclosure in, or amendment to, the Registration Statement. Complete and correct copies of the Certificate of Incorporation, as amended, and of the Amended and Restated Bylaws of the Company are available through Electronic Data Gathering, Analysis and Retrieval system (or any successor system) ("**EDGAR**").

(i) *Capital Stock.* The Company has authorized, issued and outstanding capital stock as set forth or incorporated by reference in the Registration Statement as of the respective dates set forth therein (other than (i) the grant of additional equity awards or rights under the Company's existing equity incentive and stock purchase plans, or changes in the number of outstanding shares of Common Stock of the Company due to the issuance of shares upon the exercise, conversion or redemption of securities exercisable for, convertible into or redeemable for, Common Stock outstanding on the date hereof or (ii) pursuant to the Business Combination Agreement, dated as of March 22, 2021, by and among JAWS Spitfire Acquisition Corporation, Spitfire Merger Sub, Inc., and Velo3D, Inc., as amended by Amendment #1 to Business Combination Agreement dated as of July 20, 2021 (the "**Business Combination Agreement**")) and such authorized capital stock conforms in all material respects to the description thereof set forth in the Registration Statement and the Final Prospectus. All of the outstanding shares of capital stock of the Company have been duly authorized, validly issued, are fully paid and nonassessable, were issued in compliance in all material respects with all applicable state and federal securities laws and are not subject to any preemptive rights, rights of first refusal or similar rights. The description of the capital stock of the Company included or incorporated by reference in the Registration Statement and the Final Prospectus is complete and accurate in all material respects. The Underlying Shares, when issued upon conversion of the Offered Securities, will conform to the description thereof set forth in or incorporated into the Final Prospectus. Except as set forth in Registration Statement and the Final Prospectus, and except pursuant to the Securities Purchase Agreement, the Offered Securities and any ATM Program (as defined in the Securities Purchase Agreement) contemplated by the Securities Purchase Agreement, the Company does not have outstanding and will not have outstanding any options to purchase, or any rights or warrants to subscribe for, or any other securities or obligations convertible into, or any other contracts or commitments to issue or sell, any shares of capital stock, or any such warrants, convertible securities or obligations. The issuance and sale of the Offered Securities as contemplated by the Securities Purchase Agreement will not cause any holder of any share capital, securities convertible into or exchangeable or exercisable for share capital or options, warrants or other rights to purchase share capital or any other securities of the Company to have any right to acquire any preferred shares or other securities of the Company.

(j) *No Finder's Fee.* Except as disclosed in the Registration Statement, the Final Prospectus and as contemplated by this Agreement, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or the Placement Agent for a brokerage commission, finder's fee or other like payment in connection sale of the Offered Securities.

(k) *Registration Rights.* Other than pursuant to the Securities Purchase Agreement, no holder of securities of the Company has rights, contractual or otherwise, to require the Company to register any securities pursuant to the Registration Statement, or to include any securities in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of the Registration Statement, the sale of the Offered Securities as contemplated hereby or otherwise, which rights have not been duly waived in a writing furnished to the Placement Agent by the holder thereof as of the date hereof.

(l) *Listing.* The Underlying Shares have been approved for listing on The New York Stock Exchange (the "**Exchange**"), subject to notice of issuance.

(m) *Absence of Further Requirements.* No consent, approval, authorization or order of, or any filing or declaration with, any court, arbitrator or governmental or regulatory agency or body is required for the consummation of the transactions contemplated by any Security Document, the Indenture, the Offered Securities, the Securities Purchase Agreement and hereby, except such as have been obtained under the Act or the Rules and Regulations, such as may be required under state securities or Blue Sky laws, the by-laws and rules of the Financial Industry Regulatory Authority, Inc. ("**FINRA**"), the Exchange in connection with the offering, issuance and sale of the Offered Securities, such as otherwise have already been obtained or made as of the date of this Agreement, such consents, authorization, filings or registrations contemplated by the Securities Purchase Agreement that are permitted to be obtained or made after the date of this Agreement, or such consents, authorizations, filings or registrations the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(n) *Title to Property*. Except as disclosed in the Registration Statement and the Final Prospectus, the Company and its Subsidiaries have good and marketable title in fee simple to all

properties and assets described in the Registration Statement and the Final Prospectus as owned by them, free and clear of all liens, charges, encumbrances, claims or restrictions, except such as are not material to the business of the Company or its Subsidiaries. The Company and its Subsidiaries have valid, subsisting and, subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance or other similar laws relating to creditor's rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (collectively, the "**Enforceability Exceptions**"), enforceable leases for the properties described in the Registration Statement and the Final Prospectus as leased by them. The Company and its Subsidiaries own or lease all such properties as are necessary to their operations as now conducted or as proposed to be conducted, except where the failure to so own or lease could not have a material adverse effect or could reasonably be expected to have a material adverse effect on the Company and its Subsidiaries, taken as a whole, or their respective assets, businesses, operations, earnings, properties, prospects, conditions (financial or other), stockholders' equity or results of operations, or prevent or materially interfere with consummation of the transactions contemplated hereby (such effect is referred to herein as a "**Material Adverse Effect**"). Each of the properties of the Company and its Subsidiaries complies in all material respects with all applicable codes, laws and regulations (including, without limitation, building and zoning codes, laws and regulations and laws relating to access to such properties), except for such failures to comply that could not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries or otherwise have a Material Adverse Effect. None of the Company or its Subsidiaries has received from any governmental or regulatory authorities any notice of any condemnation of, or zoning change affecting, the properties of the Company and its Subsidiaries, and the Company knows of no such condemnation or zoning change that is threatened, except for such that could not reasonably be expected to interfere in any material respect with the use made and proposed to be made of such property by the Company and its Subsidiaries or otherwise could have, individually or in the aggregate, a Material Adverse Effect.

(o) *Absence of Defaults and Conflicts Resulting from Transaction.* The execution and performance of this Agreement, the Securities Purchase Agreement, the Indenture and the Security Documents and the issuance and sale of the Offered Securities and the Underlying Shares and compliance with the terms and provisions thereof will not result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company or any of its Subsidiaries (other than liens pursuant to the Indenture and the Security Documents) pursuant to the terms or provisions of, or result in a breach or violation of any of the terms or provisions of, or conflict with or constitute a default under, or give any party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, (i) the certificate or articles of incorporation or by-laws or other organizational documents of the Company or any of its Subsidiaries, (ii) any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement or other evidence of indebtedness, lease, contract or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of its or their properties is bound or affected, or (iii) violate or conflict with any judgment, ruling, decree, order, statute, rule or regulation of any court or other governmental agency or body applicable to the business or properties of the Company or any of its Subsidiaries, which lien, charge, encumbrance, breach, violation, conflict, default, termination or acceleration, in the cases of clauses (ii) or (iii), could reasonably be expected to have a Material Adverse Effect.

(p) *Absence of Existing Defaults and Conflicts.* The Company and each Subsidiary has and will have performed all the obligations required to be performed by it, and is not and will not be, (i) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or any other contract, agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries are subject or (ii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, which default or violation, in the cases of clauses (i) or (ii), could reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company, no other party under any contract or other instrument to which it or any of its Subsidiaries is a party is in default in any respect thereunder, which default could reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is or will be in violation of any provision of its certificate or articles of incorporation or by-laws or similar organizational documents. Neither the Company nor any of its Subsidiaries has (i) failed to pay any dividend or sinking fund installment on preferred

stock or (ii) defaulted on any installment or other payment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, could have a Material Adverse Effect.

(q) *Authorization of Agreement.* The Company has full corporate power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with the terms hereof, except that the enforcement (A) of this Agreement may be subject to the Enforceability Exceptions and (B) of the indemnification and contribution obligations and provisions of this Agreement may be limited by applicable law or considerations of public policy.

(r) *Securities Purchase Agreement.* The Company has full corporate power and authority to enter into the Securities Purchase Agreement and perform the transactions contemplated thereby. The Securities Purchase Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with the terms thereof, except that the enforcement (A) of the Securities Purchase Agreement may be subject to the Enforceability Exceptions and (B) of the indemnification and contribution obligations and provisions of the Securities Purchase Agreement may be limited by applicable law or considerations of public policy.

(s) *Execution and Delivery of Indenture*. The Indenture has been duly authorized and, when executed and delivered, will be duly qualified under the Trust Indenture Act; the Offered Securities have been duly authorized and, when the Offered Securities are duly executed and authenticated by the Trustee and delivered and paid for pursuant to the Securities Purchase Agreement on each Closing Date, the Indenture will have been duly executed and delivered by the Company, such Offered Securities will have been duly executed, authenticated, issued and delivered, will conform in all material respects to the description of such Offered Securities contained in the Final Prospectus and the Indenture and such Offered Securities will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to the Enforceability Exceptions, and be entitled to the benefits and security provided by the Indenture and the Security Documents.

(t) *Offered Securities and Underlying Shares.* When the Offered Securities are delivered and paid for pursuant to the Securities Purchase Agreement on each Closing Date, such Offered Securities will be convertible into the Underlying Shares of the Company in accordance with the terms of the Indenture and the Offered Securities; the Underlying Shares initially issuable upon conversion of such Offered Securities have been duly authorized and reserved for issuance upon such conversion, and conform to the description of such Underlying Shares contained or incorporation by reference in the Final Prospectus; when issued upon conversion of the Offered Securities, the Underlying Shares will be validly issued, fully paid and nonassessable; the stockholders of the Company have no preemptive rights with respect to the Offered Securities or the Underlying Shares.

(u) *Possession of Licenses and Permits.* The Company and its Subsidiaries own or possess all authorizations, approvals, orders, licenses, registrations, other certificates and permits of and from all governmental regulatory officials and bodies (collectively, "**Licenses**"), necessary to conduct their respective businesses as contemplated in the Registration Statement and the Final Prospectus, except where the failure to own or possess all such authorizations, approvals, orders, licenses, registrations, other certificates and permits could not have a Material Adverse Effect. (i) There is no proceeding pending or threatened (or any basis therefor known to the Company) that may cause any such authorization, approval, order, license, registration, other certificate or permit to be revoked, withdrawn, cancelled, suspended or not renewed; (ii) the Company and each of its Subsidiaries is conducting its business in compliance in all material respects with all laws, rules and regulations applicable thereto (including, without limitation, all applicable federal, state and local environmental laws and regulations); and (iii) the Company has not received a notice of non-compliance, nor knows of, nor has reasonable grounds to know of, any facts that could give rise to a notice of non-compliance with any such laws, rules and regulations, and is not aware of any pending change or contemplated change to any applicable laws, rules and regulations or governmental positions; in the case of each of clauses (i), (ii) and (iii), that would materially adversely affect the business of the Company or the business or legal environment under which the Company operates.

(v) *Absence of Labor Dispute.* No material labor dispute with the employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company, is imminent; and the Company is not aware of any existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors that could have a Material Adverse Effect.

(w) *Possession of Intellectual Property.* (i) The Company and each of its Subsidiaries owns or has adequate rights to use all trademarks, trade names, domain names, patents, patent rights, mask works, copyrights, technology, know-how (including trade secrets and other unpatented or unpatentable proprietary or confidential information, systems or procedures), service marks, trade dress rights and other intellectual property and registrations and applications for registration for any of the foregoing (collectively, "**Intellectual Property**") and has such other licenses, approvals and governmental authorizations, in each case, sufficient to conduct its business as now conducted and as now proposed to be conducted, and, to the Company's and its Subsidiaries' knowledge, there are no rights of third parties to any such Intellectual Property owned by the Company and its Subsidiaries and none of the foregoing Intellectual Property rights owned or, subject to the Enforceability Exceptions, licensed by the Company or any of its Subsidiaries is invalid or unenforceable, (ii) the Company has no knowledge of any infringement by it or any of its Subsidiaries of Intellectual Property rights of others, and there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company and its Subsidiaries infringe or otherwise violate any Intellectual Property rights of others, where such infringement or violation could have a Material Adverse Effect, (iii) the Company is not aware of any infringement, misappropriation or violation by others of, or conflict by others with rights of the Company or any of its Subsidiaries with respect to, any Intellectual Property that could have a Material Adverse Effect, (iv) there is no suit, proceeding or claim being made against the Company or any of its Subsidiaries or, to the knowledge of the Company and its Subsidiaries, any employee of the Company or any of its Subsidiaries, regarding Intellectual Property, challenging the Company's and its Subsidiaries' rights in or to any such Intellectual Property or alleging other infringement that could have a Material Adverse Effect, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim, (v) to the Company's knowledge, there is no third-party U.S. patent or published U.S. patent application that contains claims for which an "interference proceeding" (as defined in 35 U.S.C. § 135) has been commenced against any patent or patent application described in the Registration Statement and the Final Prospectus as being owned by or licensed to the Company and (vi) the Company and its Subsidiaries have not received any notice of infringement with respect to any patent or any notice challenging the validity, scope or enforceability of any Intellectual Property owned by or licensed to the Company or any of its Subsidiaries, in each case the loss of which patent or Intellectual Property (or loss of rights thereto) could have a Material Adverse Effect. The Company and its Subsidiaries have taken all reasonable steps necessary to secure their interests in such Intellectual Property from their employees and contractors (including, but not limited to, assignments of such Intellectual Property from such employees and contractors) and to protect the confidentiality of all of their confidential information and trade secrets and that of third parties in their possession to the extent contractually required to do so. None of the Intellectual Property or technology (including information technology and outsourced arrangements) employed by the Company or the Subsidiaries has been obtained or is being used by the Company or the Subsidiaries in violation of any contractual obligation binding on the Company or any of the Subsidiaries or, to the knowledge of the Company and its Subsidiaries, any of their respective officers, directors or employees, where such violation or violation could have a Material Adverse Effect. The Company and the Subsidiaries own or have a valid right to access and use all computer systems, networks, hardware, software, databases, websites and equipment used to process, store, maintain and operate data, information and functions used in connection with the business of the Company and the Subsidiaries (the "**Company IT Systems**"). The Company IT Systems are adequate for, and operate and perform in all material respects as required in connection with, the operation of the business of the Company and the Subsidiaries as currently conducted, except as could not have a Material Adverse Effect.

(x) *Privacy and Data Protection.* To the knowledge of the Company, the Company and its Subsidiaries have operated its business in a manner materially compliant with all privacy and data protection laws and regulations applicable to the Company's and its Subsidiaries' collection, handling, and storage of its customers' data. The Company and its Subsidiaries have policies and procedures in place reasonably designed to ensure the integrity and security of the data collected, handled or stored in connection with the delivery of its product offerings. The Company and its Subsidiaries materially comply with, have policies and procedures in place designed to ensure privacy and data protection laws are complied with and takes appropriate steps which are

reasonably designed to assure compliance in all material respects with such policies and procedures.

(y) *Environmental Laws.* Except as to those which could not, individually or in the aggregate, have a Material Adverse Effect, (i) each of the Company and each of its Subsidiaries (A) is in compliance with all applicable rules, laws and regulation relating to pollution, the protection of health or the environment, and the use, transportation, treatment, storage and disposal of, or exposure to, hazardous or toxic substances or wastes ("**Environmental Law**") and (B) has received and is in compliance with all permits, licenses or other approvals required of them under applicable Environmental Law to conduct their respective businesses as described in the Registration Statement and the Final Prospectus, (ii) none of the Company nor any of its Subsidiaries has received any notice from any governmental authority or third party, or otherwise has knowledge, of any asserted claim under Environmental Laws, and (iii) to the Company's knowledge, no facts currently exist that could subject the Company or any of its Subsidiaries to liability under Environmental Laws, including any liability for remediation of any releases or threatened releases of hazardous or toxic substances.

(z) *Accurate Disclosure.* The statements in the Registration Statement and the Final Prospectus under the heading "Description of Capital Stock" and in the Company's Annual Report on Form 10-K incorporated by reference in the Registration Statement and the Final Prospectus under the headings "Business—Intellectual Property" and "Risks Related to Intellectual Property", insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate and fair summaries of such legal matters, agreements, documents or proceedings and present the information required to be shown.

(aa) *Absence of Manipulation.* None of the Company, any of its Subsidiaries or any of their respective directors, officers or controlling persons has taken, or will take, directly or indirectly, any action designed, or that might reasonably be expected to cause or result, under the Act or otherwise, in, or that has constituted, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(bb) *Statistical and Market-Related Data.* The statistical, industry-related and market-related data included or incorporated by reference in the Registration Statement and the Final Prospectus are based on or derived from sources the Company reasonably believes are reliable and accurate, and such data agrees with the sources from which they are derived, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(cc) *Forward-Looking Statements*. No forward-looking statement (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) contained or incorporated by reference in the Registration Statement and the Final Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(dd) *Compliance with the Sarbanes-Oxley Act.* The Company is in compliance in all material respects with, and there has been no failure on the part of the Company to comply in all material respects with, all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder. Since September 29, 2021, each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed or furnished to the Commission. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(ee) *Internal Controls.* The books, records and accounts of the Company and its Subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its Subsidiaries. Except as disclosed in the Registration Statement and the Final Prospectus, the Company and each of its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's consolidated financial statements in accordance with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any

differences. Except as set forth in the Registration Statement and the Final Prospectus, the Company's internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting. Except as set forth in the Registration Statement and the Final Prospectus, since the date of the latest audited financial statements included or incorporated by reference in the Final Prospectus, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(ff) *Disclosure Controls.* The Company has established and maintains disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e)); such disclosure controls and procedures have been designed to ensure that information required to be disclosed relating to the Company and its Subsidiaries is made known to the Company's principal executive officer and principal financial officer by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the most recently ended fiscal year (such date, the "**Evaluation Date**"). The Company presented in its Form 10-K for the most recently ended fiscal year the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date and, except as set forth in the Registration Statement and the Final Prospectus, the disclosure controls and procedures are effective. Except as set forth in the Registration Statement and the Final Prospectus, since the Evaluation Date, there have been no significant changes in the Company's disclosure controls or, to the Company's knowledge, in other factors that could significantly affect the Company's disclosure controls.

