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)**: July 1, 2024**

Velo3D, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-39757**	**98-1556965**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2710 Lakeview Court, Fremont, California	**94538**
(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 communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

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

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

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

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
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.

Third Amendment to Senior Secured Notes Due 2026

On July 1, 2024, Velo3D, Inc. (the "Company") entered into a third note amendment (the "Third Note Amendment") to its senior secured notes due 2026 (as amended, the "Notes") with the note holders (collectively, the "Note Holders"), and U.S. Bank Trust Company, National Association, as trustee. Pursuant to the Third Note Amendment, the Company and the Note Holders agreed to defer the July 1, 2024 partial redemption payment of $10.5 million (the "July Redemption Payment") over a period of ten equal monthly payments commencing August 1, 2024. In addition, under the terms of the Notes, as amended by the Third Note Amendment, a default under the warrants issued pursuant to the Letter Agreement (as defined below) and the warrants issued to the Note Holders on April 1, 2024, would trigger an event of default under the Notes.

Letter Agreement and Warrants

In connection with the Third Note Amendment and as consideration for the deferral of the July Redemption Payment, on July 1, 2024, the Company also entered into a letter agreement (the "Letter Agreement") with the Note Holders pursuant to which the Company issued to the Note Holders warrants to purchase 1,650,000 shares of the Company's common stock that are exercisable on the issuance date at an exercise price of $3.00 per share and expire on the five year anniversary of the date on which the Resale Registration Statement (as defined below) is declared effective by the Securities and Exchange Commission ("SEC"). The Note Holders may exercise the warrants by paying the exercise in cash or by reducing the outstanding principal amount under the Notes. The warrants may also be exercised on a cashless basis under certain circumstances.

The warrants were issued to the Note Holders, and any shares of common stock issuable upon exercise of the warrants will be issued to the Note Holders, pursuant to the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506(b) of Regulation D as promulgated by the SEC under the Securities Act. Pursuant to the Letter Agreement, the Company has agreed to file with the SEC a registration statement (the "Resale Registration Statement") as soon as practicable but in no event later than thirty (30) days after the issuance date of the warrants to register the resale of the shares of common stock underlying the warrants. The Letter Agreement contains customary representations, warranties and agreements by the Company, indemnification obligations of the Company, and other obligations of the parties.

The Letter Agreement, form of warrant and Third Note Amendment are filed as Exhibits 10.1, 4.1 and 4.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. The above descriptions of the terms of the Letter Agreement, the warrants and the Third Note Amendment are qualified in their entirety by reference to such exhibits.

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

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

Item 3.02 Unregistered Sales of Equity Securities.

The information required by this Item 3.02 relating to the warrants is set forth under Item 1.01 above and is incorporated herein by reference. Each of the Note Holders represented in the warrants, among other things, that it is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act, and that the acquisition of the warrants is for investment for its own account and not with a view to public resale or distribution within the meaning of the Securities Act, except pursuant to sales registered or exempted under the Securities Act.

Item 9.01. Financial Statement and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Form of Warrant.
4.2*	Third Note Amendment, dated July 1, 2024, by and among the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC.
10.1*	Letter Agreement, dated July 1, 2024, by and among the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Portions of this exhibit have been redacted in accordance with Item 601(b)(10)(iv) of Regulation S-K.

SIGNATURES

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

Velo3D, Inc.

Date: July 1, 2024

By: /s/ Bradley Kreger

Name: Bradley Kreger

Title: Chief Executive Officer

THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS.

WARRANT TO PURCHASE SHARES OF COMMON STOCK

VELO3D, INC.

Original Issuance Date: July 1, 2024 (the "Issuance Date")

Warrant Shares: _____

THIS WARRANT TO PURCHASE SHARES OF COMMON STOCK (this "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the Issuance Date (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the five year anniversary of the date on which the Resale Registration Statement is declared effective by the Commission (as defined below) (the "Termination Date") but not thereafter, to subscribe for and purchase from **VELO3D, INC.**, a Delaware corporation (the "Company"), up to _____ shares of Common Stock, par value $0.00001 per share (the "Common Stock"), of the Company (as subject to adjustment hereunder, the "Warrant Shares"). The purchase price of one Warrant Share under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Letter Agreement re Modification of July Partial Redemption (the "Letter Agreement"), dated July 1, 2024, among the Company, the Holder and _____.

2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) one (1) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by (I) wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise or (II) notifying the Company that the outstanding principal amount under the Senior Secured Note due 2026 (the "Note") issued by the Company to the Holder shall be reduced, effective upon the

Holder's receipt of the applicable Warrant Shares, by an amount equal to the quotient of (A) any or all, at the Holder's option, of such aggregate Exercise Price divided by (B) one and twenty hundredths (1.20) (each such notice, a "Principal Reduction Notice"). No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price of this Warrant, shall be **$**3.00 per share, subject to adjustment hereunder (the "Exercise Price").

(c) Cashless Exercise. Notwithstanding anything to the contrary set forth herein, if at the time of exercise hereof there is no effective Resale Registration Statement registering, or the prospectus contained therein is not available for the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (x) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (y) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. (" Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market and if the Common Stock is listed or quoted for trading on the OTC Market Group's OTCQB exchange ("OTCQB") or OTCQX exchange ("OTCQX") (or any successors to either of the foregoing) , the VWAP of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Trading Market" means any of the following markets or exchanges on which the shares of Common Stock are listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (the "NYSE") (or any successors to any of the foregoing).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market and if the Common Stock is listed or quoted for trading on OTCQB or OTCQX (or any successors to either of the foregoing), the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(d) Mechanics of Exercise

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective Resale Registration Statement permitting the resale of the Warrant Shares by the Holder or (B) this Warrant is

being exercised via cashless exercise, and otherwise by physical delivery of the Warrant Shares, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) one (1) Trading Day after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) one (1) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the third Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a registrar (which may be the Company's transfer agent (the "Transfer Agent")) that is a participant in the The Depository Trust Company ("DTC") Fast Automated Securities Transfer Program (" FAST") program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 12:00 p.m. (New York City time) on the Initial Exercise Date, which may be delivered at any time after the time of execution of the Letter Agreement, the Company agrees to deliver, or cause to be delivered, the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise . In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of Warrants with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a 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 upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share of Common Stock.

(vi) Charges, Taxes and Expenses . The issuance and delivery of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the

Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(viii) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with (i) the Holder's Affiliates, (ii) any other Persons acting as a group together with the Holder or any of the Holder's Affiliates, and (iii) any other Persons whose beneficial ownership of the shares of Common Stock would or could be aggregated with the Holder's for the purposes of Section 13(d) (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of Warrant Shares issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of Warrant Shares which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(d)(viii), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(d)(viii) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, and the Company shall have no obligation to verify or confirm the accuracy of such determination. For purposes of this Section 2(d)(viii), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Securities and Exchange Commission (the "Commission"), as the case may be, (B) a more recent public announcement by the

Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing 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 Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of the Warrant Shares issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(d)(viii), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of Warrant Shares upon exercise of this Warrant held by the Holder and the provisions of this Section 2(d)(viii) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(d)(viii) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant. If the Warrant is unexercisable as a result of the Holder's Beneficial Ownership Limitation, no alternate consideration is owing to the Holder.

(e) Stock Exchange Limitations. Notwithstanding anything to the contrary in this Warrant, unless the approval required under Section 312.03(c) of the NYSE Listed Company Manual is obtained with respect to the issuance of the Warrant Shares pursuant to this Warrant, in no event will the number of shares of Common Stock issuable upon exercise of this Warrant, together with all shares of Common Stock issued in respect of any other Warrant issued pursuant to the Letter Agreement, exceed 1,697,378 shares in the aggregate. If one or more shares of Common Stock are not delivered at any time as a result of the operation of the preceding sentence (such shares, the "Withheld Shares"), then (1) the Company will promptly pay to the Holder, as liquidated damages and not as a penalty, cash in an amount equal to the product of (x) the number of such Withheld Shares; and (y) the Daily VWAP (as defined below) per share of Common Stock on the date the Holder delivered the applicable Exercise Notice hereunder (or, if such date is not a VWAP Trading Day (as defined below), the immediately preceding VWAP Trading Day); and (2) to the extent the Holder purchases (in an open market transaction or otherwise) shares of 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 date the Holder delivered the applicable Exercise Notice hereunder (or, if such date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day). " Daily VWAP" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock 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. "VWAP Market Disruption Event" means, with respect to any date, (A) the failure by the principal (in terms of volume) 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) other market 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 notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on 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, on the principal other market 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.

3. Certain Adjustments.

(a) Share Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a share dividend or otherwise makes a distribution or distributions on shares of Common Stock or any other equity or Common Stock Equivalents payable in shares of Common Stock (which, for avoidance of doubt, shall not include any Warrant Shares issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant remains unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(b) [RESERVED]

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase shares, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial

Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, shares or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (or any Subsidiary), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the Company's assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the common equity of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of shares of Common Stock or any compulsory share exchange pursuant to which the shares of Common Stock are effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the common equity of the Company (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder

(without regard to any limitation in Section 2(d)(viii) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(d)(viii) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time concurrently with, or within thirty (30) days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder, as described below, an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction, provided, however, that, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of the consummation of such Fundamental Transaction, the same type or form of consideration (and in the same proportion), valued at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction; provided further, that if holders of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of Common Stock will be deemed to have received shares of the Successor Entity (which Successor Entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of (1) the 30 day volatility, (2) the 100 day volatility or (3) the 365 day volatility, each of clauses (1)-(3) as obtained from the HVT function on Bloomberg (determined utilizing a 365-day annualization factor) as of the Trading Day immediately following the public announcement of the applicable contemplated Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the highest VWAP during the period beginning on the Trading Day immediately preceding the public announcement of the applicable contemplated Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder's request pursuant to this Section 3(e) and (D) a remaining option time equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date and (E) a zero cost of borrow, provided, however, that if a definitive agreement for a Fundamental Transaction is executed

within sixty (60) days of the Issuance Date and such Fundamental Transaction closes within six (6) months of the date such definitive agreement is executed, the Black Scholes Value of this Warrant shall not exceed $3.03 per Warrant Share for the unexercised portion of this Warrant (the " Specified Fundamental Change Cap"); provided further, however, that the Specified Fundamental Change Cap shall only apply if pursuant to the applicable transaction or related transactions (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another unrelated Person, or (ii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 100% of the outstanding shares of Common Stock or 100% of the voting power of the common equity of the Company. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds within five Business Days of the Holder's election (or, if later, on the effective date of the Fundamental Transaction). The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. For the avoidance of doubt, the Holder shall be entitled to the benefits of the provisions of this Section 3(e) regardless of whether the Company has sufficient authorized shares of Common Stock for the issuance of Warrant Shares.

(f) [RESERVED]

(g) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share of Common Stock, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(h) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any

resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company declares a dividend (or any other distribution in whatever form) on the shares of Common Stock, (B) the Company declares a special nonrecurring cash dividend on, or a redemption of, the shares of Common Stock, (C) the Company authorizes the granting to all holders of the shares of Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company is required in connection with a Fundamental Transaction, or (E) the Company authorizes the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the shares of Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice and provided, further that no notice shall be required if the information is disseminated in a press release or document filed with the Commission. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(i) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

4. Transfer of Warrant.

(a) Transferability. Subject to the transfer conditions referred to in the legend hereon and compliance with Section 5(a), this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of

the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

5. Compliance with the Securities Act.

(a) Agreement to Comply with the Securities Act; Legend. The Holder, by acceptance of this Warrant, agrees to comply in all respects with the provisions of this Section 5 and the restrictive legend requirements set forth on the face of this Warrant and further agrees that such Holder shall not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act. This Warrant and all Warrant Shares issued upon exercise of this Warrant (unless registered under the Securities Act) shall be stamped or imprinted with a legend in substantially the following form:

> "THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE THEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS."

(b) Representations of the Holder. In connection with the issuance of this Warrant, the Holder specifically represents, as of the date hereof, to the Company by acceptance of this Warrant as follows:

(i) The Holder is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The Holder is acquiring this Warrant and the shares of Common Stock to be issued upon exercise hereof for investment for its own account and not with a view towards, or for resale in connection with, the public sale or distribution of this Warrant or the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act.

(ii) The Holder understands and acknowledges that this Warrant and the shares of Common Stock to be issued upon exercise hereof are "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that, under such laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In addition, the Holder represents that it is familiar with Rule 144 under the Securities Act, as presently in effect ("Rule 144"), and understands the resale limitations imposed thereby and by the Securities Act.

(iii) The Holder acknowledges that it can bear the economic and financial risk of its investment for an indefinite period, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Warrant and the Warrant Shares. The Holder has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Warrant and the business, properties, prospects and financial condition of the Company.

(c) Acknowledgement of the Company. The Company acknowledges and agrees that the Holder may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of this Warrant or the Warrant Shares to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, Holder may transfer any pledged or secured Warrant or Warrant Shares to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the Holder's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of this Warrants or any Warrant Shares may reasonably request in connection with a pledge or transfer of this Warrant or any Warrant Shares.

(d) Removal of Legends. This Warrant and the Warrant Shares shall not be required to contain the legend set forth in Section 5(a) or any other legend (i) following any sale of the Warrant or Warrant Shares pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), provided that the Holder furnishes the Company with reasonable assurances that such Warrant or Warrant Shares are eligible for sale, assignment or transfer under Rule 144 which shall not include an opinion of the Holder's counsel, (ii) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that the Holder provides the Company with an opinion of outside counsel in a form reasonably acceptable to the Company to the effect that such sale, assignment or transfer of the Warrant or Warrant Shares may be made without registration under the applicable requirements of the Securities Act and that the Warrant or Warrant Shares, following such sale, assignment or transfer, are no longer "restricted securities" as defined in Rule 144 or "control securities" within the meaning of Rule 144.or (iii) if such legend is not required or customarily included under applicable provisions of the Securities Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than one (1) Trading Day (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date the Holder delivers notice to the Company with respect to this Warrant or any Warrant Shares issued in the form of book-entries or, if applicable, delivers a legended certificate representing Warrant Shares to the Company) following the delivery by the Holder to the Company or the Transfer Agent (with notice to the Company) of notice with respect to this Warrant or any Warrant Shares issued in the form of book-entries or, if applicable, a legended certificate representing any Warrant Shares (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from the Holder as may be reasonably required above in this Section 5(d) (such date, the "Legend Removal Date"), as directed by the Holder, either: (A) provided that the Transfer Agent is participating in FAST, credit the applicable number of Warrant Shares to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) with respect to this Warrant or if the Transfer Agent is not participating in FAST, issue and deliver (via reputable overnight courier) to the Holder, an updated form of this Warrant or a certificate representing Warrant Shares, as applicable, in the case of each of clauses (A) and (B) above, free from all restrictive and other legends, registered in the name of the Holder or its designee. The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Warrant Shares or the removal of any legends with respect to this Warrant or any Warrant Shares in accordance herewith.

(e) In addition to the Holder's other available remedies hereunder, the Company shall pay to the Holder, in cash, (i) as partial liquidated damages and not as a penalty, for each $1,000 of Warrant Shares (based on the Weighted Average Price of the Common Stock on the date the Holder delivers notice or a legended certificate, as applicable, to the Company or the Transfer Agent with respect to such Warrant Shares pursuant to Section 5(d)) delivered for removal of the restrictive legend and subject to Section 5(d), $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such Warrant Shares are delivered without a legend and (ii) if the Company is obligated to remove the restrictive legends pursuant to Section 5(d) but fails to (a) issue and deliver (or cause to be delivered) Warrant Shares to the Holder by the Legend Removal Date that are free from all restrictive and other legends and (b) if after the Legend Removal Date the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that the Holder anticipated receiving from the Company without any restrictive legend, then an amount equal to the excess of the Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) over the product of (A) such number of Warrant Shares that the Company was required to deliver to the Holder by the Legend Removal Date multiplied by (B) the price at which the sell order giving rise to such purchase obligation was executed.

(f) In order to facilitate the Company filing the Resale Registration Statement covering the resale of any Warrant Shares issued and issuable upon exercise of this Warrant, the Holder hereby agrees to provide the Company with, following reasonable advance written request by the Company, an executed selling stockholder questionnaire in a form reasonably acceptable to the Holder and the Company as is customary under the circumstances.

6. Miscellaneous.

(a) Currency. All dollar amounts referred to in this Warrant are in United States Dollars (" U.S. Dollars"). All amounts owing under this Warrant shall be paid in U.S. Dollars. All amounts denominated in other currencies shall be converted in 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 Warrant, the U.S. Dollar exchange rate as published in the Wall Street Journal (New York edition) on the relevant date of calculation.

(b) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. For the avoidance of doubt, the Holder shall be deemed to have waived any voting rights of any such Warrant Shares that may arise with respect to any record date during the period commencing on such Exercise Date, through, and including, such applicable Warrant Share Delivery Date, as necessary, such that the aggregate voting rights of any Common Stock (including such Warrant Shares) beneficially owned by the Holder and/or any Attribution Parties, collectively, on any such record date shall not exceed the Beneficial Ownership Limitation as a result of any such exercise of this Warrant. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(c) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(d) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then such action may be taken or such right may be exercised on the next succeeding Trading Day.