(gg) *Litigation.* Except as set forth in the Registration Statement and the Final Prospectus, there are no material actions, suits or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company, any of its Subsidiaries or any of its or their officers in their capacity as such, nor any basis therefor, before or by any federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding could have a Material Adverse Effect. There are no material current or pending legal, governmental or regulatory audits or investigations, actions, suits or proceedings that are required under the Act to be described in the Registration Statement or the Final Prospectus that are not so described.

(hh) *Financial Statements.* The financial statements, together with the related notes and schedules, included or incorporated by reference in the Registration Statement or the Final Prospectus present fairly the financial condition of the Company and its consolidated Subsidiaries as of the respective dates thereof and the results of operations, cash flows and changes in stockholders' equity of the Company and its consolidated Subsidiaries for the respective periods covered thereby, and have been prepared in all material respects in conformity with generally accepted accounting principles applied on a consistent basis throughout the entire period involved. No other financial statements or schedules (historical or pro forma) are required by the Act, the Exchange Act, the Exchange Act Rules and Regulations or the Rules and Regulations to be included or incorporated by reference in the Registration Statement or the Final Prospectus. To the extent applicable, any pro forma financial statements, information or data included or incorporated by reference in the Registration Statement and the Final Prospectus comply in all material respects with the requirements of Regulation S-X of the Act, including, without limitation, Article 11 thereof, fairly present the information set forth therein, and the assumptions used in the preparation of such pro forma financial statements and data are reasonable, the pro forma adjustments used therein are appropriate to give effect to the circumstances referred to therein and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements and data. PricewaterhouseCoopers LLP (the "**Accountants**"), who have reported on the consolidated financial statements and schedules of the Company, are and, during the periods covered by their report were, an independent registered public accounting firm with respect to the Company within the meaning of, and as required by, the Act, the Rules and Regulations and the Public Company Accounting Oversight Board (United States) ("**PCAOB**"). The other financial and statistical data included and incorporated by reference in the Registration Statement and the Final Prospectus present accurately and fairly the information shown therein and have been compiled on a basis consistent with the audited financial statements incorporated by reference in the Registration Statement and the Final Prospectus and the books and records of the Company. All disclosures contained in the Registration Statement, the General Disclosure Package and the Final Prospectus regarding "non-GAAP financial measures" (as such term is defined in the Rules and Regulations) comply with Regulation G of the Exchange Act and Item 10(e) of

Regulation S-K under the Act, to the extent applicable. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Final Prospectus fairly presents the information called for in all material respects and has been prepared in all material respects in accordance with the Commission's rules and guidelines applicable thereto.

(ii) *No Material Adverse Change in Business.* Except as otherwise disclosed in the Registration Statement and Final Prospectus, subsequent to the filing of the Registration Statement and the Final Prospectus, (i) there has not been any Material Adverse Effect, the occurrence of any development that the Company reasonably expects could result in a Material Adverse Effect or any material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the general affairs, business, management, condition (financial or otherwise), earnings, results of operations, properties, operations, assets, liabilities or prospects of the Company and its Subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business (a "**Material Adverse Change**"), (ii) there has not been any material change in the capitalization or long-term indebtedness of the Company of the Company (other than in connection with the exercise or settlement of equity awards or rights granted pursuant to the Company's equity incentive and stock purchase plans from the shares reserved therefor as described in the Registration Statement and the Final Prospectus, the exercise or redemption of warrants described in the Registration Statement and the Final Prospectus, the issuance of shares of Common Stock pursuant to the Business Combination Agreement, the grant of equity awards or rights in the ordinary course of business and consistent with the past practice of the Company and the issuance of the Offered Securities pursuant to the Securities Purchase Agreement, the issuance of the Underlying Shares pursuant to the Offered Securities and the issuance of shares pursuant to any ATM Program contemplated by the Securities Purchase Agreement), (iii) neither the Company nor any of its Subsidiaries has incurred, except in the ordinary course of business as described in the Registration Statement or the Final Prospectus, any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), nor has the Company or any of its Subsidiaries entered into any material transactions other than pursuant to this Agreement, the Securities Purchase Agreement and the transactions referred to herein and therein and (iv) the Company has not paid, made or declared any dividends or other distributions of any kind on any class of its capital stock or the capital stock of any Subsidiary.

(jj) *Investment Company Act.* The Company and its Subsidiaries are not and will not become as a result of or after giving effect to the offer and sale of the Offered Securities, and will not conduct their business in a manner that would cause any of them to be, required to register as an "investment company," an entity "controlled" by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as each such terms are defined in the Investment Company Act of 1940 (the "**Investment Company Act**").

(kk) *Ratings.* No "nationally recognized statistical rating organization" as such term is defined in Section 3(a)(62) of the Exchange Act (i) has imposed (or has informed the Company that it is considering imposing) any condition (financial or otherwise) on the Company's retaining any rating assigned to the Company or any securities of the Company or (ii) has indicated to the Company that it is considering any of the actions described in Section 7(c)(ii) hereof.

(ll) *Taxes*. The Company and each of its Subsidiaries have filed all federal, state, local and foreign tax returns that have been required to be filed (within any applicable time limit extensions permitted by the relevant tax authority) and has paid all taxes and assessments shown thereon to the extent that such taxes or assessments have become due, other than those being contested in good faith and for which adequate reserves have been provided. Neither the Company nor any of its Subsidiaries has any tax deficiency, penalty or assessment that has been or, to the knowledge of the Company, might be asserted or threatened against it that could have a Material Adverse Effect. On each Closing Date, all stock transfer or other taxes (other than income taxes) that are required to be paid in connection with the sale and transfer of the Offered Securities to be sold pursuant to the Securities Purchase Agreement will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with.

(mm) *Insurance*. The Company and each of its Subsidiaries maintains or is covered by insurance of the types and in the amounts reasonably deemed adequate for its business and customary for companies engaged in similar businesses in similar industries, including, but not limited to, insurance covering real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, all of which insurance is in full force and effect.

(nn) *No Unlawful Payments*. Neither the Company nor any of its Subsidiaries nor, to the the Company's knowledge, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its Subsidiaries has, directly or indirectly, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any unlawful payment from corporate funds to any foreign or domestic government official or employee or foreign or domestic political party or campaign, (iii) violated any provision of the Foreign Corrupt Practices Act of 1977 or any comparable applicable law in another jurisdiction, or (iv) made any bribe, illegal rebate, payoff, influence payment, kickback or other unlawful payment. The Company, its Subsidiaries and each of their respective controlled affiliates have instituted and maintained, and will continue to maintain, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with all applicable anti-bribery and anti-corruption laws and with the representation and warranty contained herein.

(oo) *Compliance with Anti-Money Laundering Laws.* The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with all applicable financial recordkeeping and reporting requirements, including the Currency and Foreign Transactions Reporting Act of 1970, the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Requires to Intercept and Obstruct Terrorism Act of 2001, and the money laundering laws of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines administered or enforced by any applicable governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(pp) *Economic Sanctions.* Neither the Company nor any of its Subsidiaries thereof, nor, to the knowledge of the Company or any of its Subsidiaries, any director, officer or employee, agent, affiliate or representative of the Company or any of its Subsidiaries is a government, individual or entity that is, or is owned or controlled by an individual or entity that is (i) the subject of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority ("**Sanctions**"), nor (ii) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, Libya, North Korea, Sudan, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic). The Company and its Subsidiaries have not engaged in, and are not now engaged in, and will not engage in any dealings or transactions with any government, individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions, and have instituted and maintain policies and procedures designed to promote and achieve compliance with such Sanctions. The Company and its Subsidiaries will not, directly or indirectly, use the proceeds of the issuance and sale of the Offered Securities, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person (A) to fund or facilitate any activities or business of or with any government, individual or entity or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or (B) in any other manner that will result in a violation of Sanctions by any government, individual or entity (including any government, individual or entity participating in the offering, whether as underwriter, advisor, investor or otherwise).

(qq) *Other Offerings.* The Company has not sold, issued or distributed any shares of Common Stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or Regulation S of, the Act, other than shares of Common Stock issued (i) pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans, (ii) pursuant to outstanding options, restricted stock units ("**RSUs**"), rights or warrants or (iii) pursuant to the Sales Agreement, dated February 6, 2023, by and between the Company and Needham & Company, LLC (the "**Sales Agreement**").

(rr) *Accuracy of Exhibits*. There are no contracts or documents which are required to be described in the Registration Statement or the Final Prospectus or to be filed as exhibits to the Registration Statement which have not been so described and filed as required.

(ss) *Lending Relationship.* Except as disclosed in the Registration Statement and the Final Prospectus, the Company and its Subsidiaries (i) do not have any material lending or other

relationship with any bank or lending affiliate of the Placement Agent and (ii) does not intend to use any of the proceeds from the sale of the Offered Securities to repay any outstanding debt owed to any affiliate of the Placement Agent.

(tt) *Margin Rules*. Neither the issuance, sale and delivery of the Offered Securities nor the application of the proceeds thereof by the Company as described in the Registration Statement and the Final Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(uu) *ERISA*. To the knowledge of the Company, the Company and each of its Subsidiaries is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974, including the regulations and published interpretations thereunder ("**ERISA**"); no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company and each of its Subsidiaries would have any material liability; each of the Company and each of its Subsidiaries has not incurred and does not expect to incur material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, including the regulations and published interpretations thereunder (the "**Code**"); and each "pension plan" for which the Company or any Subsidiary would have any material liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(vv) *Subsidiaries*. No Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary's capital stock, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of such Subsidiary's property or assets to the Company or any other Subsidiary of the Company.

(ww) *Security Interests*. The Company and each relevant Subsidiary has all requisite power and authority to authorize, execute and deliver each Security Document to which it is or will be a party, perform its obligations thereunder and grant and reaffirm security interests pursuant to the applicable Security Documents. Except as provided in the Offered Securities, when the Offered Securities are delivered and paid for in accordance with the Securities Purchase Agreement on each Closing Date, the Security Documents will have been duly authorized, executed and delivered by the Company and each relevant Subsidiary and all other actions necessary or desirable to protect and perfect a first priority security interest (subject to no liens except as provided in the Indenture and the Offered Securities) in the applicable Collateral for the benefit of the holders of the Offered Securities will have been duly made or taken in each place in which such filing or recording is required to create, protect, preserve and perfect the security interest created by the Indenture, the Offered Securities and the Security Documents and will be in full force and effect, and all taxes and recording and filing fees required to be paid with respect to the execution, recording or filing of the Indenture, the the Offered Securities and the Security Documents and the issuance of the Offered Securities will have been paid, in each case, except as could have, individually or in the aggregate, a Material Adverse Effect; and, except as provided in the Offered Securities, when the Offered Securities are so delivered and paid for, and all required filings of the Indenture, the Offered Securitiesand the Security Documents are made and all other such actions taken, the Trustee and Collateral Agent will have a valid and perfected first priority security interest (subject to no liens except as provided in the Indenture and the Offered Securities) in the applicable Collateral enforceable against all creditors of the Company, subject only to the exceptions referred to in the Indenture and the Offered Securities.

(xx) *Title to Collateral*. Except as provided in the Offered Securities, when the Offered Securities are delivered and paid for pursuant to the Securities Purchase Agreement on each Closing Date, the Company and each relevant Subsidiary will have good and marketable title in fee simple to all real and fixed properties and good and marketable title to all other applicable Collateral owned by the Company or such relevant Subsidiary, as the case may be, in each case free from liens, encumbrances and defects other than the lien of the Indenture and the Offered Securitiesand the Security Documents, subject only to the exceptions referred to in the Indenture and the Offered Securities, in each case, except as could have, individually or in the aggregate, a Material Adverse Effect; and the descriptions of all the applicable Collateral contained in the granting clauses of the the Securities Purchase Agreement, the Indenture and the Offered

Securities will be correct and adequate in all material respects for the purposes of the Indenture and the Offered Securities.

3. *Agreement to Act as Placement Agent.* On the basis of the representations, warranties and agreements and subject to the terms and conditions set forth herein:

(a) The Company hereby authorizes the Placement Agent to act as its exclusive agent to solicit offers for the purchase of all or part of the Offered Securities from the Company in connection with the proposed offering of the Offered Securities. Until the earlier of the Final Closing Date and the termination of this Agreement, the Company shall not, without the prior consent of the Placement Agent, solicit or accept offers to purchase Offered Securities otherwise than through the Placement Agent.

(b) The Placement Agent agrees, as agent of the Company, to use its best efforts to solicit offers to purchase the Offered Securities from the Company on the terms and subject to the conditions set forth in the Final Prospectus. The Placement Agent has no authority to bind the Company with respect to any prospective offer to purchase Offered Securities. The Placement Agent shall not have any liability to the Company in the event any such purchase is not consummated for any reason, except to the extent it is finally determined by a court of competent jurisdiction to have resulted primarily from the bad faith, willful misconduct, fraud or gross negligence of the Placement Agent. Under no circumstances will the Placement Agent be obligated to purchase any Offered Securities for its own accounts and, in soliciting purchases of Offered Securities, the Placement Agent shall act solely as the Company's agent and not as principal.

(c) Offers for the purchase of Offered Securities may be solicited by the Placement Agent as agent for the Company at such times and in such amounts as the Placement Agent deems advisable. The Placement Agent shall communicate to the Company, orally or in writing, each offer to purchase Offered Securities received by it as Placement Agent of the Company. The Company shall have the sole right to accept offers to purchase the Offered Securities and may reject any such offer, in whole or in part. The Placement Agent shall have the right, in its reasonable discretion, without notice to the Company, to reject any offer to purchase Offered Securities received by it, in whole or in part, and any such rejection shall not be deemed a breach of its agreement contained herein.

(d) The purchases of the Offered Securities by the Purchaser shall be evidenced by the execution of a Securities Purchase Agreement by each of the parties thereto.

(e) As compensation for services rendered, on the Initial Closing Date, the Company shall pay or cause to be paid to the Placement Agent by wire transfer of immediately available funds to an account or accounts designated by the Placement Agent, an aggregate amount equal to the greater of: (i) $1,500,000 and (ii) five percent (5%) of the gross proceeds received by the Company from the sale of the Offered Securities. On any subsequent Optional Closing Date, the Company will pay to the Placement Agent five percent (5%) of the gross proceeds received by the Company from the sale of the Offered Securities issued and sold on such Optional Closing Date to the extent the total fees (including fees received at the Initial Closing Date) to the Placement Agent would exceed $1,500,000.

(f) No Offered Securities which the Company has agreed to sell pursuant to this Agreement shall be deemed to have been purchased and paid for, or sold by the Company, until such Offered Securities shall have been delivered to the Purchaser thereof against payment by such Purchaser. If the Company shall default in its obligations to deliver Offered Securities to a Purchaser whose offer it has accepted, the Company shall indemnify and hold the Indemnified Parties (as defined below) harmless against any loss, claim, damage or liability directly or indirectly arising from or as a result of such default by the Company.

4. [Reserved].

5. *Certain Agreements of the Company.* The Company agrees with the Placement Agent that:

(a) *Additional Filings.* Unless filed pursuant to Rule 462(c) as part of the Additional Registration Statement in accordance with the next sentence, the Company will file each Statutory Prospectus (including the Final Prospectus), in a form approved by the Placement Agent (which approval shall not be unreasonably withheld, conditioned or delayed), with the Commission pursuant to and in accordance with subparagraph (5) of Rule 424(b) not later than the second business day following the earlier of the date it is first used or the execution and delivery of the

Securities Purchase Agreement. The Company will advise the Placement Agent promptly of any such filing pursuant to Rule 424(b) and provide satisfactory evidence to the Placement Agent of such timely filing. If an Additional Registration Statement is necessary to register a portion of the Offered Securities under the Act but the Effective Time thereof has not occurred as of the execution and delivery of the Securities Purchase Agreement, the Company will file the Additional Registration Statement or, if filed, will file a post-effective amendment thereto with the Commission pursuant to and in accordance with Rule 462(b) on or prior to 10:00 P.M., New York time, on the date of the Securities Purchase Agreement or, if earlier, on or prior to the time the Final Prospectus is finalized and distributed to the Placement Agent, or will make such filing at such later date as shall have been consented to by the Placement Agent.