(e) Authorized Shares. The Company covenants that during the period that the Warrant is outstanding, it will reserve from its authorized and unissued shares of Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued and delivered, as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares underlying this Warrant which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any shares of Common Stock above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(f) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Letter Agreement.

(g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered for resale, and if the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state, federal or foreign securities laws.

(h) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Letter Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(i) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Securities Exchange Agreement.

(j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any shares of Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(k) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(m) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(n) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(o) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

VELO3D, INC.

By: _____

Name: Bradley Kreger

Title: Chief Executive Officer

EXHIBIT A

NOTICE OF EXERCISE

TO: **VELO3D, INC.**

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any. In exercising the Warrant, the undersigned hereby confirms and acknowledges that the representations set forth in the Warrant as they apply to the undersigned are true and complete as of this date.

(2) Payment shall take the form of (check applicable box(es)):

☐ in lawful money of the United States;

☐ a deduction, in the amount of _____, from the outstanding principal amount under the Senior Secured Convertible Note issued by the Company to the Holder on the Original Issuance Date; and/or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity:

_____

Signature of Authorized Signatory of Investing Entity:
_____

Title of Authorized Signatory: _____

Date: _____

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____

Holder's Signature: _____

Holder's Address: _____

Exhibit 4.2

Certain portions of this exhibit have been redacted because the information is both (i) not material and (ii) the type that the registrant treats as private or confidential. Redacted information has been noted in this document with a placeholder identified by the mark "[*]".

Execution Copy

THIRD NOTE AMENDMENT

This THIRD NOTE AMENDMENT, dated as of July 1, 2024 (this "**Agreement**"), is entered into between Velo3D, Inc., a Delaware corporation (the "**Company**"), High Trail Investments ON LLC ("**Holder 1**") and HB SPV I Master Sub LLC ("**Holder 2**" and, together with Holder 1, the "**Note Holders**") and acknowledged by U.S. Bank Trust Company, National Association, as trustee (the "**Trustee**").

PRELIMINARY STATEMENTS:

WHEREAS, the Company and the Note Holders are parties to that certain Securities Exchange Agreement, dated as of November 27, 2023 (the "**Securities Exchange Agreement**"), pursuant to which the Company issued (a) Senior Secured Note due 2026, Certificate No. A-1, on November 28, 2023 in the principal amount of $23,000,000.00 ("**Note A-1**") under which a principal amount of $11,166,666.67 remains outstanding as of the date hereof and (b) Senior Secured Note due 2026, Certificate No. A-2, on November 28, 2023 in the principal amount of $34,500,000.00 ("**Note A-2**") under which a principal amount of $16,750,000.00 remains outstanding as of the date hereof; and

WHEREAS, Note A-1 and Note A-2 were issued also pursuant to that certain Indenture, dated as of August 14, 2023 (the "**Base Indenture**"), by and between the Company and the Trustee, as amended and supplemented by the Second Supplemental Indenture, dated as of November 28, 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;

WHEREAS, the Company and the Note Holders are parties to certain Note Amendments, dated as of December 27, 2023 and March 31, 2024 (the "**Prior Note Amendments**"), pursuant to which Note A-1 and Note A-2 were amended (as amended by the Prior Note Amendments, collectively, the "**Notes**"); and

WHEREAS, the Notes represent 100% of the outstanding Senior Secured Notes due 2026 issued under the Indenture as of the date hereof; and

WHEREAS, the Company and the Note Holders are also parties to that certain Securities Purchase Agreement, dated as of August 10, 2023 (as amended, the "**Securities Purchase Agreement**"); and

WHEREAS, the Company and the Note Holders desire to amend the terms of the Notes; and

WHEREAS, the Company previously entered into a letter agreement, dated as of March 31, 2024 (the "**First Letter Agreement**") with the Note Holders, pursuant to which the Company

issued to the Note Holders certain warrants to purchase shares of Common Stock (the "**Prior Warrants**") as more fully described in the First Letter Agreement; and

WHEREAS, the Company has entered into a letter agreement (the "**Second Letter Agreement**" and, together with the First Letter Agreement, the "**Letter Agreements**"), dated as of the date hereof, with the Note Holders, pursuant to which the Company has agreed to issue to the Note Holders, and the Note Holders have agreed to acquire from the Company in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D as promulgated by the Commission under the Securities Act, warrants to purchase shares of Common Stock (the "**New Warrants**" and, together with the Prior Warrants, the "**Warrants**"), as more fully described in the Second Letter Agreement; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each party to this Agreement agrees, as follows:

ARTICLE I
DEFINITIONS

1.01 **Definitions.** Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Notes.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

In order to induce the Note Holders and the Trustee to enter into this Agreement, the Company hereby represents and warrants that on and as of the date hereof after giving effect to this Agreement:

2.01 **Securities Exchange Agreement and Note Amendment Representations.** The representations and warranties of the Company contained in the Securities Exchange Agreement and Prior Note Amendments, respectively, are true and correct in all material respects (or, in the case of any such representation or warranty qualified by materiality or Material Adverse Effect, in all respects), except any such representation or warranty given as of a particular date in which case they are true and correct in all material respects (or, in the case of any such representation or warranty qualified by materiality or Material Adverse Effect, in all respects) as of such date.

2.02 **Ratification; Reaffirmation.** The Company hereby reaffirms and ratifies the Transaction Documents and agrees that this Agreement, the Letter Agreements, the Prior Note Amendments, and the Warrants shall each constitute a Transaction Document. The Company hereby ratifies, affirms, reaffirms, acknowledges, confirms and agrees that (a) all of the Company's obligations owing to the Note Holders under the Transaction Documents, as modified by this Agreement, are hereby reaffirmed; and (b) the Transaction Documents are the legal, valid and binding obligations of the Company and are enforceable against the Company in accordance with their respective terms, as modified by this Agreement, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

2.03 **No Default.** No Default has occurred and is continuing and no Event of Default has occurred or resulted from the consummation of the transactions contemplated by this Agreement or the Second Letter Agreement and the Company hereby acknowledges and agrees that it is not aware of any prospective Event of Default.

2.04 **Binding Effect of Documents.** The Company hereby represents, warrants, and covenants that this Agreement and the Second Letter Agreement have been duly authorized, executed, and delivered to the Note Holders by the Company, are enforceable in accordance with their terms, and are in full force and effect, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

2.05 **No Conflict.** The Company hereby represents, warrants, and covenants that the execution, delivery, and performance of this Agreement, the Letter Agreements and the Prior Note Amendments by the Company have not and will not violate any requirement of law or contractual obligation of the Company and will not result in, or require, the creation or imposition of any Lien on any of their properties or revenues (other than Liens in favor of the Note Holders).

ARTICLE III
ADDITIONAL AGREEMENTS; AMENDMENTS

3.01 The Note Holders and the Company hereby agree that:

(a) The definition of Partial Redemption Date set forth in Section 1 of the Notes shall be deleted in its entirety and replaced with the following in lieu thereof, effective as of the date hereof, subject to and contingent upon the Company's (i) performance of Section 5 of the Second Letter Agreement (which the Trustee may assume has occurred unless it has received written notice from any Note Holder to the contrary), (ii) issuance of the New Warrants to the Note Holders and (iii) performance of Section 4.02 of this Agreement:

""**Partial Redemption Date**" means, with respect to this Note, (A) each of August 1, 2024, September 1, 2024, October 1, 2024, November 1, 2024, December 1, 2024, January 1, 2025, February 1, 2025, March 1, 2025, April 1, 2025, May 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."

(b) The definition of Partial Redemption Payment set forth in Section 1 of the Notes shall be deleted in its entirety and replaced with the following in lieu thereof, effective as of the date hereof, subject to and contingent upon the Company's (i) performance of Section 5 of the Second Letter Agreement (which the Trustee may assume has occurred unless it has received written notice from any Note Holder to the contrary), (ii) issuance of the New Warrants to the Note Holders and (iii) performance of Section 4.02 of this Agreement:

"Partial Redemption Payment" means, for each Partial Redemption Date specified below, an amount equal to one hundred twenty percent (120%) of the applicable amount specified below, 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 on any

Partial Redemption Date; provided, further, that the Holder and the Company may agree to increase the size of any Partial Redemption Payment by mutual written consent and notice to the Trustee:

Partial Redemption Date	Amount[1]
August 1, 2024	$[•]
September 1, 2024	$[•]
October 1, 2024	$[•]
November 1, 2024	$[•]
December 1, 2024	$[•]
January 1, 2025	$[•]
February 1, 2025	$[•]
March 1, 2025	$[•]
April 1, 2025	$[•]
May 1, 2025	$[•]
July 1, 2025	$[•]
October 1, 2025	$[•]
January 1, 2026	$[•]

[1] NTD: Partial Redemption Payment amounts for each Holder will be as follows:

Partial Redemption Date	Amount for High Trail Investments ON LLC	Amount for HB SPV I Master Sub LLC
August 1, 2024	$350,000	$525,000
September 1, 2024	$350,000	$525,000
October 1, 2024	$3,850,000	$5,775,000
November 1, 2024	$350,000	$525,000
December 1, 2024	$350,000	$525,000
January 1, 2025	$3,850,000	$5,775,000
February 1, 2025	$350,000	$525,000
March 1, 2025	$350,000	$525,000
April 1, 2025	Remaining Principal Amount outstanding	Remaining Principal Amount outstanding
May 1, 2025	$0	$0
July 1, 2025	$0	$0
October 1, 2025	$0	$0
January 1, 2026	$0	$0
April 1, 2026	$0	$0
July 1, 2026	$0	$0
August 1, 2026	$0	$0

April 1, 2026	$[•]
July 1, 2026	$[•]
August 1, 2026	$[•]

(c) The definition of Transaction Documents set forth in Section 1 of the Notes shall be deleted in its entirety and replaced with the following in lieu thereof, effective as of the date hereof, subject to and contingent upon the Company's (i) performance of Section 5 of the Second Letter Agreement (which the Trustee may assume has occurred unless it has received written notice from any Note Holder to the contrary), (ii) issuance of the New Warrants to the Note Holders and (iii) performance of Section 4.02 of this Agreement:

""Transaction Documents" means, collectively, the Securities Exchange Agreement, the Notes, the Security Agreements, the Amendments to Security Documents, the Indenture, the Securities Purchase Agreement, the Warrants, each Voting Agreement (as defined in the Securities Exchange Agreement) and the Irrevocable Transfer Agent Instructions (as defined in the Securities Exchange 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 Exchange Agreement and thereby, as may be amended from time to time."

(d) The definition of Warrants set forth in Section 1 of the Notes shall be deleted in its entirety and replaced with the following in lieu thereof, effective as of the date hereof, subject to and contingent upon the Company's (i) performance of Section 5 of the Second Letter Agreement (which the Trustee may assume has occurred unless it has received written notice from any Note Holder to the contrary), (ii) issuance of the New Warrants to the Note Holders and (iii) performance of Section 4.02 of this Agreement:

""**Warrants**" means the Warrants to Purchase Shares of Common Stock issued by the Company to each of High Trail Investments ON LLC and HB SPV I Master Sub LLC on each of April 1, 2024 and July 1, 2024."

(e) The reference to the second (2^{nd}) Business Day in the second sentence of Section 5(C) of the Notes shall be modified to reference the first (1^{st}) Business Day.

(f) Section 5(E) of the Notes and the definitions of Requisite Stockholder Approval and Withheld Shares in Section 1 of the Notes shall be removed in their entirety effective as of the date hereof, subject to and contingent upon the Company's (i) performance of Section 5 of the Second Letter Agreement (which the Trustee may assume has occurred unless it has received written notice from any Note Holder to the contrary), (ii) issuance of the New Warrants to the Note Holders and (iii) performance of Section 4.02 of this Agreement.

(g) Section 9(A)(viii) of the Notes shall be deleted in its entirety and replaced with the following in lieu thereof, effective as of the date hereof:

"(viii) the Company fails to comply with any covenant set forth in **Section 7(D)**, **Section 7(E)**, **Section 7(F)**, **Section 7(G)**, **Section 7 (H)**, **Section 7(J)**, **Section 7(P)**, **Section 7(Q)**, **Section 7(R)**, **Section 7(W)**, **Section 7(Y)** or **Section 7(Z)** of this Note or with any of the term or conditions set forth in (x) that certain Letter Agreement Re: Modification of April Partial Redemption, dated as of March 31, 2024, entered into by and among the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC or (y) that certain Letter Agreement Re: Modification of July Partial Redemption, dated as of July 1, 2024, entered into by and among the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC."

(h) Each Note Holder agrees that in the event that such Note Holder elects in its sole discretion, pursuant to the terms of its Warrants, to pay any portion of the exercise price thereof through a deduction to the outstanding Principal Amount of the Note held by such Note Holder, such Principal Amount shall be reduced by an amount equal to the quotient of (i) the amount of exercise price of such Warrant then being paid divided by (ii) one and twenty hundredths (1.20), and the Company shall promptly notify the Trustee thereof in writing following such exercise and shall instruct the Trustee to adjust the records of the Registrar accordingly and the Note Holders agree that the Trustee shall so adjust such records without any further action or notice from the Note Holders.

(i) Annex A to the Supplemental Indenture as amended by this Agreement is annexed hereto as Exhibit A.

ARTICLE IV
MISCELLANEOUS

4.01 **Effect of Agreement.** Each Transaction Document, as modified by this Agreement, is and shall continue to be in full force and effect and is hereby in all respects, except as modified by this Agreement, ratified and confirmed.

4.02 **Fees and Expenses.** The effectiveness of this Agreement shall be contingent upon the Company paying for all reasonable and documented out-of-pocket expenses and costs of the Note Holders and the Trustee (including, without limitation, the reasonable and documented attorney fees and expenses of counsel for the Note Holders and the Trustee) in connection with the preparation, negotiation, execution and approval of this Agreement.

4.03 **Disclosure of Agreement.** By no later than 9:15 a.m., New York City time on the date of this Agreement (or, if this Agreement is executed after such time, no later than 9:15 a.m., New York City time on the following Trading Day), the Company shall either issue a press release describing all the material terms of this Agreement or file a Current Report on Form 8-K describing all the material terms of this Agreement in the form required by the Exchange Act and attaching this Agreement (the "**Public Disclosure Document**"). From and after the issuance or filing of the Public Disclosure Document, the Company shall have disclosed all material, non-public information (if any) provided to the Note Holders by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents and neither the Note Holders nor any of their respective officers, directors, employees or agents shall be in possession of any material, non-public information regarding the Company or any of its Subsidiaries. In addition, effective upon the issuance or filing of the Public Disclosure Document, 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 the Note Holders or any of their affiliates, on the other hand, shall have terminated and the Note Holders have not been subject to any such obligation since the issuance or filing of the Public Disclosure Document.

4.04 **Rule 144 Holding Period.** The Company and the Note Holders acknowledge and agree that the Notes, including, for the avoidance of doubt, any shares of Common Stock issued thereunder (the "**Rule 144 Securities**") will continue to have a holding period under Rule 144 promulgated under Securities Act ("**Rule 144**") that will be deemed to have commenced as of August 14, 2023. The Company further acknowledges and agrees that it will neither assert nor maintain a contrary position with respect to the date of commencement of the holding period under Rule 144 with respect to the Rule 144 Securities.

4.05 **Section Captions.** Section captions used in this Agreement are for convenience of reference only, and shall not affect the construction of this Agreement.

4.06 **Counterparts.** This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement and/or any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), electronic deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be. As used herein, "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record. 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.

4.07 **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 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 the Note Holders each 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 the Note Holders from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Note Holders or to enforce a judgment or other court ruling in favor of the Note Holders . 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 THE NOTES OR ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

4.08 **Concerning the Trustee.** By their signatures hereto, each Note Holder (constituting all of the outstanding Note Holders) hereby consents to the terms of this Agreement and directs the Trustee to execute and deliver this amendment and to perform its obligations hereunder. The parties hereto acknowledge and agree that the rights, privileges and immunities of the Trustee set forth in the Indenture shall apply as though fully set forth herein. The Trustee shall have no obligation to monitor the terms of the Securities Purchase Agreement, as may be amended hereunder, the Letter Agreements or the Prior Note Amendments.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

COMPANY:

Velo3D, Inc.

By: /s/ Bradley Kreger
Name: Bradley Kreger
Title: Chief Executive Officer

THE NOTE HOLDERS:

HB SPV I Master Sub LLC

By: /s/ [*]
Name: [*]
Title: Authorized Signatory*

High Trail Investments ON LLC

By: /s/ [*]
Name: [*]
Title: Authorized Signatory*

Acknowledged and Agreed:

TRUSTEE:

U.S. Bank Trust Company, National Association

By: /s/ Andrew Fyna
Name: Andrew Fyna
Title: Vice President

* [*] LP not individually, but solely as Investment Advisor to HB SPV I Master Sub LLC and High Trail Investments ON LLC

Exhibit A

Form of Note

Velo3D, Inc.

Senior Secured 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 twenty percent (120%) of the principal sum of [✧] ($[✧]) (such principal sum, the "**Principal Amount**," and one hundred twenty percent (120%) 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 or repurchase of this Note.

This Note has been issued pursuant to the Indenture, dated as of August 14, 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 Second Supplemental Indenture, dated as of November 28, 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

(Signature Page to Senior Note due 2026, Certificate No. A-[✧])

VELO3D, INC.