(b) *Filing of Amendments: Response to Commission Requests.* Prior to the earlier of the Final Closing Date or the expiration of the Option pursuant to the Securities Purchase Agreement, the Company will promptly advise the Placement Agent of any proposal to amend or supplement at any time the Initial Registration Statement, any Additional Registration Statement or any Statutory Prospectus and will not effect such amendment or supplementation without the Placement Agent's consent; and the Company will also advise the Placement Agent promptly of (i) the effectiveness of any Additional Registration Statement (if its Effective Time is subsequent to the execution and delivery of this Agreement), (ii) prior to the earlier of the Final Closing Date or the expiration of the Option pursuant to the Securities Purchase Agreement, any amendment or supplementation of a Registration Statement or any Statutory Prospectus, (iii) any request by the Commission or its staff for any amendment to any Registration Statement, for any supplement to any Statutory Prospectus or for any additional information, (iv) the institution by the Commission of any stop order proceedings in respect of a Registration Statement or the threatening of any proceeding for that purpose, and (v) the receipt by the Company of any notification with respect to the suspension of the qualification of the Offered Securities in any jurisdiction or the institution or threatening of any proceedings for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(c) *Continued Compliance with Securities Laws.* If, at any time when a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act by the Placement Agent or dealer, any event occurs as a result of which the Final Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Registration Statement or supplement the Final Prospectus to comply with the Act, the Company will promptly notify the Placement Agent of such event and will promptly prepare and file with the Commission and furnish, at its own expense, to the Placement Agent and the dealers and any other dealers upon request of the Placement Agent, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Placement Agent's consent to, nor the Placement Agent's delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 7 hereof.

(d) *Testing-the-Waters Communication.* If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Placement Agent and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such statement or omission.

(e) *Rule 158.* As soon as practicable, but not later than the Availability Date (as defined below), the Company will make generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the Effective Time of the Initial Registration Statement (or, if later, the Effective Time of the Additional Registration Statement) which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act. For the purpose of the preceding sentence, "**Availability Date**" means the day after the end of the fourth fiscal quarter following the fiscal quarter that includes such Effective Time on which the Company is required to file its Form 10-Q for such fiscal quarter except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "Availability Date" means the day after the end of such fourth fiscal quarter on which the Company is required to file its Form 10-K.

(f) *Furnishing of Prospectuses.* The Company will furnish to the Placement Agent electronic copies of each Registration Statement, each related Statutory Prospectus, and, so long as a prospectus relating to the Offered Securities is (or but for the exemption in Rule 172 would be) required to be delivered under the Act, the Final Prospectus and all amendments and supplements to such documents, in each case in such quantities as the Placement Agent requests. The Final Prospectus shall be so furnished on or prior to 3:00 P.M., New York time, on the business day following the execution and delivery of the Securities Purchase Agreement. All other such documents shall be so furnished as soon as available. The Company will pay the expenses of printing and distributing to the Placement Agent all such documents.

(g) *Blue Sky Qualifications.* The Company will arrange for the qualification of the Offered Securities for sale under the laws of such jurisdictions as the Placement Agent designates and will continue such qualifications in effect so long as required for the distribution. Notwithstanding the foregoing, the Company will not be obligated to qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to so qualify, file any general consent to service of process in any such jurisdiction or subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(h) *Reporting Requirements.* Prior to the completion of the distribution of the Offered Securities within the meaning of the Act, the Company will furnish to the Placement Agent as soon as practicable after the end of each fiscal year, an electronic copy of its annual report to stockholders for such year; and the Company will furnish to the Placement Agent within one (1) Business Day after the filing thereof with the Commission, an electronic copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to stockholders. However, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and is timely filing reports with the Commission on EDGAR, it is not required to furnish such reports or statements to the Placement Agent.

(i) *Payment of Expenses.* The Company agrees with the Placement Agent that the Company will pay all reasonable, documented out-of-pocket expenses incident to the performance of the obligations of the Company, as the case may be, under this Agreement, the Securities Purchase Agreement, the Indenture and the Security Documents, including but not limited to any filing fees and other expenses (including reasonable, documented fees and disbursements of counsel to the Placement Agent) incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions as the Placement Agent designates and the preparation and printing of memoranda relating thereto, costs and expenses related to the review by FINRA of the Offered Securities (including filing fees and the reasonable, documented fees and expenses of counsel for the Placement Agent relating to such review), costs and expenses relating to investor presentations or any "road show" in connection with the offering and sale of the Offered Securities including, without limitation, any travel expenses of the Company's officers and employees and any other expenses of the Company including fees and expenses incident to listing or maintaining the listing of the Underlying Shares on the New York Stock Exchange, American Stock Exchange, The Nasdaq Stock Market LLC and other national and foreign exchanges, fees and expenses in connection with the registration of the Offered Securities under the Exchange Act, costs and expenses incurred in connection with the creation, perfection, protection and continuation of the first priority liens contemplated by the Indenture and each Security Document and fees and expenses incurred in connection with lien and title searches, title insurance, taxes, fees and other charges for recording mortgages and filing UCC financing statements, intellectual property filings and continuations), fees and expenses of the Trustee, fees and expenses of the Collateral Agent, any transfer taxes payable in connection with the delivery of the Offered Securities to the Purchaser and expenses incurred in distributing the Final Prospectus (including any amendments and supplements thereto) to the Placement Agent; *provided, however* that the fees and expenses to be reimbursed to the Placement Agent (including any fees and expenses of counsel for the Placement Agent) shall not exceed an aggregate amount of two hundred thousand dollars ($200,000).

(j) *Use of Proceeds.* The Company will use the net proceeds received by it in connection with this offering in the manner described in the "Use of Proceeds" section of the Final Prospectus, the Company does not intend to use any of the proceeds from the sale of the Offered Securities hereunder to repay any outstanding debt owed to the Placement Agent or affiliate of the Placement Agent.

(k) *Reservation of Shares.* The Company will reserve and keep available at all times from and after the Initial Closing Date, free of preemptive rights, shares of Common Stock for the purpose of enabling the Company to satisfy any obligations to issue the maximum number of Underlying Shares issuable upon conversion of the Offered Securities.

(l) *Absence of Manipulation.* The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Offered Securities.

(m) *Post-Closing Perfection Actions.* Except as provided in the Offered Securities, on or prior to the thirtieth (30th) day following the Initial Closing Date, the Company and each relevant Subsidiary will authorize, execute and deliver the Ancillary Security Agreements to which it will be a party pursuant to the Securities Purchase Agrement and take any other actions necessary to perfect and protect a first priority security interest (subject to no liens except as provided in the Indenture and the Offered Securities) in the applicable Collateral covered by such Ancillary Security Agreements for the benefit of the holders of the Offered Securities.

(n) *Emerging Growth Company Status*. The Company will promptly notify the Placement Agent if the Company ceases to be an Emerging Growth Company at any time prior to the completion of the distribution of the Offered Securities within the meaning of the Act.

(o) If, immediately prior to the third anniversary of the initial effective date of the Registration Statement (the "**Renewal Date**"), any of the Offered Securities remain unsold, the Company will, prior to the Renewal Date, file a new shelf registration statement or, if applicable, an automatic shelf registration statement relating to the Offered Securities, in a form satisfactory to the Placement Agent and its counsel, and, if such registration statement is not an automatic shelf registration statement, will use its best efforts to cause such registration statement to be declared effective within 180 days after the Renewal Date. The Company will take all other reasonable actions necessary or appropriate to permit the public offer and sale of the Offered Securities to continue as contemplated in the expired registration statement related to the Offered Securities. From and after the effective date thereof, references herein to the "Registration Statement" shall include such new shelf registration statement or such new automatic shelf registration statement, as the case may be.

6. *Free Writing Prospectuses*. The Company represents and agrees that and the Placement Agent represents and agrees that it has not made and will not make any offer relating to the Offered Securities that would constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission.

7. *Conditions of the Obligations of the Placement Agent.* The obligations of the Placement Agent hereunder will be subject to the accuracy of the representations and warranties of the Company herein (as though made on such Closing Date), to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) *Accountants' Comfort Letter.* (i) The Placement Agent shall have received letters, dated, respectively, the date hereof and the Initial Closing Date confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws and in the form and substance satisfactory to the Placement Agent (except that, in the letter dated the Initial Closing Date, the specified date referred to in the comfort letters shall be a date no more than three days prior to the Initial Closing Date) and (ii) The Placement Agent shall have received letters, dated each subsequent Optional Closing Date, confirming that they are a registered public accounting firm and independent public accountants within the meaning of the Securities Laws and in the form and substance satisfactory to the Placement Agent.

(b) *Effectiveness of Registration Statement.* If the Effective Time of the Additional Registration Statement (if any) is not prior to the execution and delivery of the Securities Purchase Agreement, such Effective Time shall have occurred not later than 10:00 P.M., New York time, on the date of the Securities Purchase Agreement or, if earlier, the time the Final Prospectus is finalized and distributed to the Placement Agent, or shall have occurred at such later time as shall have been consented to by the Placement Agent. The Final Prospectus shall have been filed with the Commission in accordance with the Rules and Regulations and Section 5(a) hereof. Prior to such Closing Date, no stop order suspending the effectiveness of a Registration Statement shall

have been issued and no proceedings for that purpose shall have been instituted or, to the knowledge of the Company or the Placement Agent, shall be contemplated by the Commission.

(c) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole which, in the judgment of the Placement Agent, is material and adverse and makes it impractical or inadvisable to place the Offered Securities; (ii) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (as defined in Section 3(a)(62) of the Exchange Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls the effect of which is such as to make it, in the judgment of the Placement Agent, impractical to place or to enforce contracts for the sale of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any suspension or material limitation of trading in securities generally on the New York Stock Exchange or the Nasdaq Stock Market, or any setting of minimum or maximum prices for trading on such exchange; (v) or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (vi) any banking moratorium declared by any U.S. federal or New York authorities; (vii) any major disruption of settlements of securities, payment or clearance services in the United States or any other country where such securities are listed or (viii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Placement Agent, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency is such as to make it impractical or inadvisable to place the Offered Securities or to enforce contracts for the sale of the Offered Securities.

(d) *Opinion and 10b-5 Statement of Counsel for the Company.* The Placement Agent shall have received an opinion and 10b-5 statement, dated such Closing Date, of Fenwick & West LLP, counsel for the Company, and an opinion, dated such Closing Date, of intellectual property counsel to the Company satisfactory to the Placement Agent as to intellectual property matters, each in form and substance satisfactory to the Placement Agent and its counsel.

(e) *Opinion and 10b-5 Statement of Counsel for the Placement Agent.* The Placement Agent shall have received from Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Placement Agent, such opinion or opinions and 10b-5 statement, dated such Closing Date, with respect to such matters as the Placement Agent may require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(f) *Officers' Certificate.* The Placement Agent shall have received a certificate, dated such Closing Date, of an executive officer of the Company and a principal financial or accounting officer of the Company in which such officers shall state that: the representations and warranties of the Company in this Agreement are true and correct; the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date; no stop order suspending the effectiveness of any Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the best of their knowledge and after reasonable investigation, are contemplated by the Commission; the Additional Registration Statement (if any) satisfying the requirements of subparagraphs (1) and (3) of Rule 462(b) was timely filed pursuant to Rule 462(b), including payment of the applicable filing fee in accordance with Rule 456(a) or (b); and, subsequent to the date of the most recent financial statements included or incorporated by reference in the Final Prospectus, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries taken as a whole except as set forth in the Final Prospectus or as described in such certificate.

(g) *CFO Certificate.* At the time of the execution of the Securities Purchase Agreement, and on each Closing Date, the Placement Agent shall have received a certificate of the Chief Financial Officer of the Company in form and substance satisfactory to the Placement Agent.

(h) *Listing*. The Underlying Shares issuable upon conversion of the Offered Securities shall have been approved for listing on the Exchange, subject to notice of issuance.

The Company will furnish the Placement Agent with such conformed copies of such opinions, certificates, letters and documents as the Placement Agent reasonably requests. The Placement Agent may in its sole discretion waive compliance with any conditions to the obligations of the Placement Agent hereunder, whether in respect of an Optional Closing Date or otherwise.

8. *Indemnification and Contribution.* (a) *Indemnification of the Placement Agent by Company.* The Company will indemnify and hold harmless the Placement Agent, its partners, members, directors, officers, employees, agents, affiliates and each person, if any, who controls the Placement Agent within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each an "**Indemnified Party**"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject, under the Act, the Exchange Act, other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Written Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Indemnified Party for any reasonable and documented legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Indemnified Party is a party thereto), whether threatened or commenced, and in connection with the enforcement of this provision with respect to any of the above as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by the Placement Agent specifically for use therein, it being understood and agreed that the only such information furnished by the Placement Agent consists of the information described as such in subsection (b) below.

(b) *Indemnification of Company.* The Placement Agent will indemnify and hold harmless the Company, each of its directors and each of its officers who signs a Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act (each, a "**Placement Agent Indemnified Party**") against any losses, claims, damages or liabilities to which such Placement Agent Indemnified Party may become subject, under the Act, the Exchange Act, or other Federal or state statutory law or regulation or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any part of any Registration Statement at any time, any Statutory Prospectus as of any time, the Final Prospectus or any Written Testing-the-Waters Communication or arise out of or are based upon the omission or the alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by the Placement Agent specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by such Placement Agent Indemnified Party in connection with investigating or defending against any such loss, claim, damage, liability, action, litigation, investigation or proceeding whatsoever (whether or not such Placement Agent Indemnified Party is a party thereto), whether threatened or commenced, based upon any such untrue statement or omission, or any such alleged untrue statement or omission as such expenses are incurred, it being understood and agreed that the only such information furnished by the Placement Agent consists of the following information in the Final Prospectus: the name of the Placement Agent and the information contained in the fifth paragraph under the caption "Plan of Distribution".

(d) *Actions against Parties; Notification.* Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under subsection (a), (b) or (c) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a), (b) or (c) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and

provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a), (b) or (c) above. In case any such action is brought against any indemnified party and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. No indemnifying party will be liable for any settlement of any action or claim effected without its written consent (which consent will not be unreasonably withheld or delayed).

(e) *Contribution.* If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a), (b) or (c) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a), (b) or (c) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Placement Agent on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Placement Agent on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Placement Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total fees received by the Placement Agent under this Agreement. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Placement Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (e). Notwithstanding the provisions of this subsection (e), the Placement Agent shall not be required to contribute any amount in excess of the amount of fees received by the Placement Agent pursuant to this Agreement. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Company and the Placement Agent agree that it would not be just and equitable if contribution pursuant to this Section 8(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 8(e).

9. [Reserved]

10. *Termination*. If any condition specified in Section 7 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Placement Agent by notice to the Company at any time on or prior to the Initial Closing Date. The Company may terminate this Agreement at any time prior to execution of a Securities Purchase Agreement upon written notice to the Placement Agent. Any termination pursuant to this Section 10 shall be without liability on the part of any party to any other party, except that Section 5, Section 8, Section 9, Section 10, Section 11, Section 12 and Section 13 shall at all times be effective and shall survive such termination.

11. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the Placement Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of the Placement Agent, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If this Agreement is terminated

for any reason or, if for any reason, the purchase of the Offered Securities by the Purchaser is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof (including the provisions of Section 7 hereof), the Company will reimburse the Placement Agent for all reasonable, documented out-of-pocket expenses (including reasonable, documented fees and disbursements of counsel) reasonably incurred by it in connection with the offering of the Offered Securities, and the respective obligations of the Company and the Placement Agent pursuant to Section 8 hereof shall remain in effect. In addition, if any Offered Securities have been purchased pursuant to a Securities Purchase Agreement, the representations and warranties in Section 2 and all obligations under Section 5 shall also remain in effect.

12. *Notices*. All communications hereunder will be in writing and, if sent to the Placement Agent, will be mailed, delivered or telegraphed and confirmed to the Placement Agent, c/o Credit Suisse Securities (USA) LLC, Eleven Madison Avenue, New York, N.Y. 10010-3629, Attention: LCD-IBD, with a copy (which shall not constitute notice) to Skadden, Arps, Slate Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attention: Ryan Dzierniejko, email: [*], or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 511 Division St. Campbell, CA 95008, Attention: William McCombe, email: [*], with a copy (which shall not constitute notice) to Fenwick & West LLP, 902 Broadway, New York, NY, Attention: Per Chilstrom, email: [*]. An electronic communication shall be deemed written notice for purposes of this Section 12 if sent to the electronic mail address specified by the receiving party in this Section 12.

13. *Successors*. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7, and no other person will have any right or obligation hereunder.

14. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, both written and oral, with respect to the subject matter hereof, including, without limitation, that certain letter agreement, dated as of June 14, 2023, between the Company and Credit Suisse Securities (USA) LLC.

15. *Counterparts*. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, 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.

16. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) No Other Relationship. The Placement Agent has been retained solely to act as a placement agent in connection with the sale of the Offered Securities and that no fiduciary, advisory or agency relationship between the Company, on the one hand, and the Placement Agent, on the other, has been created in respect of any of the transactions contemplated by this Agreement or the Final Prospectus, irrespective of whether the Placement Agent has advised or is advising the Company on other matters;

(b) Arms' Length Negotiations. The fees paid to the Placement Agent set forth in this Agreement were established by Company following discussions and arms-length negotiations with the Placement Agent and the Company and the Placement Agent are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) Absence of Obligation to Disclose. The Company has been advised that the Placement Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Placement Agent has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) Waiver. The Company waives, to the fullest extent permitted by law, any claims they may have against the Placement Agent for breach of fiduciary duty or alleged breach of fiduciary duty and agree that the Placement Agent shall have no liability (whether direct or indirect) to the Company in respect of

such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

17. ***Applicable Law.*** **This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably and unconditionally waives any objection to the laying of venue of any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in Federal and state courts in the Borough of Manhattan in the City of New York and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit or proceeding in any such court has been brought in an inconvenient forum.

18. ***WAIVER OF JURY TRIAL.*** **THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

19. *Recognition of the U.S. Special Resolution Regimes.*

(i) In the event that the Placement that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from the Placement Agent of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(ii) In the event that the Placement Agent that is a Covered Entity or a BHC Act Affiliate of the Placement Agent becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against the Placement Agent are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

As used in this Section 16(g):

"BHC Act Affiliate" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"U.S. Special Resolution Regime" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

[*Signature pages follow*]

If the foregoing is in accordance with the Placement Agent's understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the Placement Agent in accordance with its terms.

Very truly yours,

Velo3D, Inc.

By /s/ Benny Buller
Name: Benny Buller
Title: Chief Executive Officer

The foregoing Placement Agent Agreement is hereby confirmed and accepted as of the date first above written.

Credit Suisse Securities (USA) LLC

By: /s/ Christopher F. Siska
Name: Christopher F. Siska
Title: Managing Director

SCHEDULE A

None.

Certain information in this document indicated with "[*]" has been omitted from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

SECURITY AGREEMENT

THIS **SECURITY AGREEMENT** (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") dated as of August 14, 2023 among Velo3D, Inc., a Delaware corporation (the " **Pledgor**"), each of the Subsidiaries of the Pledgor from time to time party hereto (together with the Pledgor and all Additional Grantors (as defined below), the "**Grantors**") and High Trail Investments ON LLC, a Delaware limited liability company, in its capacity as collateral agent for the benefit of the Holders (as defined below) and the Trustee (as defined in the Notes) (together with its successors and assigns in such capacity, the "**Secured Party**").

W I T N E S S E T H:

WHEREAS, the Pledgor will enter into that certain Securities Purchase Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "**Securities Purchase Agreement**"), with High Trail Investments ON LLC and HB SPV I Master Sub LLC (collectively, the "**Initial Holder**") and each other party thereto, pursuant to which, among other things, the Pledgor will issue, and the Initial Holder will purchase, subject to the terms set forth therein, the Notes (as defined in the Securities Purchase Agreement);

AND WHEREAS, it is a condition precedent to the closing under the Securities Purchase Agreement that the Grantors shall have executed and delivered this Agreement to the Secured Party for its benefit and the benefit of the Holders.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Capitalized terms used herein without definition and defined in the Notes are used herein as defined therein. In addition, as used herein:

"**Account**" means any "account", as such term is defined in the UCC.

"**Additional Grantor**" shall have the meaning given in Section 4.14.

"**Agreement**" has the meaning set forth in the preamble hereof.

"**Applicable Law**" means, in relation to any subject, all provisions applicable to that subject of all (i) constitutions, treaties, statutes, laws, rules, regulations and ordinances of any Governmental Entity, (ii) authorizations, consents, approvals, permits or licenses issued by, or a registration or filing with, any Governmental Entity and (iii) orders, decisions, judgments, awards and decrees of any Governmental Entity (including common law and principles of public policy).

"**Chattel Paper**" means all "chattel paper", as such term is defined in the UCC, including, without limitation, "electronic chattel paper" and "tangible chattel paper", as each term is defined in the UCC.

"**Collateral**" has the meaning ascribed thereto in Section 3 hereof.

"**Collateral Records**" means all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

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

"**Commercial Tort Claims**" means "commercial tort claims", as such term is defined in the UCC, including, without limitation, all commercial tort claims listed on Schedule VIII hereto.

"**Contracts**" means all contracts, undertakings, or other agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which a Grantor may now or hereafter have any right, title or interest, including, without limitation, with respect to an Account, any agreement relating to the terms of payment or the terms of performance thereof.

"**Control Agreement**" has the meaning set forth in Section 4.5 hereof.

"**Copyrights**" means all copyrights and rights, title and interests (and all related IP Ancillary Rights) in copyrights, works protectable by copyrights, mask works, database and design rights, copyright registrations and copyright applications, including, without limitation, the copyright registrations and copyright applications listed on Schedule III attached hereto (if any), all Copyrights (as defined in the Notes), and all renewals of any of the foregoing.

"**Deposit Accounts**" means all "deposit accounts", as such term is defined in the UCC, now or hereafter held in the name of a Grantor.

"**Documents**" means all "documents", as such term is defined in the UCC, and shall include, without limitation, all documents of title (as defined in the UCC), bills of lading or other receipts evidencing or representing Inventory or Equipment.

"**Equipment**" means (i) all "equipment", as such term is defined in the UCC and, in any event, shall include, Motor Vehicles, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC); and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

"**Excluded Accounts**" means (a) any accounts maintained by a Grantor exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of such Grantor's employees; provided amounts therein are transferred into such accounts no earlier than five Business Days prior to the use of all amounts contained therein for making such payments; or (b)(i) any merchant account in the nature of accounts with payment service providers; (ii) any bank or deposit account used solely for purposes of cash deposits or pledges constituting Permitted Liens; or (iii) any escrow account, trust account or other fiduciary account maintained in the ordinary course of business; provided, that at no time shall the aggregate amount in the accounts described in this clause (b) exceed $1,000,000.

"**Excluded Collateral**" has the meaning set forth in Section 3.1(a) hereof.

"**General Intangibles**" means all "general intangibles", as such term is defined in the UCC, and, in any event, shall include, without limitation, payment intangibles, contract rights, rights to payment, rights arising under common law, statutes, or regulations, choses or things in action, goodwill (including the goodwill associated with any Trademark), Patents, Trademarks, Copyrights, URLs and domain names, industrial designs and other Intellectual Property or rights therein or applications therefor, whether under license or otherwise, programs, programming materials, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the UCC.

"**Goods**" means all "goods", as such term is defined in the UCC, including, without limitation, fixtures and embedded Software to the extent included in "goods" as defined in the UCC.

"**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other

government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

"**Grantors**" has the meaning set forth in the preamble hereof.

"**Holders**" means the Initial Holder and each Holder under and as defined in any Note.

"**Initial Holder**" has the meaning set forth in the preamble hereof.

"**Instruments**" means all "instruments", as such term is defined in the UCC, and shall include, without limitation, promissory notes, drafts, bills of exchange and trade acceptances.

"**Insurance**" means (i) all insurance policies covering any or all of the Collateral (regardless of whether the Secured Party is the loss payee thereof) and (ii) all key man life insurance policies (if any).

"**Intellectual Property**" means all rights, title and interests in intellectual property arising under any Applicable Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets, industrial designs, integrated circuit topographies, confidential proprietary information and rights under Intellectual Property Licenses.

"**Intellectual Property Licenses**" means all rights under or interests in any written agreement, including all contractual obligations (and all related IP Ancillary Rights), granting any right, title and interest in any Intellectual Property, including software license agreements, whether a Grantor is a licensee or licensor under any such license agreement, and including, without limitation, the license agreements listed on Schedule IV attached hereto and all Copyright Licenses, Patent Licenses and Trademark Licenses (each as defined in the Notes).

"**Internet Domain Name**" means all right, title and interest (and all related IP Ancillary Rights) arising under any Applicable Law in Internet domain names.

"**IP Ancillary Rights**" means, with respect to an item of Intellectual Property all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

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

"**Investment Property**" means all "investment property", as such term is defined in the UCC.

"**Joinder Agreement**" shall mean a Joinder Agreement substantially in the form of Annex I.

"**Letter-of-Credit Right**" means any "letter-of-credit right", as such term is defined in the UCC.

"**Mortgage**" means any mortgage, deed of trust, deed to secure debt or other document, in form and substance reasonably satisfactory to the Secured Party, creating in favor of the Secured Party a Lien on real property owned by a Grantor.

"**Motor Vehicles**" means motor vehicles, tractors, trailers and other like property, whether or not the title thereto is governed by a certificate of title or ownership.

"**Note Documents**" means the Securities Purchase Agreement, the Notes, the Security Documents and the other Transaction Documents (as defined in the Securities Purchase Agreement).

"**Notes**" has the meaning set forth in the Securities Purchase Agreement.

"**Obligations**" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Note Document after the commencement of a bankruptcy proceeding, whether or not a claim for such interest is allowed) of the Pledgor and the other Grantors under the Notes, any Security Document or any other Note Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**Patents**" means any patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, all patentable inventions and those patents and patent applications listed on Schedule V attached hereto (if any), all Patents (as defined in the Notes), and all IP Ancillary Rights in respect of any of the foregoing.

"**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity.

"**Pledge Supplement**" has the meaning set forth in Section 4.1(j) hereof.

"**Pledged Collateral**" means (a) all of the Pledged Interests, (b) the certificates, if any, representing the Pledged Interests and any interest of a Grantor on the books and records of any Pledged Entity pertaining to such Pledged Interests and (c) all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the Pledged Interests.

"**Pledged Entities**" means the corporations, limited liability companies and other entities set forth on Exhibit A and each other corporation, limited liability company or other entity, the stock or other equity interests and securities of which are owned or acquired by a Grantor and described on a Pledge Supplement.

"**Pledged Interests**" means all of the capital stock, limited liability company interests and other equity interests and securities of the Pledged Entities or any other entity now owned or hereafter acquired by a Grantor.

"**Pledgor**" has the meaning set forth in the preamble hereof.

"**Proceeds**" means "proceeds", as such term is defined in the UCC and, in any event, includes, without limitation, (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Entity (or any person acting under color of a Governmental Entity), and (c) any and all other amounts from time to time paid or payable under, in respect of or in connection with any of the Collateral.

"**Receivables**" means all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Property, together with all of a Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

"**Receivables Records**" means (i) all originals or copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables; (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of a Grantor or any computer bureau or agent from time to time acting for such Grantor or otherwise; (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers; (iv) all credit information, reports and memoranda related thereto; and (v) all other written or non-written forms of information related in any way to the foregoing or any Receivable.

"**Record**" has the meaning specified in the UCC.

"**Related Person**" has the meaning specified in Section 6.12(b).

"**Representative**" means any Person acting as agent, trustee or representative on behalf of the Secured Party from time to time.

"**Security Documents**" means this Agreement, the Subsidiary Guaranty, the Control Agreements, the Mortgages, if any, and each other agreement or instrument pursuant to or in connection with which the Pledgor or any of its Subsidiaries grants a security interest in any Collateral to the Secured Party, for its benefit and the benefit of the Holders, or pursuant to which any such security interest in Collateral is perfected, each as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"**Secured Party**" has the meaning set forth in the preamble hereof.

"**Securities Purchase Agreement**" has the meaning set forth in the recitals hereof.

"**Software**" means all "software", as such term is defined in the UCC, now owned or hereafter acquired by a Grantor, other than software embedded in any category of Goods, including, without limitation, all computer programs and all supporting information provided in connection with a transaction related to any program.

"**Subsidiary Guaranty**" means that certain Subsidiary Guaranty, dated as of the date hereof, by and among the Pledgor and the Grantors party thereto in favor of the Secured Party, as amended, restated or modified from time to time.

"Supporting Obligation" means any "supporting obligation", as such term is defined in the UCC.

"**Trade Secrets**" means all right, title and interest (and all related IP Ancillary Rights) arising under any Applicable Law in or relating to trade secrets.

"**Trademarks**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in any trademarks, trade names, internet domain names, URLs, all websites, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source or business identifiers, all goodwill associated therewith, all registrations and recordings thereof and all applications in connection therewith, including, without limitation, the trademarks, trademark applications, internet domain names and

URLs listed in Schedule VI attached hereto (if any) and renewals thereof, all Trademarks (as defined in the Notes).

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that to the extent that the Uniform Commercial Code is used to define any term herein and such term is defined differently in different Articles of the Uniform Commercial Code, the definition of such term contained in Article 9 shall govern.

Section 2. Representations, Warranties and Covenants of the Grantors. Each Grantor represents and warrants to, and covenants with, the Secured Party, as of the date hereof, as follows:

(a) Such Grantor has rights in and the power to transfer the Collateral in which it purports to grant a security interest pursuant to Section 3 hereof (subject, with respect to after acquired Collateral, to such Grantor acquiring the same) and no Lien other than (x) with respect to the Collateral other than the Pledged Collateral, Permitted Liens, and (y) with respect to the Pledged Collateral, the Permitted Liens described in clause (B) or (C) of the definition thereof, in either case, exists or will exist upon such Collateral at any time.

(b) This Agreement is the legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms except to the extent that such enforceability is subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance and moratorium laws and other laws of general application affecting enforcement of creditors' rights generally, or the availability of equitable remedies, which are subject to the discretion of the court before which an action may be brought.

(c) This Agreement is effective to create in favor of the Secured Party a valid security interest in and Lien upon all of such Grantor's right, title and interest in and to the Collateral, and upon (i) the filing of appropriate UCC financing statements in the jurisdictions listed on Schedule I attached hereto, (ii) each Deposit Account (other than any Excluded Accounts) being subject to a Control Agreement (as hereinafter defined) among the applicable Grantor, depository institution and the Secured Party on behalf of the Holders, (iii) filings in the United States Patent and Trademark Office or United States Copyright Office with respect to Collateral that is Patents, Trademarks or Copyrights, as the case may be, (iv) the filing of the Mortgages in the jurisdictions listed on Schedule I hereto, (v) the delivery to the Secured Party of the Pledged Collateral together with assignments in blank, (vi) the security interest created hereby being noted on each certificate of title evidencing the ownership of any Motor Vehicle (which shall only be required to be noted on a certificate of title if required by Section 4.1(d) hereof), (vii) delivery to the Secured Party or its Representative of Instruments duly endorsed by the applicable Grantor or accompanied by appropriate instruments of transfer duly executed by the applicable Grantor with respect to Instruments not constituting Chattel Paper and (viii) the consent of the issuer and any confirmer of any letter of credit to an assignment to the Secured Party of the proceeds of any drawing thereunder, such security interest will be a duly perfected first priority security interest (subject only to Permitted Liens) in all of the Collateral. No consent, approval or authorization of or designation or filing with any Governmental Entity on the part of any Grantor is required in connection with the pledge and security interest granted under this Agreement (other than (x) any consent or approval which has been obtained and is in full force and effect and (y) the filings described in clauses (c)(i), (iii) and (iv) above).

(d) The execution, delivery and performance of this Agreement will not violate (i) any material provision of any Applicable Law, (ii) any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, which are applicable to any Grantor, (iii) the articles or certificate of incorporation, certificate of formation, bylaws or any other similar organizational documents of any Grantor or any Pledged Entity or of any securities issued by any Grantor or any Pledged Entity, (iv) any mortgage, indenture, lease, contract, or other agreement, instrument or undertaking to which any Grantor or any Pledged Entity is a party or which is binding upon any Grantor or any Pledged Entity or upon any of the assets of any Grantor or any Pledged Entity, and will not result in the creation or imposition of any lien, charge or encumbrance on or security interest in any of the assets of any Grantor or any Pledged Entity, except as otherwise contemplated by this Agreement.

(e) All of the Equipment, Inventory and Goods with a value in excess of $50,000 individually or in the aggregate owned by any Grantor is located at the places as specified on

Schedule I attached hereto (other than locations where such Equipment, Inventory and Goods is temporarily located for maintenance or repair and locations in transit). Except as disclosed on Schedule I, none of the Collateral is in the possession of any bailee, warehousemen, processor or consignee. Schedule I discloses each Grantor's name as of the date hereof as it appears in official filings in the state or province, as applicable, of its incorporation, formation or organization, the type of entity of such Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by such Grantor's state of incorporation, formation or organization (or a statement that no such number has been issued), such Grantor's state or province, as applicable, of incorporation, formation or organization and the chief place of business, chief executive office and the office where such Grantor keeps its books and records and the states in which such Grantor conducts its business. Such Grantor has only one state or province, as applicable, of incorporation, formation or organization. Such Grantor does not do business and has not done business during the past five years under any trade name or fictitious business name, and has not changed its jurisdiction of incorporation, formation or organization or its corporate structure in any way, except as disclosed on Schedule II attached hereto.