Senior Secured Note due 2026

This Note (this "**Note**") is issued by Velo3D, Inc., a Delaware corporation (the "**Company**"), and is a Note that may be authenticated and delivered for original issue under the Indenture referred to below and pursuant to the Securities Exchange Agreement referred to below in an aggregate principal amount not to exceed fifty-seven million five hundred thousand dollars ($57,500,000) and designated as the Company's "Senior Secured 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.

"**Available Cash**" means, as of any date of determination, (A) the sum of (i) the Company's Cash and Cash Equivalents and (ii) any Cash paid by the Company to the Holder or any Other Holder pursuant to (x) Section 1 of the Securities Exchange Agreement or (y) this Note, any Other Note, any Prior Note (as defined in the Securities Exchange Agreement) or any Subsequently Purchased Note during the applicable Quarterly Cash Burn Period less (B) any Cash raised from any financings or series of related financings during the applicable Quarterly Cash Burn Period, including for the avoidance of doubt, from the sale and issuance of the Company's Capital Stock, Convertible Securities, Equity-Linked Securities or Indebtedness (including, for the

avoidance of doubt, Cash actually received in connection with the exercise or settlement of any Convertible Securities or Equity-Linked Securities).

"**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 8.**

"**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 Burn Measurement Date**" has the meaning set forth in **Section 7(R)**.

"**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, twenty five percent (25.0%) of the gross proceeds from any 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 twenty five percent (25.0%) 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 ATM Issuances; provided, however, that (i) the issuance of shares of Common Stock pursuant to the Notes shall not constitute a Cash Sweep Financing; and (ii) any Equity Issuances occurring prior to the earlier to occur of (x) the Company raising twenty million dollars ($20,000,000) in gross proceeds from Equity Issuances after the Issue Date (provided that, for the avoidance of doubt, if an aggregate amount of Equity Issuance is made after the Issuance Date in excess of twenty million dollars ($20,000,000), all amounts in excess of twenty million dollars ($20,000,000) shall constitute Cash Sweep Financing) and (y) [✧][1], 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 7(Y).**

[1] Ninetieth (90th) calendar day after the Issue Date.

"**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.

"**Compliance Certificate**" has the meaning set forth in **Section 7(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.

"**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) or any of its Subsidiaries.

"**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 5(C)**.

"**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 9(D)**.

"**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 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 Exchange 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-Linked Securities**" means any rights, obligations, options or warrants to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions or otherwise) any shares of Common Stock.

"**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 9(A)**.

"**Event of Default Acceleration Amount**" means, with respect to the delivery of a notice pursuant to **Section 9(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to 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) plus the accrued and unpaid interest on this Note.

"**Event of Default Notice**" has the meaning set forth in **Section 9(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)**.

"**Excess Shares**" has the meaning set forth in **Section 5(D)**.

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

"**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:

(A) 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;

(B) 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

(C) 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 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.

"**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.

"**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 August 14, 2023, by and between the Company and the Trustee, as amended and supplemented by the Second Supplemental Indenture, dated as of November 28, 2023, by and between the Company and the Trustee.

"**Independent Investigator**" has the meaning set forth in **Section 7(S)**.

"**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 January 1, 2024; 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[✧].

"**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** and **Section 6**.

"**Maximum Percentage**" has the meaning set forth in **Section 5(D)**.

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

"**Note Documents**" means the Securities Exchange Agreement, this Note, the Security Agreements (as defined in the Securities Exchange Agreement), the Amendments to Security Documents (as defined in the Securities Exchange Agreement) and the other Transaction Documents. The Company shall provide copies of all Note Documents to the Trustee.

"**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 August 1, 2024, September 1, 2024, October 1, 2024, November 1, 2024, December 1, 2024, January 1, 2025, February 1, 2025, March 1, 2025, April 1, 2025, May 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 each Partial Redemption Date specified below, an amount equal to one hundred twenty percent (120%) of the applicable amount specified below, 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 on any Partial Redemption Date; provided, further, that the Holder and the Company may agree to increase the size of any Partial Redemption Payment by mutual written consent and notice to the Trustee:

Partial Redemption Date	**Amount**[2]
August 1, 2024	$[•]
September 1, 2024	$[•]
October 1, 2024	$[•]
November 1, 2024	$[•]
December 1, 2024	$[•]
January 1, 2025	$[•]
February 1, 2025	$[•]
March 1, 2025	$[•]
April 1, 2025	$[•]
May 1, 2025	$[•]

[2] NTD: Partial Redemption Payment amounts for each Holder will be as follows:

Partial Redemption Date	Amount for High Trail Investments ON LLC	Amount for HB SPV I Master Sub LLC
August 1, 2024	$350,000	$525,000
September 1, 2024	$350,000	$525,000
October 1, 2024	$3,850,000	$5,775,000
November 1, 2024	$350,000	$525,000
December 1, 2024	$350,000	$525,000
January 1, 2025	$3,850,000	$5,775,000
February 1, 2025	$350,000	$525,000
March 1, 2025	$350,000	$525,000
April 1, 2025	Remaining Principal Amount outstanding	Remaining Principal Amount outstanding
May 1, 2025	$0	$0
July 1, 2025	$0	$0
October 1, 2025	$0	$0
January 1, 2026	$0	$0
April 1, 2026	$0	$0
July 1, 2026	$0	$0
August 1, 2026	$0	$0

July 1, 2025	$[•]
October 1, 2025	$[•]
January 1, 2026	$[•]
April 1, 2026	$[•]
July 1, 2026	$[•]
August 1, 2026	$[•]

"**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 and any Subsequently Purchased Notes; (B) Indebtedness actually disclosed pursuant to the Securities Exchange Agreement as of the date of the Securities Exchange 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).

"**Permitted Intellectual Property Licenses**" means (A) Intellectual Property licenses actually disclosed pursuant to the Securities Exchange Agreement as of the date of the Securities Exchange 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 Exchange 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 Exchange Agreement, as in effect as of the Issue Date, and Liens securing any Subsequently Purchased Notes; (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 Quarterly Cash Burn**" means, for the applicable Quarterly Cash Burn Period set forth in the table below, the applicable corresponding dollar amount set forth in the table below:

Quarterly Cash Burn Period:	**Permitted Quarterly Cash Burn**
10/1/23 - 12/31/23	$25,000,000
11/1/23 - 1/31/24	$23,000,000
12/1/23 - 2/29/24	$22,000,000
1/1/24 - 3/31/24	$20,000,000
2/1/24 - 4/30/24	$18,000,000
3/1/24 - 5/31/24	$17,000,000
4/1/24 - 6/30/24	$15,000,000
5/1/24 - 7/31/24	$13,000,000
6/1/24 - 8/31/24	$12,000,000
7/1/24 - 9/30/24	$10,000,000
8/1/24 - 10/31/24	$9,000,000
9/1/24 - 11/30/24	$8,000,000
10/1/24 - 12/31/24 and thereafter	$5,000,000

"**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 8** 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** and **Section 6**.

"**Quarterly Cash Burn Period**" means the three-calendar month period ending on and including the applicable Cash Burn Measurement Date.

"**Quarterly Cash Burn Reference Date**" means the last calendar day of the calendar month immediately preceding the first calendar day of the applicable Quarterly Cash Burn Period.

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

"**Related Parties**" has the meaning set forth in **Section 21(B)**.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 5(D)**.

"**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.

"**Required Reserve Amount**" has the meaning in **Section 7(Q)**.

"**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.

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

"**Securities Exchange Agreement**" means that certain Securities Exchange Agreement, dated as of November 27, 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 Exchange Agreement.

"**Securities Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of August 10, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC providing for the issuance of the Prior Notes (as defined in the Securities Exchange Agreement), as amended by First Amendment to Securities Purchase Agreement, dated as of November 27, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC. The Trustee shall not been deemed to have any knowledge of or have any obligation to monitor the terms of the Securities Purchase Agreement.

"**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.

"**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%).

"**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.

"**Subsequently Purchased Notes**" has the meaning set forth in the Securities Purchase Agreement.

"**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 8(A)**.

"**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 Exchange Agreement, the Notes, the Security Agreements, the Amendments to Security Documents, the Indenture, the Securities Purchase Agreement, the Warrants, each Voting Agreement (as defined in the Securities Exchange Agreement) and the Irrevocable Transfer Agent Instructions (as defined in the Securities Exchange 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 Exchange 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 5(C)**.

"**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.

"**Warrants**" means the Warrants to Purchase Shares of Common Stock issued by the Company to each of High Trail Investments ON LLC and HB SPV I Master Sub LLC on each of April 1, 2024 and July 1, 2024.

"**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.