(f) To such Grantor's knowledge, no Copyrights, Patents, Intellectual Property Licenses or Trademarks listed on Schedules III, IV, V and VI attached hereto, respectively, if any, have been adjudged invalid or unenforceable or have been canceled, in whole or in part, or are not presently subsisting. To such Grantor's knowledge and as of the date hereof, each of such Copyrights, Patents, Intellectual Property Licenses and Trademarks (if any) is valid and enforceable. To such Grantor's knowledge, such Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of such Copyrights, Patents, Intellectual Property Licenses and Trademarks, identified on Schedules III, IV, V and VI, as applicable, as being owned by such Grantor, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by such Grantor not to sue third persons, other than Permitted Liens and Permitted Intellectual Property Licenses. Such Grantor has adopted, used and is currently using, or has a current bona fide intention to use, all of the Trademarks and Copyrights listed on Schedules III and VI, respectively. Such Grantor has not received written notice of any suits or actions commenced or threatened with reference to the Copyrights, Patents or Trademarks owned by it. To such Grantor's knowledge, such Grantor's use of the Intellectual Property owned by such Grantor is not interfering with, infringing upon, misappropriating, or otherwise in conflict with the Intellectual Property rights of any third party.

(g) Without duplication of any information required to be delivered by any Grantor to the Secured Party under and in accordance with the terms of the Notes, then subject to Section 2(q), each Grantor agrees to deliver to the Secured Party (x) an updated Schedule I, II, VII and/or VIII within 20 Business Days of any change thereto and (y) an updated Schedule III, IV, V and/or VI in the case of any change thereto within 30 days after the end of each fiscal quarter.

(h) All depositary and other accounts including, without limitation, Deposit Accounts, securities accounts, brokerage accounts and other similar accounts, maintained by any Grantor (other than any Excluded Accounts) as are described on Schedule VII hereto, which description includes for each such account the name of such Grantor maintaining such account, the name of the financial institution at which such account is maintained and the account number of such account. No Grantor shall open any new Deposit Accounts, securities accounts, brokerage accounts or other accounts (other than any Excluded Accounts) unless such Grantor shall have given the Secured Party prior written notice of its intention to open any such new accounts. Subject to Section 2(r), each Grantor shall deliver to the Secured Party a revised version of Schedule VII showing any changes thereto promptly following, but in any event within 10 Business Days of, any such change. Each Grantor hereby authorizes the financial institutions at which such Grantor maintains an account to provide Secured Party with such information with respect to such account as the Secured Party from time to time reasonably may request, and each Grantor hereby consents to such information being provided to the Secured Party. In addition, all of such Grantor's depositary, security, brokerage and other accounts including, without limitation, Deposit Accounts (other than any Excluded Accounts) shall be subject to the provisions of Section 4.5 hereof.

(i) No Grantor owns any Commercial Tort Claims having a value in excess of $50,000 individually or in the aggregate except for those disclosed on Schedule VIII hereto (if any).

(j) No Grantor has any interest in real property except as disclosed on Schedule IX (if any). Subject to Section 2(r), such Grantor shall deliver to the Secured Party a revised

version of Schedule IX showing any changes thereto within 30 days of any such change. Except as otherwise agreed to by the Secured Party, all such interests that are fee interests in real property are, or within 30 days after such Grantor acquires any such fee interest shall be, subject to a Mortgage in favor of the Secured Party.

(i) Each Grantor shall duly and properly record each interest in real property held by such Grantor that is required to be subject to a Mortgage, except with respect to easements, rights of way, access agreements, surface damage agreements, surface use agreements or similar agreements that such Grantor, in good faith, using prudent customs and practices in the industry in which it operates, does not believe are of material value or material to the operation of such Grantor's business or, with respect to state and federal rights of way, are not capable of being recorded as a matter of state and federal law.

(ii) Each Grantor shall cause a title insurance company reasonably satisfactory to the Secured Party to issue, in respect of each mortgaged real property interest (including any additional real property interest (whether fee, leasehold or otherwise) that is required to be subject to a Mortgage), a mortgagee's title insurance policy (or policies) or marked up unconditional binder for such insurance or unconditional commitment to issue a title policy for such insurance. Each such policy shall (1) be in an amount satisfactory to the Secured Party; (2) insure that the Mortgage insured thereby creates a valid first Lien on, and security interest in, such mortgaged real property interest free and clear of all defects and encumbrances, except for Permitted Liens; (3) name the Collateral Agent, for the benefit of the Holders, as the insured thereunder; (4) be in the form of ALTA Loan Policy acceptable to the Collateral Agent; and (5) contain such endorsements and affirmative coverage as the Collateral Agent may reasonably request, each in form and substance reasonably acceptable to the Collateral Agent.

(k) All Equipment (including, without limitation, Motor Vehicles) owned by each Grantor and subject to a certificate of title or ownership statute is described on Schedule X hereto.

(l) None of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC).

(m) No Grantor owns any "as extracted collateral" (as defined in the UCC) or any timber to be cut.

(n) All actions and consents, including all filings, notices, registrations and recordings necessary for the exercise by the Secured Party of the rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained, other than those required under federal and state securities laws (in each case, with respect only to the exercise of remedies).

(o) Exhibit A sets forth (i) the authorized capital stock and other equity interests of each Pledged Entity, (ii) the number of shares of capital stock and other equity interests of each Pledged Entity that are issued and outstanding as of the date hereof and (iii) the percentage of the issued and outstanding shares of capital stock and other equity interests of each Pledged Entity held by each Grantor. Each Grantor is the record and beneficial owner of, and has good and marketable title to, the Pledged Interests, and such shares are and will remain free and clear of all pledges, liens, security interests and other encumbrances and restrictions whatsoever, except the liens and security interests in favor of the Secured Party created by this Agreement and any Permitted Lien described in clause (B) or (C) of the definition thereof.

(p) Except as set forth on Exhibit A, there are no outstanding options, warrants or other similar agreements with respect to the Pledged Interests or any of the other Collateral.

(q) The Pledged Interests have been duly and validly authorized and issued, are fully paid and non-assessable, and the Pledged Interests listed on Exhibit A constitute all of the issued and outstanding capital stock or other equity interests of the Pledged Entities.

(r) Upon delivery by any Grantor to the Secured Party of any updated schedule required to be delivered pursuant to this Section 2, unless such Grantor has in good faith determined

that the matters contained in such updated schedule do not constitute material, nonpublic information relating to such Grantor or any of its Subsidiaries, such Grantor shall on or prior to 9:00 am, New York city time on the Business Day immediately following such updated schedule delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that such Grantor believes that any updated schedule required to be delivered pursuant to this Section 2 contains material, non-public information relating to such Grantor or any of its Subsidiaries, such Grantor so shall indicate to the Secured Party explicitly in writing concurrently with the delivery of such updated schedule, and in the absence of any such written indication, the Secured Party shall be entitled to presume that information contained in such updated schedule does not constitute material, non-public information relating to such Grantor or any of its Subsidiaries.

Section 3. Collateral.

(a) As collateral security for the prompt payment and performance in full when due (whether at stated maturity, by acceleration or otherwise) of the Obligations, each Grantor hereby pledges and grants to the Secured Party (for the ratable benefit of the Holders) a Lien on and security interest in all of such Grantor's right, title and interest in the following properties and assets of such Grantor, whether now owned by such Grantor or hereafter acquired and whether now existing or hereafter coming into existence and wherever located (all being collectively referred to herein as "**Collateral**"):

i) all Instruments, together with all payments thereon or thereunder, and Letter-of-Credit Rights;

ii) all Accounts;

iii) all Inventory;

iv) all General Intangibles (including Software);

v) all Equipment;

vi) all Documents;

vii) all Contracts;

viii) all Goods;

ix) all Investment Property;

x) all Deposit Accounts and the balance from time to time in all bank accounts maintained by such Grantor;

xi) all Commercial Tort Claims specified on Schedule VIII;

xii) all Intellectual Property;

xiii) all Chattel Paper, all amounts payable thereunder, all rights and remedies of such Grantor thereunder including but limited to the right to amend, grant waivers and declare defaults, any and all accounts evidenced thereby, any guarantee thereof, and all collections and monies due or to become due or received by any Person in payment of any of the foregoing;

xiv) all Receivables and Receivable Records;

xv) all Insurance;

xvi) all Pledged Collateral;

xvii) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

xviii) all other tangible and intangible property of such Grantor, including, without limitation, all fee interests in real property, Proceeds, tort claims, products, accessions, rents, profits, income, benefits, substitutions, additions and replacements of and to any of the property of such Grantor described in the preceding clauses of this Section 3 (including, without limitation, any proceeds of insurance thereon, insurance claims and all rights, claims and benefits against any Person relating thereto), other rights to payments not otherwise included in the foregoing, and all books, correspondence, files, records, invoices and other papers, including without limitation all tapes, cards, computer runs, computer programs, computer files and other papers, documents and records in the possession or under the control of such Grantor, any computer bureau or service company from time to time acting for such Grantor.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in, and the term "Collateral" shall be deemed to exclude, all of the following property (the "**Excluded Collateral**"): (A) any intent-to-use trademark applications filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, to the extent that, and solely during the period in which, the grant of a security interest therein would otherwise invalidate any Grantor's right, title or interest therein, (B) any property owned by a Grantor that is subject to a purchase money Lien or a "capital lease" in accordance with GAAP permitted hereunder or under the Note Documents if the contractual obligation pursuant to which such Lien is granted (or the document providing for such capital lease) prohibits the creation of a Lien thereon or expressly requires the consent of any person other than a Grantor, unless such consent has been obtained or such prohibitions otherwise cease to exist, in which case such Collateral shall automatically become subject to the security interest granted hereunder, (C) any General Intangibles or other rights, in each case arising under any contracts, instruments, licenses or other documents as to which the grant of a security interest would violate or invalidate any such contract, instrument, license or other document or give any other party to such contract, instrument, license or other document the right to terminate its obligations thereunder, (D) any asset, the granting of a security interest in which would be void or illegal under any applicable governmental law, rule or regulation, or pursuant thereto would result in, or permit the termination of, such asset, provided, that the property described in clauses (C) and (D) above shall only be excluded from the term "Collateral" to the extent the conditions stated therein are not rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC or any other Applicable Law, and (E) the Excluded Accounts. Notwithstanding the foregoing, all Proceeds of the property described in clauses (A) through (E) above shall constitute Collateral and shall be included within the property and assets over which a security interest is granted pursuant to this Agreement, unless such Proceeds would independently constitute Excluded Collateral.

(b) The security interest granted under this Section does not constitute and is not intended to result in a creation or an assumption by the Secured Party of any obligation of any Grantor or any other Person in connection with any or all of the Collateral or under any agreement or instrument relating thereto. Anything herein to the contrary notwithstanding, (i) the exercise by the Secured Party of any of its rights in the Collateral shall not release any Grantor from any of its duties or obligations in respect of the Collateral other than any duties and obligations arising with respect to Collateral after such Grantor has been dispossessed of such Collateral by the Secured Party (or its assignee), which, by their nature, may not be satisfied without possession of such Collateral and (ii) the Secured Party shall not have any obligations or liability in respect of the Collateral by reason of this Agreement, nor shall the Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 4. Covenants; Remedies. In furtherance of the grant of the pledge and security interest pursuant to Section 3 hereof, each Grantor hereby agrees with the Secured Party as follows:

1.1 Delivery and Other Perfection; Maintenance, etc.

(a) Delivery of Instruments, Documents, Etc. Each Grantor shall deliver and pledge to the Secured Party or its Representative any and all Instruments, negotiable Documents and Chattel Paper evidencing amounts greater than $50,000 individually or in the aggregate for any such Instruments, negotiable Documents and Chattel Paper of such Grantor and certificated securities accompanied by stock/membership interest powers executed in blank, which stock/membership interest powers may be filled in and completed at any time upon the occurrence and during the continuance of any Event of Default duly endorsed and/or accompanied by such instruments of assignment and transfer executed by such Grantor in such form and substance as the Secured Party or

its Representative may request; provided, that so long as no Event of Default shall have occurred and be continuing, each Grantor may retain for collection in the ordinary course of business any Instruments, negotiable Documents and Chattel Paper received by such Grantor in the ordinary course of business, and the Secured Party or its Representative shall, promptly upon request of a Grantor, make appropriate arrangements for making any other Instruments, negotiable Documents and Chattel Paper pledged by such Grantor available to such Grantor for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent deemed appropriate by the Secured Party or its Representative, against a trust receipt or like document). If a Grantor retains possession of any Chattel Paper, negotiable Documents or Instruments evidencing amounts greater than $50,000 individually or in the aggregate for any such Instruments, negotiable Documents and Chattel Paper of such Grantor at any time pursuant to the terms hereof, such Chattel Paper, negotiable Documents and Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of High Trail Investments ON LLC, in its capacity as agent for one or more creditors, as Secured Party."

(b) Other Documents and Actions. Each Grantor shall give, execute, deliver, file and/or record any financing statement, registration, notice, instrument, document, agreement, Mortgage or other papers that may be necessary (as determined in the reasonable judgment of the Secured Party or its Representative) to create, preserve, perfect or validate the security interest granted pursuant hereto (or any security interest or mortgage contemplated or required hereunder, including with respect to Section 2(j) of this Agreement) or to enable the Secured Party or its Representative to exercise and enforce the rights of the Secured Party hereunder with respect to such pledge and security interest; provided that notices to account debtors in respect of any Accounts or Instruments shall be subject to the provisions of clause (e) below. Notwithstanding the foregoing each Grantor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements (and other similar filings or registrations under any Applicable Laws and regulations pertaining to the creation, attachment, or perfection of security interests) and amendments thereto that (a) indicate the Collateral (i) as all assets of such Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Grantor agrees to furnish any such information to the Secured Party promptly upon request.

(c) Books and Records; Inspections. Each Grantor shall maintain at its own cost and expense, in accordance with sound business practices, complete and accurate, in all material respects, books and records of the Collateral, including, without limitation, a record of all payments received and all credits granted with respect to the Collateral and all other dealings with the Collateral. Upon the occurrence and during the continuation of any Event of Default, such Grantor shall deliver and turn over any such books and records (or true and correct copies thereof) to the Secured Party or its Representative at any time following 5 days' prior written notice. Such Grantor shall permit, at reasonable times during business hours and following 5 day's prior written notice, the Secured Party or its Representative to: (i) inspect the properties and operations of such Grantor or any Pledged Entity; (ii) visit any or all of its offices, to discuss its financial matters with its directors or officers; (iii) examine (and, at the expense of the Grantors, photocopy extracts from) any of its books or other records; and (iv)(A) inspect the Collateral and other tangible assets of such Grantor or any Pledged Entity, (B) perform appraisals of the equipment of such Grantor or any Pledged Entity and (C) inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral, for purposes of or otherwise in connection with conducting a review, audit or appraisal of such books and records. Each Grantor will pay the Secured Party the reasonable out-of-pocket costs and expenses of any audit or inspection of the Collateral promptly after receiving the invoice; provided that such Grantor shall not be required to reimburse the Secured Party for the foregoing expenses relating to more than one such inspection or audit in any calendar year unless an Event of Default has occurred and is continuing, in which event such Grantor shall be required to reimburse the Secured Party for any and all of the foregoing expenses. Notwithstanding anything contained in this Section 4.1(c) to the contrary, if an Event of Default shall have occurred and be continuing, then the Secured Party or its Representative may take any of the actions specified in clauses (i) through (iv) of

this Section 4.1(c) without prior notice to such Grantor, but shall endeavor in good faith to provide such Grantor subsequent notice.

(d) Motor Vehicles. Each Grantor shall, promptly upon acquiring same, cause the Secured Party to be listed as the lienholder on each certificate of title or ownership covering any items of Motor Vehicles having a value in excess of $50,000 individually or in the aggregate for all such Motor Vehicles of the Pledgor or any of its Subsidiaries, or otherwise comply with the certificate of title or ownership laws of the relevant jurisdiction issuing such certificate of title or ownership in order to properly evidence and perfect the Secured Party's security interest in the assets represented by such certificate of title or ownership. The Secured Party will, promptly after receipt of written request therefor from such Grantor, return any such certificate of title as needed by such Grantor to maintain the registration and licensing of such Equipment and Motor Vehicles, and such Grantor shall promptly return such certificates of title to Secured Party upon completion of such registration and licensing requirements.

(e) Notice to Account Debtors; Verification . (i) Upon the occurrence and during the continuance of any Event of Default, upon request of the Secured Party or its Representative, each Grantor shall promptly notify (and each Grantor hereby authorizes the Secured Party and its Representative so to notify) each account debtor in respect of any Accounts or Instruments or other Persons obligated on the Collateral that such Collateral has been assigned to the Secured Party hereunder, and that any payments due or to become due in respect of such Collateral are to be made directly to the Secured Party, and (ii) the Secured Party and its Representative shall have the right at any time or times to make direct verification with the account debtors or other Persons obligated on the Collateral of any and all of the Accounts or other such Collateral.

(f) Intellectual Property. Each Grantor represents and warrants that the Copyrights, Patents, and Trademarks listed on Schedules III, V and VI, respectively (if any), constitute all of the registered Copyrights and all of the issued or applied-for Patents, and registered or applied-for Trademarks owned by such Grantor as of the date hereof or licensed to Grantor under any material Intellectual Property License as of the date hereof. Each Grantor represents and warrants that (i) each material Intellectual Property License is in full force and effect and constitutes a legal, valid, and binding obligation of the applicable Grantor and each other party thereto, and is enforceable in accordance with its terms, and (ii) neither the applicable Grantor nor, to such Grantor's knowledge, any other party to any material Intellectual Property License is, and no person has provided written notice to the applicable Grantor alleging it to be, in default or breach under any such material Intellectual Property License, and no person has provided written notice to the applicable Grantor indicating an intention to terminate (including by non-renewal) any such material Intellectual Property License. If such Grantor shall obtain ownership of or other right, title or interest in or to, or otherwise become entitled to the benefit of, any registered Copyrights, issued or applied-for Patents, registered or applied-for Trademarks, Intellectual Property Licenses or any other Intellectual Property (including, for the avoidance of doubt, any improvements to any existing Intellectual Property), the provisions of this Agreement above shall automatically apply thereto and such Grantor shall promptly give to the Secured Party notice with respect to any such registered Copyrights, issued or applied-for Patents, registered or applied-for Trademarks, or Intellectual Property Licenses. Each Grantor hereby authorizes the Secured Party to modify this Agreement by amending Schedules III, IV, V and VI, as applicable, to include any such property in any such notice. Each Grantor shall (i) prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or hereafter to the extent material to the operations of the business of such Grantor, (ii) preserve and maintain all rights in the Copyrights, Patents, Intellectual Property Licenses and Trademarks, to the extent material to the operations of the business of such Grantor and (iii) ensure that the Copyrights, Patents, Intellectual Property Licenses and Trademarks are and remain enforceable, to the extent material to the operations of the business of such Grantor. Any expenses incurred in connection with such Grantor's obligations under this Section 4.1(f) shall be borne by such Grantor. Except for any such items that such Grantor reasonably believes in good faith are no longer necessary for the on-going operations of its business, such Grantor shall not abandon any material registered Copyright, issued or applied-for Patent, or registered or applied-for Trademark, or permit any right to apply for the registration of any material Intellectual Property to lapse or expire, without the prior written consent of the Secured Party, which consent shall not be unreasonably withheld, conditioned or delayed. Each Grantor represents that all Intellectual Property license agreements pursuant to which such Grantor is a licensee or licensor are in writing.

(g) Further Identification of Collateral. Each Grantor will, when and as often as requested by the Secured Party or its Representative (but, absent the occurrence and continuance of an Event of Default, in no event more frequently than quarterly), furnish to the Secured Party or such Representative, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Secured Party or its Representative may reasonably request, all in reasonable detail.

(h) Investment Property. Each Grantor will promptly take any and all actions required or requested by the Secured Party, from time to time, to cause the Secured Party to obtain exclusive control of any Investment Property owned by such Grantor. For purposes of this Section 4.1(h), the Secured Party shall have exclusive control of Investment Property if (i) such Investment Property consists of certificated securities and such Grantor delivers such certificated securities to the Secured Party (with assignments in blank or appropriate endorsements if such certificated securities are in registered form); (ii) such Investment Property consists of uncertificated securities and the issuer thereof agrees, pursuant to documentation in form and substance reasonably satisfactory to the Secured Party, that it will comply with instructions originated by the Secured Party without further consent by such Grantor, and (iii) such Investment Property consists of security entitlements and either (x) the Secured Party becomes the entitlement holder thereof or (y) the appropriate securities intermediary agrees, pursuant to the documentation in form and substance reasonably satisfactory to the Secured Party, that it will comply with entitlement orders originated by the Secured Party without further consent by such Grantor.

(i) Commercial Tort Claims. Each Grantor shall promptly notify the Secured Party of any Commercial Tort Claims acquired by it that concerns claims in excess of $50,000 individually or in the aggregate for any such Commercial Tort Claims of the Pledgor and any of its Subsidiaries and if requested by the Secured Party, such Grantor shall enter into a supplement to this Agreement granting to the Secured Party a Lien on and security interest in such Commercial Tort Claim.

(j) Pledge Supplement. Within five (5) Business Days of the creation or acquisition of any new Pledged Interests, each Grantor shall execute a supplement to Exhibit A in the form of Annex II (a "**Pledge Supplement**") and deliver such Pledge Supplement to the Secured Party. Any Pledged Collateral described in a Pledge Supplement delivered by such Grantor shall thereafter be deemed to be listed on Exhibit A hereto.

1.2 Preservation of Rights. Whether or not an Event of Default has occurred or is continuing, the Secured Party and its Representative shall have the right to take any steps the Secured Party or its Representative reasonably deems necessary or appropriate to preserve any Collateral or any rights against third parties to any of the Collateral upon any Grantor's failure to do so, including obtaining insurance for the Collateral at any time when such Grantor has failed to do so, and such Grantor shall promptly pay, or reimburse the Secured Party for, all reasonable and customary out-of-pocket expenses incurred in connection therewith.

1.3 Name Change; Location; Bailees.

(a) No Grantor shall form or acquire any subsidiary other than in accordance with any express terms of the Note Documents.

(b) Each Grantor shall provide the Secured Party at least 10 Business Days prior written notice of (i) any reincorporation or reorganization of itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof, and/or (ii) any change of its name, identity or corporate structure.

(c) Except for the sale of Inventory in the ordinary course of business, other sales of assets expressly permitted by the terms of the Note Documents and except for Collateral temporarily located for maintenance or repair (so long as such Grantor shall promptly provide the Secured Party with written notice of such temporary location), such Grantor will keep Collateral with a value in excess of $100,000 individually or $250,000 in the aggregate at the locations specified in Schedule I attached hereto. Such Grantor will give the Secured Party 10 Business Days prior written notice before any change in such Grantor's chief place of business or of any new location for any of the Collateral with a value in excess of $100,000 individually or $250,000 in the aggregate for any Collateral granted in favor of the Secured Party by such Grantor.

1.4 Other Liens. No Grantor will create, permit or suffer to exist, and each Grantor will defend the Collateral against and take such other action as is necessary to remove, any Lien on the Collateral except Permitted Liens, and each Grantor will defend the right, title and interest of the Secured Party in and to the Collateral and in and to all Proceeds thereof against the claims and demands of all Persons whatsoever, subject to Permitted Liens.

(a) If any Collateral with a value in excess of $250,000 in the aggregate for any Collateral granted in favor of the Secured Party by such Grantor is at any time in the possession or control of any warehousemen, bailee, consignee or processor, the applicable Grantor shall promptly notify the Secured Party of such fact and, upon the request of the Secured Party or its Representative, notify such warehousemen, bailee, consignee or processor of the Lien and security interest created hereby and shall instruct such Person to hold all such Collateral for the Secured Party's account subject to the Secured Party's instructions.

(b) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement naming such Grantor, as debtor, and the Secured Party, as secured party, without the prior written consent of the Secured Party and agrees that it will not do so without the prior written consent of the Secured Party, subject to such Grantor's rights under Section 9-509(d)(2) to the UCC.

1.5 Bank Accounts and Securities Accounts . On or prior to the date hereof, each Grantor, as applicable, shall enter into an account control agreement or securities account control agreement, as applicable, in form and substance reasonably satisfactory to the Secured Party (each a "**Control Agreement**"), with Secured Party and each financial institution with which each such Grantor maintains from time to time any Deposit Accounts (general or special), securities accounts, brokerage accounts or other similar accounts (other than Excluded Accounts), which financial institutions are set forth on Schedule VII attached hereto. Pursuant to this Agreement, each Grantor grants and shall grant to the Secured Party a continuing lien upon, and security interest in, all such accounts (other than Excluded Accounts) and all funds at any time paid, deposited, credited or held in such accounts (whether for collection, provisionally or otherwise) or otherwise in the possession of such financial institutions. Following the date hereof, no Grantor shall establish any Deposit Account, securities account, brokerage account or other similar account (other than Excluded Accounts) with any financial institution unless prior or concurrently thereto the Secured Party and such Grantor shall have entered into a Control Agreement with such financial institution which purports to cover such account. Each Grantor shall deposit and keep on deposit all of its funds in a Deposit Account (other than Excluded Accounts) or Securities Account which is subject to a Control Agreement with Secured Party.

1.6 Events of Default, Etc. During the period during which an Event of Default shall have occurred and be continuing:

(a) each Grantor shall, at the request of the Secured Party or its Representative, assemble the Collateral and make it available to the Secured Party or its Representative at a place or places designated by the Secured Party or its Representative which are reasonably convenient to the Secured Party or its Representative, as applicable, and such Grantor;

(b) the Secured Party or its Representative may make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, any of the Collateral;

(c) the Secured Party shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not said UCC is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral in accordance with this Agreement and the other Note Documents as if the Secured Party were the sole and absolute owner thereof (and each Grantor agrees to take all such action as may be appropriate to give effect to such right);

(d) the Secured Party or its Representative shall have the right, in the name of the Secured Party or in the name of a Grantor or otherwise, to demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so;

(e) the Secured Party or its Representative shall have the right to take immediate possession and occupancy of any premises owned, used or leased by a Grantor and exercise all other rights and remedies which may be available to the Secured Party;

(f) the Secured Party shall have the right, upon reasonable written notice (such reasonable notice to be determined by the Secured Party in its sole and absolute discretion, which shall not be less than 10 days), with respect to the Collateral or any part thereof (whether or not the same shall then be or shall thereafter come into the possession, custody or control of the Secured Party or its Representative), to sell, lease, license, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Secured Party deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), and the Secured Party or anyone else may be the purchaser, lessee, licensee, assignee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the applicable Grantor, any such demand, notice and right or equity being hereby expressly waived and released. The Secured Party may, to the fullest extent permitted by Applicable Law, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

(g) the Secured Party may, prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Secured Party deems appropriate;

(h) the Secured Party may proceed to perform any and all of the obligations of any Grantor contained in any Contract and exercise any and all rights of such Grantor therein contained as such Grantor itself could;

(i) the Secured Party shall have the right to use any Grantor's rights under any Collateral consisting of Intellectual Property Licenses in connection with the enforcement of the Secured Party's rights hereunder; and

(j) the rights, remedies and powers conferred by this Section 4.6 are in addition to, and not in substitution for, any other rights, remedies or powers that the Secured Party may have under any Note Document, at law, in equity or by or under the UCC or any other statute or agreement. The Secured Party may proceed by way of any action, suit or other proceeding at law or in equity and no right, remedy or power of the Secured Party will be exclusive of or dependent on any other. The Secured Party may exercise any of its rights, remedies or powers separately or in combination and at any time.

Without limiting the foregoing, the Secured Party may, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon any Grantor or any other person or entity (all and each of which demands, advertisements and/or notices are hereby expressly waived), upon the occurrence and during the continuance of an Event of Default forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith date and otherwise fill in the blanks on any assignments separate from certificates or stock power or otherwise sell, assign, give an option or options to purchase, contract to sell or otherwise dispose of and deliver said Collateral, or any part thereof, in one or more portions at one or more public or private sales or dispositions, at any exchange or broker's board or at any of the Secured Party's offices or elsewhere upon such terms and conditions as the Secured Party may deem advisable and at such prices as it may deem best, for any combination of cash and/or securities or other property or on credit or for future delivery without assumption of any credit risk, with the right of the Secured Party (or the designee of the Secured Party) upon any such sale, public or private, to purchase the whole or any part of said Collateral so sold, free of any

right or equity of redemption of the applicable Grantor, which right or equity is hereby expressly waived or released. Each Grantor agrees that, to the extent notice of sale shall be required by Applicable Law or this Agreement, at least ten (10) days' prior written notice to the applicable Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Notwithstanding any provision in any operating agreement or shareholder agreement of any issuer of the Collateral or any other Applicable Law to the contrary, the undersigned, constituting a member and/or shareholder of each issuer hereby acknowledges that such member and/or shareholder, as applicable, may pledge to the Secured Party all of such member's and/or shareholder's right, title and interest in such issuer, and upon foreclosure the successful bidder (which may include the Secured Party or any Holder) will be deemed admitted as a member and/or shareholder, as applicable, of such issuer, and will automatically succeed to all of such pledged right, title and interest, including without limitation such members' and/or shareholder's limited liability company and equity interests, right to vote and participate in the management and business affairs of the issuer, right to a share of the profits and losses of the issuer and right to receive distributions from the issuer.

The proceeds of each collection, sale or other disposition under this Section 4.6 shall be applied in accordance with Section 4.9 hereof.

1.7 Deficiency. If the proceeds of sale, collection or other realization of or upon the Collateral are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, the Grantors shall remain liable for any deficiency.

1.8 Private Sale. Each Grantor recognizes that the Secured Party may be unable to effect a public sale of any or all of the Collateral consisting of securities by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "Act"), and applicable state securities laws, but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and such Grantor agrees that it is not commercially unreasonable for the Secured Party to engage in any such private sales or dispositions under such circumstances. Each Grantor agrees that it would not be commercially unreasonable for the Secured Party to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. The Secured Party may sell the Collateral without giving any warranties as to the Collateral. The Secured Party may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. The Secured Party shall be under no obligation to delay a sale of any of the Collateral to permit any Grantor to register such Collateral for public sale under the Act, or under applicable state securities laws, even if such Grantor would agree to do so. The Secured Party shall not incur any liability as a result of the sale of any such Collateral, or any part thereof, at any private sale provided for in this Agreement and each Grantor hereby waives any claims against the Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Secured Party accepts the first offer received and does not offer the Collateral to more than one offeree. The Secured Party may sell the Collateral without giving any warranties as to the Collateral. The Secured Party may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

Each Grantor further agrees to do or cause to be done all such other acts and things as may be necessary to make such sale or sales of any portion or all of any such Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Grantor's expense. Each Grantor further agrees that a breach of any of the covenants contained in this Section 4.8 will cause irreparable injury to the Secured Party, that the Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 4.8 shall be specifically enforceable against such Grantor, and each Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

Each Grantor further agrees not to exercise any and all rights of subrogation it may have against a Pledged Entity upon the sale or disposition of all or any portion of the Pledged Collateral by the Secured Party pursuant to the terms of this Agreement until the termination of this Agreement in accordance with Section 4.12.

4 . 9 Application of Proceeds. The proceeds of any collection, sale or other realization of all or any part of the Collateral following the occurrence and during the continuance of an Event of Default, and any other cash at the time held by the Secured Party under this Agreement, shall be applied, first to the payment of all fees and expenses or other liabilities of any kind payable to the Secured Party in connection with the Note Documents (solely in its capacity as Collateral Agent and not in its capacity as a Holder or any other capacity) and second, to the Trustee for payment in accordance with Section 6.10 of the Base Indenture.

1.9 Attorney-in-Fact. Each Grantor hereby irrevocably constitutes and appoints the Secured Party, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, from time to time upon the occurrence and during the continuance of an Event of Default in the discretion of the Secured Party, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary to perfect or protect any security interest granted hereunder, to maintain the perfection or priority of any security interest granted hereunder, and, without limiting the generality of the foregoing, hereby gives the Secured Party the power and right, on behalf of such Grantor, without notice to or assent by such Grantor (to the extent permitted by Applicable Law), to do the following upon the occurrence and during the continuation of an Event of Default:

(a) to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary to accomplish the purposes of this Agreement;

(b) to ask, demand, collect, receive and give acquittance and receipts for any and all moneys due and to become due under any Collateral and, in the name of such Grantor or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other Instruments for the payment of moneys due under any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Secured Party for the purpose of collecting any and all such moneys due under any Collateral whenever payable and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Secured Party for the purpose of collecting any and all such moneys due under any Collateral whenever payable;

(c) to pay or discharge charges or liens levied or placed on or threatened in writing against the Collateral, to effect any insurance called for by the terms of this Agreement or the Note Documents and to pay all or any part of the premiums therefor;

(d) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due, and to become due thereunder, directly to the Secured Party or as the Secured Party shall direct, and to receive payment of and receipt for any and all moneys, claims and other amounts due, and to become due at any time, in respect of or arising out of any Collateral;

(e) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against any Grantor, assignments, verifications and notices in connection with accounts and other Documents constituting or relating to the Collateral;

(f) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral;

(g) to defend any suit, action or proceeding brought against the Grantors with respect to any Collateral;

(h) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Secured Party may deem appropriate;

(i) to the extent that a Grantor's authorization given in Section 4.1(b) of this Agreement is not sufficient to file such financing statements with respect to this Agreement, with or without such Grantor's signature;

(j) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Secured Party were the absolute owner thereof for all purposes;

(k) to use any Intellectual Property or Intellectual Property Licenses of such Grantor, including but not limited to any Copyrights, Patents or Trademarks, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts of such Grantor;

(l) in connection with the exercise of the Secured Party's rights under Section 4.6, to prepare, sign, and file any document which may be required by the United States Patent and Trademark Office, the United States Copyright Office or similar registrar in order to effect an absolute assignment of all right, title and interest in all registered Intellectual Property and any application for all such registrations, and record the same;

(m) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of the applicable Grantor as debtor; and

(n) to do, at the Secured Party's option and at the Grantors' expense, at any time, or from time to time, all acts and things which the Secured Party reasonably deems necessary to protect or preserve or realize upon the Collateral and the Secured Party's lien therein, in order to effect the intent of this Agreement, all as fully and effectively as the Grantors might do.

Each Grantor hereby ratifies, to the extent permitted by law, all that such attorneys lawfully do or cause to be done by virtue hereof provided the same is performed in a commercially reasonable manner. The power of attorney granted hereunder is a power coupled with an interest and shall be irrevocable until the Obligations are paid in full and this Agreement is terminated in accordance with Section 4.12 hereof.