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.* On each Partial Redemption Date, the Company shall redeem a Partial Redemption Payment of this Note (in an Authorized Denomination). Such Partial Redemption Payment may be canceled by the Holder at any time prior to the receipt of the applicable Partial Redemption Payment from the Company. The Company shall pay the Holder the Partial Redemption Payment by wire transfer of immediately available funds on the applicable Partial Redemption Date. Any Partial Redemption Payment paid pursuant to this **Section 4(A)** shall reduce the Principal Amount by such paid amount divided by one and twenty hundredths (1.20). 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 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). The Company shall deliver to the Trustee a written notice of any Partial Redemption Payment, including the applicable amount of the Partial Redemption Payment (a "**Partial Redemption Notice**"), within two (2) Business Days after the applicable Partial Redemption Date.

(B) *Interest*. Except as provided in **Section 9(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) be paid to Holder in arrears on any date on which any portion of the outstanding Principal Amount of this Note is reduced or otherwise retired (including, for the avoidance of doubt, a Fundamental Change Repurchase Date, a Partial Redemption Date, any date that an Event of Default Acceleration Amount or Cash Sweep Payment is paid by the Company to the Holder or the date upon which the Holder is issued shares of Common Stock pursuant to the exercise of its Warrant through the payment of the exercise price thereof through a deduction of a portion of the outstanding Principal Amount of this Note); and (v) 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 twenty hundredths (1.20). 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 first (1st) 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. If (x) the Company shall fail for any reason or for no reason on or prior to the applicable Event of Default Stock Payment Delivery Date to deliver shares of Common Stock in accordance with this **Section 5(C)** (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:

(i) 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

(ii) 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 date of delivery of the related Event of Default Stock Payment Notice.

To exercise such right, the Holder must deliver notice of such exercise to the Company, specifying whether the Holder has elected clause (i) or (ii) above to apply. If the Holder has elected clause (i) 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 (i). 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 Event of Default Stock Payment 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 Event of Default Stock Payment 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 Event of Default Stock Payment Delivery Date until the cash amount set forth in **Section 5(C)(i)** is paid to the Holder or the shares of Common Stock are delivered to the Holder pursuant to **Section 5(C)(ii)**. Under no circumstances shall the Trustee be responsible for holding or delivering shares of Common Stock to the Holder.

(D) *Beneficial Ownership Limitation*. Notwithstanding anything to the contrary contained herein, the Company shall not issue shares pursuant to this Note, and the Holder shall not have the right to receive shares pursuant to the terms and conditions of this Note and any such issuance shall be null and void and treated as if never made, to the extent that after giving effect to such 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 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 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 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 warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation conversion or exercise analogous to the limitation contained in this **Section 5(D)**. For purposes of this **Section 5(D)**, 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 Exchange 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 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 issuance of shares of Common Stock would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 5(D)**, 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 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 (61st) 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 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 issuance. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 5(D)** 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 5(D)** 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 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 issuance or otherwise trigger the provisions of this **Section 5(D)**. The Trustee shall have no obligation to monitor any limitations on beneficial ownership in connection with this **Section 5(D)**.

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. 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 8**, 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 and all Subsequently Purchased 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 9(A)(ii)**, **Section 9(A)(iv)**, **Section 9(A)(vi)**, **Section 9(A)(ix)**, **Section 9(A)(x)**, **Section 9(A)(xi)** or **Section 9(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 7(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 9(A)(ii)**, **Section 9(A)(iv)**, **Section 9(A)(vi)**, **Section 9(A)(ix)**, **Section 9(A)(x)**, **Section 9(A)(xi)** or **Section 9(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) [Reserved.]

(ii) On the first (1st) Business Day of each month (or, if requested by the Holder in its sole discretion, within one (1) Business Day of such request or, if earlier, immediately in the event an Event of Default has occurred as a result of a breach of **Section 7(D)**, **Section 7(E)**, **Section 7(G)**, **Section 7(R)**, **Section 7(W)** or **Section 7(Z)** hereof), the Company shall provide to the Holder and the Trustee a certification, in the form attached hereto as **Exhibit A**, 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 7(D)**, **Section 7(E)**, **Section 7(G)**, **Section 7(R)**, **Section 7(W)** and **Section 7(Z)** during the immediately preceding calendar month (or applicable period). Each such certification delivered pursuant to this Section 7(J)(ii) shall be referred to as a "**Compliance Certificate**." 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 Exchange 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 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 one hundred million (100,000,000) shares of Common Stock, which shall not be exclusively reserved for issuance pursuant to the Notes (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 7(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) *Minimum Cash Spend Availability*. On the last calendar day of each calendar month beginning with the calendar month ending December 31, 2023 (each a "**Cash Burn Measurement**

Date"), the Company's and its Wholly Owned Subsidiaries' Available Cash on the Cash Burn Measurement Date shall be greater than or equal to (A) the Company's and its Wholly Owned Subsidiaries' Cash and Cash Equivalents on the Quarterly Cash Burn Reference Date, less (B) the Permitted Quarterly Cash Burn.

(S) *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.

(T) 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 7(T)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Exchange Agreement.

(U) 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 Exchange 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.

(V) 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.

(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 Exchange 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 January 31, 2024, the Company shall establish a new ATM Program (or increase the Existing ATM Sales Program (as defined in the Securities Exchange Agreement)) such that the Company has an 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 January 31, 2024, 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 the Amendments to Security Documents, 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. As soon as reasonably practicable, but in any event before forty-five (45) days after the Issue Date of the Notes (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 and/or amendments to existing security documents, 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 Security Agreements as amended by the Amendments to Security Documents and the Ancillary Security Documents.

(AA) *Common Stock Issued Pursuant to this Note*.

(i) *Status of Shares Issued; 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 Shares Issued*. 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.

Section 8. 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 8** 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 9. 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)**, Partial Redemption Notice 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, Partial Redemption 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;

(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 9(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 7(D)**, **Section 7(E)**, **Section 7(F)**, **Section 7(G)**, **Section 7 (H)**, **Section 7(J)**, **Section 7(P)**, **Section 7(Q)**, **Section 7(R)**, **Section 7(W)**, **Section 7(Y)** or **Section 7(Z)** of this Note or with any of the term or conditions set forth in (x) that certain Letter Agreement Re: Modification of April Partial Redemption, dated as of March 31, 2024, entered into by and among the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC or (y) that certain Letter Agreement Re: Modification of July Partial Redemption, dated as of July 1, 2024, entered into by and among the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC;

(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) as long as any Notes remain outstanding, the Company at any time 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 7(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 Exchange Agreement). For clarity, an Event of Default under this **Section 9(A)(xiv)** 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;

(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 9(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 9(A)(xvi)** or **Section 9(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 9(A)(xvi)** or **Section 9(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 and the Trustee (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 or any date that an Event of Default Acceleration Amount is paid by the Company to the Holder, and (iv) the Maturity Date.

Section 10. 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 11. RANKING.

All payments due under this Note shall rank (i) *pari passu* with all Other Notes and all Subsequently Purchased 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 12. 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 and to the Trustee to protect the Trustee from any loss that it may suffer if this Note is replaced.

Section 13. 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: Bernard Chung
Email address: bernard.chung@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 9.2 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 Exchange 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 14. 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 15. 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 16. 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 17. AMENDMENTS

Except as set forth in Section 7.2(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 to provide for the assumption by a Successor Corporation of the obligations of the Company under this Note in accordance with **Section 8**. Section 7.1 of the Base Indenture shall not be applicable in connection with this Note.

Section 18. 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 19. 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 20. 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 21. 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 21** 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 21** 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 21** 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 Exchange 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 22. 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, Daily VWAPs, 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 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 23. 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 24. 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 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 7(D)** of the Note during the [calendar month ended [✧]][period beginning on [✧] and ending on [✧]].[1]

(ii) the Company satisfied the requirements of **Section 7(E)** of the Note during the [calendar month ended [✧]][period beginning on [✧] and ending on [✧]].

(iii) the Company satisfied the requirements of **Section 7(G)** of the Note during the [calendar month ended [✧]][period beginning on [✧] and ending on [✧]].

(iv) the Company satisfied the requirements of **Section 7(W)** of the Note during the calendar month ended [✧][period beginning on [✧] and ending on [✧]].

(v) the Company satisfied the requirements of **Section 7(R)** of the Note during the calendar month ended [✧][period beginning on [✧] and ending on [✧]].

(vi) the Company satisfied the requirements of **Section 7(Z)** of the Note during the calendar month ended [✧][period beginning on [✧] and ending on [✧]].

Capitalized terms used herein without definition shall have the meanings given to such terms in the Note.

VELO3D, INC.
By:
Name:
Title:

Date: _____

[1] NTD: Include this bracketed language for (i)-(vi) if the period is anything other than a month.