Each Grantor also authorizes the Secured Party, at any time from and after the occurrence and during the continuation of any Event of Default, (x) to communicate in its own name with any party to any Contract constituting Collateral with regard to the assignment of the right, title and interest of such Grantor in and under the Contracts hereunder and other matters relating thereto and (y) to execute, in connection with any sale of Collateral provided for in Section 4.6 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

1.10 Perfection. Prior to or concurrently with the execution and delivery of this Agreement, each Grantor shall:

(a) file such financing statements, assignments for security and other documents in such offices as may be necessary to perfect the security interests granted by Section 3 of this Agreement;

(b) at the Secured Party's request, deliver to the Secured Party or its Representative the originals of all Instruments required to be so delivered hereunder together with, in the case of Instruments constituting promissory notes, allonges attached thereto showing such promissory notes to be payable to the order of a blank payee;

(c) deliver to the Secured Party or its Representative all certificates representing the Pledged Interests now owned by such Grantor, together with undated assignments separate from

certificates or stock/membership interest powers duly executed in blank by such Grantor and irrevocable proxies;

(d) deliver to the Secured Party or its Representative a Mortgage with respect to all real property held by such Grantor that is required to be subject to a Mortgage;

(e) deliver to the Secured Party or its Representative a Control Agreement for each Deposit Account (other than any Excluded Accounts) owned by such Grantor, acceptable in all respects to the Secured Party, duly executed by such Grantor and the financial institution at which such Grantor maintains such Deposit Account; and

(f) deliver to the Secured Party or its Representative the originals of all Motor Vehicle titles with respect to Motor Vehicles having a value in excess of $100,000 in the aggregate, duly endorsed indicating the Secured Party's interest therein as a lienholder, together with such other documents as may be required consistent with Section 4.1(d) hereof to perfect the security interest granted by Section 3 in all such Motor Vehicles (if any).

1.11 Termination; Partial Release of Collateral. This Agreement and the Liens and security interests granted hereunder shall continue in effect until the Obligations (other than inchoate indemnity obligations) are paid in full. When the Obligations (other than inchoate indemnity obligations) are paid in full, the security interest granted hereby shall immediately and automatically terminate and all rights to the Collateral shall revert to the applicable Grantor, and the Secured Party will promptly following such termination deliver possession of all Collateral (including, without limitation, the Pledged Interests, the other Pledged Collateral and any other property then held as part of the Pledged Collateral) to the applicable Grantor and execute and deliver to such Grantor such documents as are necessary to evidence such termination, including UCC termination statements and such other documentation as shall be reasonably requested by such Grantor to effect the termination and release of the Liens and security interests in favor of the Secured Party affecting the Collateral. Upon any sale of property, permitted by the Note Documents, to a party who is not a Grantor or a Subsidiary of a Grantor, the Liens granted herein with respect to such property shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person. The Secured Party shall, at the Grantors' expense, execute and deliver or otherwise authorize the filing of such documents as any Grantor shall reasonably request, in form and substance reasonably satisfactory to the Secured Party, including financing statement amendments to evidence such release.

1.12 Further Assurances. At any time and from time to time, upon the written request of the Secured Party or its Representative, and at the sole expense of the Grantors, each Grantor shall promptly and duly execute and deliver any and all such further instruments, documents and agreements and take such further actions as the Secured Party or its Representative may reasonably require in order for the Secured Party to obtain the full benefits of this Agreement and of the rights and powers herein granted in favor of the Secured Party, including, without limitation, using such Grantor's commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the assignment to the Secured Party of any Collateral held by such Grantor or in which such Grantor has any rights not heretofore assigned, the filing of any financing or continuation statements under the UCC with respect to the liens and security interests granted hereby, transferring Collateral to the Secured Party's possession (if a security interest in such Collateral can be perfected by possession), placing the interest of the Secured Party as lienholder on the certificate of title of any Motor Vehicle, using commercially reasonable efforts to obtain waivers of liens from landlords and mortgagees, and delivering to the Secured Party all such Control Agreements as the Secured Party or its Representative shall require (other than with respect to Excluded Accounts) duly executed by such Grantor and the financial institution at which such Grantor maintains a Deposit Account covered by such Control Agreement. Each Grantor also hereby authorizes the Secured Party and its Representative to file any such financing or continuation statement without the signature of such Grantor to the extent permitted by Applicable Law.

1.13 Additional Grantors. From time to time subsequent to the date hereof, if any Grantor acquires a Subsidiary, such Grantor shall (i) have provided at least five (5) Business Days' prior to such Grantor's acquisition of such Subsidiary notice of such acquisition to the Secured Party, and (ii) within thirty (30) days following the date any Grantor acquires such Subsidiary, (a) cause each such person so acquired to become a party hereto as an additional Grantor (each, an "**Additional Grantor**"), by executing a Joinder Agreement, together with a Pledge Supplement executed by the

applicable Grantor and any other attachments, all in form and substance reasonably satisfactory to Secured Party, (b) cause each Additional Grantor to execute a joinder to the Subsidiary Guaranty, (c) deliver each of the following documents: (x) a secretary's certificate, (y) a Lien and judgment search and (z) any financing statements or amendments to financing statements requested by the Secured Party, in the case of the items described in clauses (x) and (y), substantially in the form of such document or other item delivered under the Securities Purchase Agreement in respect of the Grantors at Closing (with any such changes reasonably satisfactory to the Secured Party), (d) if such Additional Grantor maintains any Deposit Account, securities account, brokerage account or other similar account (other than any Excluded Accounts), such Additional Grantor shall execute and deliver a Control Agreement with the applicable financial institution which purports to cover such account, (e) if reasonably requested by the Secured Party, such Grantor shall deliver an opinion of legal counsel to the Additional Grantor, in form and substance reasonably satisfactory to the Secured Party, covering the documents executed and the security interests granted by the Secured Party, (iii) if an Additional Grantor owns an interest in any real property, such Grantor and such Additional Grantor shall comply with the terms of Section 2(j) as if such real property was acquired on the date Grantor acquired such Pledged Interest, (iv) take all other such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by Secured Party, and (v) promptly following demand thereof, pay all fees and expenses of the Secured Party, including attorney's fees, incurred in connection with actions taken under this Section. Upon delivery of any such Joinder Agreement to the Secured Party, notice of which is hereby waived by each other Grantor, each Additional Grantor shall be a "**Grantor**" hereunder with the same force and effect as if it were originally a party to this Agreement and named as a "**Grantor**" hereunder. Each Grantor expressly agrees that their obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Secured Party not to cause any other Person to become an Additional Grantor hereunder. This Agreement shall be fully effective as to each Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

1.14 Limitation on Duty of Secured Party. The powers conferred on the Secured Party under this Agreement are solely to protect the Secured Party's interest on behalf of itself and the Holders in the Collateral and shall not impose any duty upon it to exercise any such powers. Without in any way limiting the exculpation and indemnification provisions of the Note Documents, the Secured Party shall be accountable only for amounts that it actually receives and retains for its own account as a result of the exercise of such powers and neither the Secured Party nor its Representative nor any of their respective officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act, except for bad faith, gross negligence or willful misconduct. Without limiting the foregoing, the Secured Party and any Representative shall each be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its respective possession if such Collateral is accorded treatment substantially similar to that which the relevant Secured Party or any Representative, in its individual capacity, accords its own property consisting of the type of Collateral involved, it being understood and agreed that neither the Secured Party nor any Representative shall have any responsibility for taking any necessary steps (other than steps taken in accordance with the standard of care set forth above) to preserve rights against any Person with respect to any Collateral.

Without limiting the generality of the foregoing, neither the Secured Party nor any Representative shall have any obligation or liability under any Contract or license by reason of or arising out of this Agreement or the granting to the Secured Party of a security interest therein or assignment thereof or the receipt by the Secured Party or any Representative of any payment relating to any Contract or license pursuant hereto, nor shall the Secured Party or any Representative be required or obligated in any manner to perform or fulfill any of the obligations of any Grantor under or pursuant to any Contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or license, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

1.15 Dividends, Distributions, Etc. If, prior to the payment in full of the Obligations (other than inchoate indemnity obligations), any Grantor shall receive any certificate (including, without limitation, any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital, or issued in connection with any reorganization,

merger or consolidation), or any options or rights, whether as an addition to, in substitution for, or in exchange for any of the Pledged Interests or otherwise, such Grantor agrees, in each case, to accept the same as the Secured Party's agent and to hold the same in trust for the Secured Party, and to deliver the same promptly (but in any event within five (5) Business Days of receipt) to Secured Party in the exact form received, with the endorsement of such Grantor when necessary and/or with appropriate undated assignments separate from certificates or stock powers duly executed in blank, to be held by the Secured Party subject to the terms hereof, as additional Pledged Collateral. Each Grantor shall promptly deliver to the Secured Party (i) a Pledge Supplement with respect to such additional certificates, and (ii) any financing statements or amendments to financing statements as requested by the Secured Party. Each Grantor hereby authorizes the Secured Party to attach each such Pledge Supplement to this Agreement. Except as provided in Section 4.17(b) below, all sums of money and property so paid or distributed in respect of the Pledged Interests which are received by such Grantor shall, until paid or delivered to the Secured Party, be held by such Grantor in trust as additional Pledged Collateral.

1.16 Voting Rights; Dividends; Certificates.

(a) So long as no Event of Default has occurred and is continuing, each Grantor shall be entitled (subject to the other provisions hereof, including, without limitation, Section 4.18 below) to exercise its voting and other consensual rights with respect to the Pledged Interests and otherwise exercise the incidents of ownership thereof in any manner not inconsistent with this Agreement and/or any of the other Note Documents. Each Grantor hereby grants to the Secured Party or its nominee, an irrevocable proxy to exercise all voting, corporate and limited liability company rights relating to the Pledged Interests in any instance, which proxy shall be effective, at the discretion of the Secured Party, upon the occurrence and during the continuance of an Event of Default so long as the Secured Party has notified such Grantor in writing of its intent to exercise its voting power under this clause prior to the exercise thereof. Upon the request of the Secured Party at any time, each Grantor agrees to deliver to the Secured Party such further evidence of such irrevocable proxy or such further irrevocable proxies to vote the Pledged Interests as the Secured Party may reasonably request.

(b) So long as no Event of Default shall have occurred and be continuing, the Grantors shall be entitled to receive cash dividends or other distributions made in respect of the Pledged Interests, to the extent permitted to be made pursuant to the terms of the Note Documents. Upon the occurrence and during the continuance of an Event of Default, in the event that any Grantor, as record and beneficial owner of the Pledged Interests, shall have received, any cash dividends or other distributions in the ordinary course, such Grantor shall deliver to the Secured Party, and the Secured Party shall be entitled to receive and retain, for the benefit of the Secured Party and the Holders, all such cash or other distributions as additional security for the Obligations.

(c) Each Grantor shall cause all Pledged Interests required to be delivered pursuant to Section 4.1(a) to be certificated within thirty (30) days of the date of this Agreement and at all times thereafter while this Agreement is in effect and shall deliver to the Secured Party or its Representative within thirty (30) days of the date of this Agreement and at all times thereafter all certificates representing the Pledged Interests, together with undated assignments separate from certificates or stock/membership interest powers duly executed in blank by such Grantor and irrevocable proxies.

(d) Any or all of the Pledged Interests held by the Secured Party hereunder may, if an Event of Default has occurred and is continuing and so long as the Secured Party has notified the applicable Grantor in writing of its intent to exercise its power of registration under this sentence prior to the exercise thereof, be registered in the name of Secured Party or its nominee, and the Secured Party or its nominee may thereafter without notice exercise all voting and corporate rights at any meeting with respect to any Pledged Entity and exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Interests as if it were the absolute owner thereof, including, without limitation, the right to vote in favor of, and to exchange at its discretion any and all of the Pledged Interests upon the merger, consolidation, reorganization, recapitalization or other readjustment with respect to any Pledged Entity or upon the exercise by any Pledged Entity, any Grantor or the Secured Party of any right, privilege or option pertaining to any of the Pledged Interests, and in connection therewith, to deposit and deliver any and all of the Pledged Interests with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Secured Party may reasonably determine, all without liability except to account for property actually received by the Secured Party, but the Secured

Party shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing.

1.17 No Disposition, Etc. Until the irrevocable payment in full of the Obligations (other than inchoate indemnity obligations), each Grantor agrees that, except as permitted under the Note Documents, it will not sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Pledged Interests or any other Pledged Collateral, nor will such Grantor create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance with respect to any of the Pledged Interests or any other Pledged Collateral, or any interest therein, or any proceeds thereof, except for the lien and security interest of the Secured Party provided for by this Agreement, the other Security Documents and the Permitted Liens described in clause (B) or (C) of the definition thereof.

1.18 Payment of Expenses.

The Grantors shall, jointly and severally, pay all invoiced costs and expenses (including attorneys' fees) incurred by the Secured Party and its Affiliates and each Holder in connection with the administration and enforcement of this Agreement and the other Note Documents, and in connection with any amendments, waivers or consents under or in respect of this Agreement, the Notes or any other Note Document (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Notes or any other Note Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, the Notes or any other Note Document, or by reason of being a holder of any Note, and (b) the costs and expenses, including the fees of one financial advisor for all holders of the Notes incurred in connection with the insolvency or bankruptcy of any Grantor or any Subsidiary thereof or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes or any other Note Document.

Section 5. Lien Absolute; Waiver of Suretyship Defenses.

1.1 Lien Absolute, Waivers.

(a) Until payment in full of the Obligations (other than inchoate indemnity obligations), all rights of Secured Party hereunder, and all obligations of Grantors hereunder, shall be absolute and unconditional irrespective of, shall not be affected by, and shall remain in full force and effect without regard to, and each Grantor hereby waives all, rights, claims or defenses that it might otherwise have (now or in the future) with respect to, in each case, each of the following (whether or not such Grantor has knowledge thereof):

i) the validity or enforceability of the Note Documents, any of the Obligations or any guarantee or right of offset with respect thereto at any time or from time to time held by the Secured Party;

ii) any renewal, extension or acceleration of, or any increase in the amount of the Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Note Documents;

iii) any failure or omission to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under any Note Documents, at law, in equity or otherwise) with respect to the Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Obligations;

iv) any change, reorganization or termination of the corporate structure or existence of any Grantor or any of their Subsidiaries and any corresponding restructuring of the Obligations;

v) any settlement, compromise, release, or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitutions for, the Obligations or any subordination of the Obligations to any other obligations;

vi) the validity, perfection, non-perfection or lapse in perfection, priority or avoidance of any security interest or lien, the release of any or all collateral securing, or purporting to secure, the Obligations or any other impairment of such collateral;

vii) any exercise of remedies with respect to any security for the Obligations (including, without limitation, any collateral, including the Collateral securing or purporting to secure any of the Obligations) at such time and in such order and in such manner as the Secured Party may decide and whether or not every aspect thereof is commercially reasonable and whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Grantor would otherwise have and without limiting the generality of the foregoing or any other provisions hereof, each Grantor hereby expressly waives any and all benefits which might otherwise be available to such Grantor under applicable law;

viii) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Grantor as an obligor in respect of the Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of the Pledgor or any other Grantor for the Obligations, or of such Grantor under the guarantee contained in the Note Documents or of any security interest granted by any Grantor, whether in a Bankruptcy Proceeding or in any other instance;

ix) any right to require Secured Party, as a condition of payment or performance by such Grantor, to (i) proceed against any other guarantor (including any other Grantor) of the Obligations or any other Person, (ii) proceed against or exhaust any security held from any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of Secured Party in favor of any Grantor, any such other guarantor or any other Person, or (iv) pursue any other remedy in the power of Secured Party whatsoever;

x) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and

xi) any defenses (other than the defense of payment or release in accordance with the Note Documents) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement.

(b) In addition, each Grantor further waives any and all other defenses, set- offs or counterclaims (other than a defense of payment or performance in full hereunder) which may at any time be available to or be asserted by it, any Grantor or Person against the Secured Party, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction and usury.

(c) Each Grantor waives diligence, presentment, protest, marshaling, demand for payment, notice of dishonor, notice of default and notice of nonpayment to or upon any of the Grantors with respect to the Obligations. Except for notices provided for herein, each Grantor hereby waives notice (to the extent permitted by applicable law) of any kind in connection with this Agreement or any collateral securing the Obligations, including, without limitation, the Collateral. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, the Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any Grantor or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by the Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from any Grantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of any Grantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Secured Party against any Grantor.

For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

Section 6. Miscellaneous.

1.1 No Waiver. No failure on the part of the Secured Party or any of its Representatives to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Secured Party or any of its Representatives of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law.

1.2 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

1.3 Notices. All notices, approvals, requests, demands and other communications hereunder shall be delivered or made in the manner set forth in, and shall be effective in accordance with the terms of, the Notes; provided, that, to the extent any such communication is being made or sent to the Secured Party, such communication shall be made to the Secured Party at the address set forth below the Secured Party's signature hereto; provided, further, that any communication to a Grantor (other than the Pledgor) may be made to the address of the Pledgor. The Pledgor and the Secured Party may change their respective notice addresses by written notice given to the other parties hereto 10 days following the effectiveness of such change.

1.4 Amendments, Etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by the Grantors and the Secured Party, except that the Schedules hereto shall be deemed amended and supplemented by any information set forth from time to time in writing delivered by any Grantor to the Secured Party. Any such amendment or waiver shall be binding upon the Secured Party and the Grantors and their respective successors and assigns.

1.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto; provided, that no Grantor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the Secured Party. The Secured Party, in its capacity as the collateral agent, may assign its rights and obligations hereunder without the consent of any Grantor.

1.6 Counterparts; Headings. This Agreement may be authenticated in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may authenticate this Agreement by signing any such counterpart. This Agreement may be authenticated by manual signature or facsimile, .pdf or similar electronic signature, all of which shall be equally valid. The headings in this Agreement are for convenience of reference only and shall not alter or otherwise affect the meaning hereof.

1.7 Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Secured Party and its Representative in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

1.8 SUBMISSION TO JURISDICTION; WAIVER OF VENUE; SERVICE OF PROCESS . EACH GRANTOR (A) AGREES THAT ANY SUIT, ACTION OR PROCEEDING AGAINST IT ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY U.S. FEDERAL COURT WITH APPLICABLE SUBJECT MATTER JURISDICTION SITTING IN THE CITY OF NEW YORK; (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (I) ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR

PROCEEDING; AND (II) ANY CLAIM THAT IT MAY NOW OR HEREAFTER HAVE THAT ANY SUCH SUIT, ACTION OR PROCEEDING IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; AND (C) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE SECURED PARTY'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE FOREGOING COURTS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH GRANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

1.9 WAIVER OF RIGHT TO TRIAL BY JURY . EACH GRANTOR AND THE SECURED PARTY HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH GRANTOR AND THE SECURED PARTY HEREBY AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION 6.9 AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

1.10 Survival. All representations, warranties, covenants and agreements of the Grantors and the Secured Party shall survive the execution and delivery of this Agreement.

1.11 Collateral Agent for Holders.

(a) The Holders have, pursuant to Section 9(t) of the Securities Purchase Agreement, designated and appointed the Secured Party as the collateral agent of the Holders under this Agreement and the other Note Documents.

(b) The Secured Party shall have the discretion to allocate proceeds received by the Secured Party pursuant to the exercise of remedies under the Note Documents or at law or in equity (including without limitation with respect to any secured creditor remedies exercised against the Collateral and any other security provided for under any Security Documents) to the then outstanding Obligations in such order as the Secured Party shall elect.

1.12 Collateral Agent.

(a) The Secured Party is hereby designated as the collateral agent under this Agreement, the Security Documents and the Note Documents, and the Holders irrevocably authorize the Secured Party to take such action on their behalf under the provisions of this Agreement, the Security Documents and the other Note Documents, and to exercise such powers and perform such duties as are expressly delegated to the Secured Party by the terms of this Agreement and the other Note Documents, and consents and agrees to the terms of the each Note Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms. Each Holder, by accepting the benefits of this Agreement, agrees to the appointment of the Secured Party pursuant to this Section 6.12. The Secured Party agrees to act as such on the express conditions contained in this Section 6.12. The Holders agree that any action taken by the Secured Party in accordance with the provisions of this Agreement and the

other Note Documents, and the exercise by the Secured Party of any rights or remedies set forth herein and therein shall be authorized and binding upon the Holders. Notwithstanding any provision to the contrary contained elsewhere in this Agreement and the other Note Documents, the duties of the Secured Party shall be ministerial and administrative in nature, and the Secured Party shall not have any duties or responsibilities, except those expressly set forth herein and in the Security Documents, to which the Secured Party is a party, nor shall the Secured Party have or be deemed to have any trust or other fiduciary relationship with the Holders, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Security Documents and the other Note Documents, or otherwise exist against the Secured Party. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to the Secured Party is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Secured Party may perform any of its duties under this Agreement or the other the Note Documents, by or through receivers, agents, employees, attorneys-in-fact or with respect to any specified Person, such Person's Affiliates, and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates (a "**Related Person**"), and shall be entitled to advice of counsel concerning all matters pertaining to such duties, and shall be entitled to act upon, and shall be fully protected in taking action in reliance upon any advice or opinion given by legal counsel. The Secured Party shall not be responsible for the acts or omissions of any receiver, agent, employee, attorney-in-fact or Related Person that it selects as long as such selection was made in good faith and with due care.

(c) The Secured Party shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, order, letter, telegram, facsimile, certification, telephone message, statement, or other communication, document or conversation (including those by telephone or e-mail) believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including, without limitation, counsel to the any Grantor), independent accountants and other experts and advisors selected by the Secured Party. The Secured Party shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document. The Secured Party shall be fully justified in failing or refusing to take any action under this Agreement and the other Note Documents. The Secured Party shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Note Documents, in accordance with a request, direction, instruction or consent of the Holders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(d) The Secured Party shall not be deemed to have knowledge or notice of the occurrence of any default or Event of Default.

(e) The Secured Party may resign at any time by 5 days' written notice to the Holders, such resignation to be effective upon the acceptance of a successor agent to its appointment as Secured Party. If the Secured Party resigns under this Agreement, the Pledgor shall appoint a successor collateral agent. If no successor collateral agent is appointed pursuant to the preceding sentence within ten (10) days after the intended effective date of resignation (as stated in the notice of resignation) the Secured Party shall be entitled to petition a court of competent jurisdiction to appoint a successor. Upon the acceptance of its appointment as successor collateral agent hereunder, such successor collateral agent shall succeed to all the rights, powers and duties of the retiring Secured Party, and the retiring Secured Party's appointment, powers and duties as the Secured Party shall be terminated. After the retiring Secured Party's resignation hereunder, the provisions of this Section 6.12(e) shall continue to inure to its benefit and the retiring Secured Party shall not by reason of such resignation be deemed to be released from liability as to any actions taken or omitted to be taken by it while it was the Secured Party under this Agreement.

(f) High Trail Investments ON LLC shall initially act as collateral agent and shall be authorized to appoint co-collateral agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents, neither the Secured Party nor any of its respective officers, directors, employees or agents or other Related Persons shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be

under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Secured Party nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

(g) The Secured Party is authorized and directed to (i) enter into the Security Documents to which it is party, whether executed on or after the Closing, (ii) bind the Holders on the terms as set forth in the Security Documents and the other Note Documents, and (iii) perform and observe its obligations under the Security Documents and the other Note Documents.

(h) The Secured Party shall have no obligation whatsoever to assure that the Collateral exists or is owned by any Grantor or is cared for, protected, or insured or has been encumbered, or that the Secured Party's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all or part of the Grantor's property constituting Collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Secured Party pursuant to this Agreement, any Security Document or the other Note Documents.

(i) No provision of this Agreement, any Security Document or the other Note Documents shall require the Secured Party to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder unless it shall have received indemnity satisfactory to the Secured Party in its sole discretion against potential costs and liabilities incurred by the Secured Party relating thereto. Notwithstanding anything to the contrary contained in this Agreement, the Security Documents or the other Note Documents, in the event the Secured Party is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Secured Party shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the Mortgages or take any such other action if the Secured Party has determined that the Secured Party may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances. The Secured Party shall at any time be entitled to cease taking any action described in this clause (i) if it no longer reasonably deems any indemnity, security or undertaking to be sufficient.

(j) The Secured Party (i) shall not be liable for any action taken or omitted to be taken by it in connection with this Agreement, any Security Document, the other Note Documents, or any instrument referred to herein or therein, except to the extent that any of the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct, (ii) shall not be liable for interest on any money received by it and (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel. The grant of permissive rights or powers to the Secured Party shall not be construed to impose duties to act.

(k) The Secured Party shall not be liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. The Secured Party shall not be liable for any indirect, special, punitive, incidental or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(l) The Secured Party does not assume any responsibility for any failure or delay in performance or any breach by the Pledgor or any Grantor under this Agreement, the Security Documents and the other Note Documents. The Secured Party shall not be responsible any Person for any recitals, statements, information, representations or warranties contained in this Agreement, the Security Documents, the other Note Documents, or in any certificate, report, statement, or other

document referred to or provided for in, or received by the Secured Party under or in connection with, this Agreement, the Security Documents or the other Note Documents; the execution, validity, genuineness, effectiveness or enforceability of the Security Documents and any other Note Document of any other party thereto; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any obligations; the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any obligor; or for any failure of any obligor to perform its obligations under this Agreement, the Security Documents and the other Note Documents. The Secured Party shall have no obligation to any Person to ascertain or inquire into the existence of any default or Event of Default, the observance or performance by any obligor of any terms of this Agreement, the Security Documents or the other Note Documents, or the satisfaction of any conditions precedent contained in this Agreement, the Security Documents or the other Note Documents. The Secured Party shall not be required to initiate or conduct any litigation or collection or other proceeding under this Agreement, the Intercreditor Agreements, and the Security Documents unless expressly set forth hereunder or thereunder.

(m) The parties hereto hereby agree and acknowledge that the Secured Party shall not assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Agreement, the Security Documents or the other Note Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto hereby agree and acknowledge that in the exercise of its rights under Agreement, the Security Documents or the other Note Documents, the Secured Party may hold or obtain indicia of ownership primarily to protect the security interest of the Secured Party in the Collateral and that any such actions taken by the Secured Party shall not be construed as or otherwise constitute any participation in the management of such Collateral. In the event that the Secured Party is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in either of the Secured Party's sole discretion may cause the Secured Party to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the Secured Party to incur liability under CERCLA or any other federal, state or local law, each of the Secured Party and the Secured Party reserves the right, instead of taking such action, to either resign as the collateral agent or arrange for the transfer of the title or control of the asset to a court-appointed receiver. The Secured Party shall not be liable to the Pledgor, the Grantors, or any other Person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Secured Party's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment.

(n) Subject to the provisions of the applicable Security Documents and the other Note Documents, the Secured Party shall execute and deliver this Agreement, the Security Documents and the other Note Documents to which it is a party and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof. For the avoidance of doubt, the Secured Party shall have no discretion under this Agreement, the Security Documents or the other Note Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders.

(o) The Secured Party is authorized to receive any funds for the benefit of itself, and the Holders distributed under the Security Documents and to make further distributions of such funds to itself and the Holders in accordance with the Security Documents and the other Note Documents.

(p) In each case that the Secured Party may or is required hereunder or under any Security Document or the other Note Documents, to take any action (an "**Action**"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any Security Document or the other Note Documents, the Secured Party may seek direction from the Holders. The Secured Party shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction

from the Holders. If the Secured Party shall request direction from the Holders with respect to any Action, the Secured Party shall be entitled to refrain from such Action unless and until the Secured Party shall have received direction from the Holders, and the Secured Party shall not incur liability to any Person by reason of so refraining.

(q) Notwithstanding anything to the contrary in this Agreement, the Security Documents or the other Note Documents, in no event shall the Secured Party be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Agreement, the Security Documents or the other Note Documents (including without limitation the filing or continuation of any UCC financing or continuation statements or similar documents or instruments), nor shall the Secured Party be responsible for, and the Secured Party makes no representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or Liens intended to be created thereby.

(r) Notwithstanding anything to the contrary contained herein, the Secured Party shall only act pursuant to the instructions of the Holders with respect to the Security Documents and the Collateral.

1.13 No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

1.14 ENTIRE AGREEMENT; AMENDMENT . THIS AGREEMENT, TOGETHER WITH THE OTHER NOTE DOCUMENTS, SUPERSEDES ALL OTHER PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN THE SECURED PARTY, EACH GRANTOR, THEIR RESPECTIVE AFFILIATES AND PERSONS ACTING ON THEIR BEHALF WITH RESPECT TO THE MATTERS DISCUSSED HEREIN, AND THIS AGREEMENT, TOGETHER WITH THE OTHER NOTE DOCUMENTS AND THE OTHER INSTRUMENTS REFERENCED HEREIN AND THEREIN, CONTAINS THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE MATTERS COVERED HEREIN AND THEREIN AND, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR THEREIN, NEITHER THE SECURED PARTY NOR ANY GRANTOR MAKES ANY REPRESENTATION, WARRANTY, COVENANT OR UNDERTAKING WITH RESPECT TO SUCH MATTERS. AS OF THE DATE OF THIS AGREEMENT, THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THE MATTERS DISCUSSED HEREIN. NO PROVISION OF THIS AGREEMENT MAY BE AMENDED, MODIFIED OR SUPPLEMENTED OTHER THAN BY AN INSTRUMENT IN WRITING SIGNED BY THE GRANTORS AND THE SECURED PARTY.

1.15 Grantor Acknowledgement. Each Grantor acknowledges receipt of an executed copy of this Agreement. Each Grantor waives the right to receive any amount that it may now or hereafter be entitled to receive (whether by way of damages, fine, penalty, or otherwise) by reason of the failure of the Secured Party to deliver to such Grantor a copy of any financing statement or any statement issued by any registry that confirms registration of a financing statement relating to this Agreement.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be duly executed and delivered as of the day and year first above written.

PLEDGOR:

VELO3D, INC.

By: /s/ Benyamin Buller_____
Name: Benyamin Buller
Title: Chief Executive Officer

Notice Address:

511 Division St.
Campbell, CA 95008
Attention: Chief Financial Officer
Email: [*]

GRANTORS

VELO3D US, INC.

By: /s/ Benyamin Buller_____
Name: Benyamin Buller
Title: Chief Executive Officer

Notice Address:

511 Division St.
Campbell, CA 95008
Attention: Chief Financial Officer
Email: [*]

SECURED PARTY:

HIGH TRAIL INVESTMENTS ON LLC,
as Secured Party

By: /s/ [*]*

Name: [*]

Title: Authorized Signatory

*Authorized Signatory
[*] Capital Management LP
Not individually, but solely as
Investment Advisor to High Trail
Investments ON LLC.

Notice Address:

High Trail Investments ON LLC
c/o High Trail Capital
80 River Street, Suite 4C
Hoboken, NJ 07030
Attention: Eric Helenek
Telephone: [*]
Email: [*]

ANNEX I
to SECURITY AGREEMENT

JOINDER AGREEMENT

This **JOINDER AGREEMENT**, dated as of [ ] (this "**Joinder Agreement**"), is delivered by [NAME OF ADDITIONAL GRANTOR], a [ ] (the "**Additional Grantor**") pursuant to the Security Agreement, dated as of [ ], 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"), among Velo3D, Inc., as the Pledgor, the Grantors party thereto from time to time, and High Trail Investments ON LLC, as the Secured Party. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

RECITALS:

WHEREAS, the Pledgor and certain of its Subsidiaries (other than the Additional Grantor) have entered into the Security Agreement in favor of the Secured Party;

WHEREAS, the agreements, documents and instruments related to the Obligations secured by the Security Agreement require the Additional Grantor to become a party to the Security Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Joinder Agreement in order to become a party to the Security Agreement.

NOW, THEREFORE, IT IS AGREED:

1. Security Agreement.

By executing and delivering this Joinder Agreement, the Additional Grantor, as provided in Section 4.14 of the Security Agreement, hereby becomes a party to the Security Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. Attached hereto is a Pledge Supplement with the information with respect to the Additional Grantor required under Section 2 of the Security Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 2 of the Security Agreement is true and correct on and as of the date hereof (after giving effect to this Joinder Agreement) as if made by such Additional Grantor on and as of such date.

2. Grant of Security Interest.

The Additional Grantor hereby assigns as collateral security to the Secured Party, and hereby grants to the Secured Party, a security interest in and continuing lien on, all of the Additional Grantor's right, title and interest in, to and under all of the property described in Section 3 of the Security Agreement, in each case, whether now owned or existing or hereafter acquired or arising and wherever located (collectively and together with the Collateral under the Security Agreement, the "**Collateral**"), for the prompt and complete payment and performance when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Obligations, subject to the exclusions, limitations and other provisions set forth in Section 3 of the Security Agreement.

3. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Joinder Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

By: _____

Name: _____

Title: _____

ANNEX II
to SECURITY AGREEMENT

PLEDGE SUPPLEMENT

This PLEDGE SUPPLEMENT, dated as of [ ], is delivered by [NAME OF GRANTOR] a [ ] (the "**Grantor**") pursuant to the Security Agreement, dated as of [ ], 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"), among Velo3D, Inc., a Delaware corporation (the "**Pledgor**"), each of the Subsidiaries of the Pledgor from time to time party thereto (together with the Pledgor, the "**Grantors**"), High Trail Investments ON LLC, in its capacity as collateral agent for the benefit of the Holders (as defined in the Security Agreement) (together with its successors and assigns in such capacity, the "**Secured Party**"). Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

The Grantor hereby confirms the grants of security interests to the Collateral Agent set forth in Section 3 of the Security Agreement. The Grantor represents and warrants that the attached supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

IN WITNESS WHEREOF, the Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of the date first set forth above.

[NAME OF GRANTOR]

By:
Name:
Title:

[NOTE: Grantor to attach each of the Schedules to the Security Agreement necessary to reflect any changes to such Schedules.]