Exhibit 10.1

Certain portions of this exhibit have been redacted because the information is both (i) not material and (ii) the type that the registrant treats as private or confidential. Redacted information has been noted in this document with a placeholder identified by the mark "[*]".

Execution Copy

HIGH TRAIL CAPITAL LP
80 River Street, Suite 4C
Hoboken, NJ 07030

July 1, 2024

Velo3D, Inc.
2710 Lakeview Ct.
Fremont, CA 94538

Re: Modification of July Partial Redemption

To the addressees set forth above:

Reference is made to that certain (i) Securities Exchange Agreement (the "**Securities Exchange Agreement**"), dated as of November 27, 2023, by and between Velo3D, Inc., a Delaware corporation (the "**Company**"), High Trail Investments ON LLC ("**Holder 1**") and HB SPV I Master Sub LLC ("**Holder 2**" and together with Holder 1, the "**Holders**") pursuant to which the Company issued (a) Senior Secured Note due 2026, Certificate No. A-1, on November 28, 2023 in the principal amount of $23,000,000 ("**Note A-1**") and (b) Senior Secured Note due 2026, Certificate No. A-2, on November 28, 2023 in the principal amount of $34,500,000 ("**Note A-2**"), (ii) Note Amendment, dated as of December 27, 2023 (the "**First Note Amendment**"), by and between the Company and the Holders and acknowledged by U.S. Bank Trust Company, National Association, as trustee, pursuant to which Note A-1 and Note A-2 were amended, (iii) Second Note Amendment, dated as of March 31, 2024 (the "**Second Note Amendment**"), by and between the Company and the Holders and acknowledged by U.S. Bank Trust Company, National Association, as trustee, pursuant to which Note A-1 and Note A-2 were further amended (as amended by the First Note Amendment and the Second Note Amendment, "**Note 1**" and "**Note 2**," respectively, and collectively, the "**Notes**") and (iv) Letter Agreement, dated as of March 31, 2024 (the "**First Letter Agreement**"), by and between the Company and the Holders, pursuant to which the Company issued to the Holders certain warrants (the "**Prior Warrants**") to purchase shares of Common Stock as more fully described in the First Letter Agreement. Terms used but not defined herein shall have the respective meanings ascribed to them in the Securities Exchange Agreement.

For valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this letter agreement hereby agree as follows:

1. The Company and each Holder is executing and delivering this letter agreement with respect to the Notes in reliance upon the SEC Filings and with respect to the New Warrants (as defined below) in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the 1933 Act and Rule 506(b) of Regulation D as promulgated by the SEC under the 1933 Act.

2. Concurrently herewith, the Company shall deliver to the Holders a fully executed copy of an amendment to each of the Notes, in the form attached hereto as Exhibit A (the "**Third Note**

Amendment" and, together with the First Note Amendment and the Second Note Amendment, the "**Note Amendments**").

3. Concurrently with the execution of this letter agreement, the Company shall issue and deliver (i) to Holder 1 a warrant to purchase 660,000 shares of Common Stock at an exercise price of $3.00 in the form attached hereto as Exhibit B-1 (the "**Holder 1 Warrant**") and (ii) to Holder 2 a warrant to purchase 990,000 shares of Common Stock at an exercise price of $3.00 in the form attached hereto as Exhibit B-2 (the "**Holder 2 Warrant**" and together with the Holder 1 Warrant the "**New Warrants**" and together with the Prior Warrants, the "**Warrants**").

4. This letter agreement and the Third Note Amendment shall become effective upon (i) the payment by the Company of the reasonable and documented out-of-pocket expenses and costs of the Holders (in accordance with Section 5 hereof and Section 4.02 of the Third Note Amendment) through the date of this letter agreement and (ii) the issuance of the New Warrants to the Holders.

5. On the date hereof, the Company shall pay all reasonable and documented out-of-pocket expenses and costs of the Holders (including, without limitation, the reasonable and documented attorney fees and expenses of counsel for the Holders) in connection with the preparation, negotiation, execution and approval of this letter agreement and the transactions contemplated hereby.

6. The Company shall:

    a) file a registration statement with the SEC as soon as practicable but in no event later than thirty (30) days after the issuance date of the New Warrants (such date, the "**Filing Date**") to register the resale of all shares of Common Stock issued or issuable upon the exercise of the New Warrants (the "**Registrable Securities**"; *provided* that any such shares of Common Stock shall cease to be Registrable Securities upon the earliest of (A) when they are sold by a Holder (other than a sale to an affiliate of the Holder), whether pursuant to an effective registration statement under the Securities Act, pursuant to Rule 144 under the Securities Act or otherwise, (B) when they shall have ceased to be outstanding, and (C) when they may be sold pursuant to Rule 144 under the Securities Act without restriction on the basis of volume or manner of sale limitations) on Form S-1 or Form S-3 under the 1933 Act (providing for shelf registration of such Registrable Securities under SEC Rule 415) (the registration statement, including any preliminary prospectus, final prospectus, exhibit or amendment included in or relating to such registration statement being the "**Resale Registration Statement**");

    b) use its commercially reasonable efforts to cause the Resale Registration Statement to be declared effective as soon as practicable and in any event within 30 days of the filing thereof (or, in the event the staff of the SEC (the "**Staff**") reviews and has written comments to the Resale Registration Statement, within 60 days of the filing thereof), such efforts to include, without limiting the generality of the foregoing, preparing and filing with the SEC any financial statements or other information that is required to be filed prior to the effectiveness of the Resale Registration Statement;

c) not less than two (2) Trading Days (as defined in the Notes) prior to the filing of the Resale Registration Statement or any related prospectus or any amendment or supplement thereto, furnish via email to the Holders copies of all such documents proposed to be filed, which documents (other than any document that is incorporated or deemed to be incorporated by reference therein) will be subject to the review of the Holders. The Company shall reflect in each such document when so filed with the SEC such comments regarding the Holders and the plan of distribution as the Holders may reasonably and promptly propose (which shall not include demand, underwritten or "piggy back" registration rights) no later than two (2) Trading Days after the Holders have been so furnished with copies of such documents as aforesaid;

d) promptly prepare and file with the SEC such amendments and supplements to the Resale Registration Statement and the prospectus used in connection therewith as may be necessary to keep the Resale Registration Statement continuously effective and free from any material misstatement or omission to state a material fact therein until termination of such obligation as provided in Section 9 below, subject to the Company's right to suspend pursuant to Section 8 below;

e) furnish to the Holders such number of copies of prospectuses in conformity with the requirements of the 1933 Act and such other documents as the Holders may reasonably request, in order to facilitate the public sale or other disposition of all or any of the Registrable Securities by the Holders;

f) file such documents as may be required of the Company for normal securities law clearance for the resale of the Registrable Securities in such states of the United States as may be reasonably requested by the Holders and use its commercially reasonable efforts to maintain such blue sky qualifications during the period the Company is required to maintain effectiveness of the Resale Registration Statement; provided, however, that the Company shall not be required in connection with this Section 6(f) to qualify as a foreign corporation or as a dealer in securities or execute a general consent to service of process or subject itself to taxation in any jurisdiction in which it is not now so qualified or has not so consented;

g) upon notification by the SEC that the Resale Registration Statement will not be reviewed or is not subject to further review by the SEC, the Company shall within one (1) Trading Day following the date of such notification request acceleration of the Resale Registration Statement (with the requested effectiveness date to be not more than two (2) Trading Days later); provided, however, the Company may delay effectiveness if it would have been able to suspend use of the Registration Statement in accordance with Section 8 below if the Registration Statement were then effective;

h) upon notification by the SEC that the Resale Registration Statement has been declared effective by the SEC, the Company shall file the final prospectus under Rule 424 of the 1933 Act ("**Rule 424**") within the applicable time period prescribed by Rule 424;

i) advise the Holders promptly (and in any event within two (2) Trading Days thereof):

i. of the effectiveness of the Resale Registration Statement or any post-effective amendments thereto;

ii. of any request by the SEC for amendments to the Resale Registration Statement or amendments to the prospectus or for additional information relating thereto;

iii. of the issuance by the SEC of any stop order suspending the effectiveness of the Resale Registration Statement under the 1933 Act or of the suspension by any state securities commission of the qualification of the Registrable Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes; and

iv. of the existence of any fact and the happening of any event that makes any statement of a material fact made in the Resale Registration Statement, the prospectus and amendment or supplement thereto, or any document incorporated by reference therein, untrue, or that requires the making of any additions to or changes in the Resale Registration Statement or the prospectus in order to make the statements therein not misleading;

j) cause all Registrable Securities to be listed on each securities exchange, if any, on which equity securities by the Company are then listed; and

k) bear all expenses in connection with the procedures in this Section 6 and the registration of the Registrable Securities on the Resale Registration Statement and the satisfaction of the blue sky laws of such states (other than selling commissions and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for the Holders (except for the reasonable and documented fees and disbursements of counsel to the Holders in connection with the preparation and filing of the Resale Registration Statement and the fees and disbursements of counsel to the Holders to be paid by the Company as provided in Section 5 of this letter agreement)).

The Company's obligations to maintain the effectiveness of the Resale Registration Statement shall terminate on the earliest of (a) the one (1) year anniversary of the expiration date of the New Warrants, and (b) with respect to any Holder, the date on which such Holder ceases to own any Registrable Securities.

The Holders shall promptly provide such information as may reasonably be requested by the Company in connection with the preparation of the Resale Registration Statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act and in connection with the Company's obligation to comply with Federal and applicable state securities laws.

7. Registration Rights Indemnification.

a) The Company agrees to indemnify and hold harmless the Holders and their respective affiliates, partners, members, officers, directors, agents, brokers and representatives, and each person, if any, who controls a Holder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act (each, a "**Purchaser Party**" and collectively the "**Purchaser Parties**"), to the fullest extent permitted by applicable law, from and against any losses, claims, damages or liabilities (collectively, "**Losses**") to which they may become subject (under the 1933 Act or otherwise) insofar as such Losses (or actions or proceedings in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Resale Registration Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or arise out of any failure by the Company to fulfill any undertaking included in the Resale Registration Statement and the Company will, as incurred, reimburse the Purchaser Parties for any legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim; provided, however, that the Company shall not be liable in any such case to the extent that such Loss arises primarily out of, or is based primarily upon an untrue statement or omission made in the Resale Registration Statement in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Holders specifically for use in preparation of the Resale Registration Statement or any amendment or supplement thereto.

b) The Holders agree to indemnify and hold harmless the Company and its officers, directors, affiliates, agents, brokers and representatives and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act (each a "**Company Party**" and collectively the "**Company Parties**"), to the fullest extent permitted by applicable law, from and against any Losses to which the Company Parties may become subject (under the 1933 Act or otherwise), insofar as such Losses (or actions or proceedings in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Resale Registration Statement (or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in each case, on the effective date thereof), if, and only to the extent, such untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information furnished by or on behalf of the Holders specifically for use in preparation of the Resale Registration Statement, and the Holders will, as incurred, reimburse each Company Party for any legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim; provided, however, that in no event shall any indemnity under this Section 7 be greater in amount than the dollar amount of the net proceeds received by the Holders upon their sale of the Registrable Securities included in the Resale Registration Statement.

c) Promptly after receipt by any indemnified person of a notice of a claim or the beginning of any action in respect of which indemnity is to be sought against an indemnifying person pursuant to this Section 7, such indemnified person shall notify the indemnifying person in writing of such claim or of the commencement of such action, and, subject to the provisions hereinafter stated, in case any such action shall be brought against an indemnified person and such indemnifying person shall have been notified thereof, such indemnifying person shall be entitled to participate therein, and, to the extent that it shall wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified person. After notice from the indemnifying person to such indemnified person of its election to assume the defense thereof, such indemnifying person shall not be liable to such indemnified person for any legal expenses subsequently incurred by such indemnified person in connection with the defense thereof; provided, however, that if there exists or shall exist a conflict of interest that would make it inappropriate in the reasonable judgment of the indemnified person for the same counsel to represent both the indemnified person and such indemnifying person or any affiliate or associate thereof, the indemnified person shall be entitled to retain its own counsel at the expense of such indemnifying person. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). The indemnifying party shall not settle an action without the consent of the indemnified party, which consent shall not be unreasonably withheld, unless such settlement includes an unconditional release of such indemnified party for all liability on claims that are the subject matter of such proceeding and 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.

d) If after proper notice of a claim or the commencement of any action against the indemnified party, the indemnifying party does not choose to participate, then the indemnified party shall assume the defense thereof and upon written notice by the indemnified party requesting advance payment of a stated amount for its reasonable defense costs and expenses, the indemnifying party shall advance payment for such reasonable defense costs and expenses (the "**Advance Indemnification Payment**") to the indemnified party. In the event that the indemnified party's actual defense costs and expenses exceed the amount of the Advance Indemnification Payment, then upon written request by the indemnified party, the indemnifying party shall reimburse the indemnified party for such difference; in the event that the Advance Indemnification Payment exceeds the indemnified party's actual costs and expenses, the indemnified party shall promptly remit payment of such difference to the indemnifying party.

e) If the indemnification provided for in this Section 7 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative

fault of the indemnifying party on the one hand and of the indemnified party on the other, as well as any other relevant equitable considerations; provided, that in no event shall any contribution by an indemnifying party hereunder be greater in amount than the dollar amount of the proceeds received by such indemnifying party upon the sale of such Registrable Securities.

8. The Holders acknowledge that there may be times when the Company must suspend the use of the Resale Registration Statement until such time as an amendment to such Resale Registration Statement has been filed by the Company and declared effective by the SEC, or until such time as the Company has filed an appropriate report with the SEC pursuant to the 1934 Act. Each Holder hereby covenants that it will not sell any Registrable Securities pursuant to the Resale Registration Statement during the period commencing at the time at which the Company gives such Holder notice of the suspension of the use of the Resale Registration Statement and ending at the time the Company gives such Holder notice that it may thereafter effect sales pursuant to the Resale Registration Statement; provided, that such suspension periods shall in no event exceed forty-five (45) days in any 12-month period or thirty (30) days in any three-month period and that, in the good faith judgment of the Board of Directors of the Company, the Company would, in the absence of such delay or suspension hereunder, be required under state or federal securities laws to disclose any corporate development, a potentially significant transaction or event involving the Company, or any negotiations, discussions, or proposals directly relating thereto, in either case the disclosure of which would reasonably be expected to have an adverse effect upon the Company or its stockholders.

9. The obligations of the Company pursuant to Section 6 hereof shall cease and terminate, with respect to any Registrable Securities, upon such time as the New Warrants shall no longer be outstanding and the legends have been removed from such Registrable Securities.

10. By no later than 9:15 a.m., New York City time on the date hereof (or, if this letter agreement is executed after such time, no later than 9:15 a.m., New York City time on the following Trading Day), the Company shall either issue a press release or file a Current Report on Form 8-K disclosing all the material terms of the transactions contemplated by this letter agreement (the "**Public Disclosure Document**"). From and after the issuance or filing of the Public Disclosure Document, the Company shall have disclosed all material, nonpublic information (if any) provided to the Holders by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents and neither the Holders nor any of their respective officers, directors, employees or agents shall be in possession of any material, non-public information regarding the Company or any of its Subsidiaries.

11. This letter agreement may be executed by one or more of the parties on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this letter agreement and/or any document to be signed in connection with this letter agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), electronic deliveries or the keeping of records in

electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be. As used herein, "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record. 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 letter agreement shall have the same validity and effect as a signature affixed by the party's hand.

12. All questions concerning the construction, validity, enforcement and interpretation of this letter agreement shall be determined in accordance with the provisions of the Securities Exchange Agreement.

13. This letter agreement and the Warrants shall each constitute a Transaction Document for all purposes under the Securities Exchange Agreement. Except as amended herein, the Transaction Documents (including, for the avoidance of doubt, the Prior Warrants) are hereby ratified and reaffirmed and the Company acknowledges, confirms and agrees that all of the Company's obligations owing to the Holders under the Transaction Documents (including, for the avoidance of doubt, the Prior Warrants) are hereby reaffirmed and shall remain in full force and effect.

The agreement set forth in this letter agreement is limited to the extent specifically set forth above and shall in no way serve to amend or waive compliance with any terms, covenants or provisions of the Prior SPA, Securities Exchange Agreement, Note Amendments, First Letter Agreement, Prior Warrants, or the Notes, other than as expressly set forth above.

[Signature Pages Follow]

This letter agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument.

Very truly yours,

VELO3D, INC.

By:	/s/ Bradley Kreger
Name:	Bradley Kreger
Title:	Chief Executive Officer

AGREED AND ACCEPTED:

HIGH TRAIL INVESTMENTS ON LLC

By:	/s/ [*]
Name:	[*]
Title:	Authorized Signatory*

*Authorized Signatory
[*] LP
not individually, but solely as
Investment Advisor to High Trail Investments ON LLC

AGREED AND ACCEPTED:

HB SPV I MASTER SUB LLC

By: /s/ [*]
Name: [*]
Title: Authorized Signatory*

*Authorized Signatory
[*] LP
not individually, but solely as
Investment Advisor to HB SPV I Master Sub LLC

Exhibit A

Third Note Amendment

Exhibit B-1

Form of Holder 1 Warrant

Exhibit B-2

Form of Holder 2 Warrant