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

FORM 8-K

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

Date of Report (Date of earliest event reported): December 31, 2018

WORKHORSE GROUP INC.
(Exact name of registrant as specified in its charter)

Nevada	000-53704	26-1394771
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification Number)

100 Commerce Drive, Loveland, Ohio 45140
(Address of principal executive offices) (zip code)

513-297-3640
(Registrant's telephone number, including area code)

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

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

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

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

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

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

☐ 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.

Item 1.02 Termination of a Material Definitive Agreement.

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

Item 3.02 Unregistered Sales of Equity Securities.

On December 31, 2018, Workhorse Group Inc. (the "Company") entered into a Credit Agreement (the "Credit Agreement"), among the Company, as borrower, Marathon Asset Management, LP, on behalf of certain entities it manages, as lenders (collectively, with their permitted successors and assignees, the "Lenders"), and Wilmington Trust, National Association, as the agent ("Wilmington"). The Credit Agreement provided the Company with a $10 million tranche of term loans (the "Tranche One Loans") which may not be re-borrowed following repayment and (ii) a $25 million tranche of term loans which may be re-borrowed following repayment (the "Tranche Two Loans" together with the Tranche One Loans, the "Loans"). The Company used the proceeds for the Tranche One Loans (x) to pay off a loan provided by Arosa Opportunistic Fund LP ("Arosa") in the principal amount of $7.8 million plus interest and (y) for working capital purposes. Draws from the Tranche Two Loans will be used in connection with vehicle production and are subject to the Company's receipt of purchase orders.

The Company's ability to borrow amounts under the Credit Agreement is conditioned upon its compliance with specified covenants, including certain reporting covenants and financial covenants that, in addition to other items, require the Company to maintain (i) minimum liquidity of at least $4 million at all times on or after March 31, 2019, (ii) a maximum total leverage ratio (ratio of total debt borrowed by the Company to EBITDA for the four consecutive fiscal quarters most recently ended, subject to certain adjustments set forth in the Credit Agreement) not to exceed 4.50:1.00 on the last day of the quarter ended September 30, 2019, which total leverage ratio is adjusted for subsequent quarters as set forth in the Credit Agreement and (iii) a maximum debt service coverage ratio (ratio of EBITDA (for the four consecutive fiscal quarters most recently ended, subject to certain adjustments set forth in the Credit Agreement) to interest expense and payments for operating leases) not to exceed 1.25:1.00 on the last day of the quarter ended September 30, 2019, which debt service coverage ratio is adjusted for subsequent quarters as set forth in the Credit Agreement. In the event the Company breaches the total leverage ratio or the debt service coverage ratio covenants, the Company may cure such breach by raising capital through the sale of equity, which capital will be added on a dollar-for-dollar basis to the calculation of EBITDA for purposes of such test period to determine compliance with the financial covenant. In each consecutive four fiscal quarter period, equity cures can only be made for two fiscal quarters, and only four equity cures are allowed during the term of the Credit Agreement. The capital raised in connection with such equity cure must be used to repay the Loans.

In addition, the Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among others, restrictions on the Company's ability to dispose of property, enter into mergers, acquisitions or other business combination transactions, incur additional indebtedness, grant liens, pay dividends and make certain other restricted payments. The representations, warranties and covenants contained in the Credit Agreement were made solely for the benefit of the parties to the Credit Agreement and their permitted successors and assignees. In addition, such representations, warranties and covenants (i) are intended not as statements of fact, but rather as a way of allocating the risk between the parties to the Credit Agreement, (ii) have been qualified by reference to confidential disclosures made by the parties in connection with the Credit Agreement and (iii) may apply standards of materiality in a way that is different from what may be viewed as material by shareholders of, or other investors in, the Company. Accordingly, the Credit Agreement is included with this filing only to provide investors with information regarding the terms of the transactions contemplated thereby, and not to provide investors with any other factual information regarding the Company. Shareholders should not rely on the representations, warranties and covenants contained in the Credit Agreement or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties contained in the Credit Agreement may change after the date of the Credit Agreement, which subsequent information may or may not be fully reflected in public disclosures.

The Tranche One Loans, and both the drawn and undrawn portions of the Tranche Two Loan, will bear interest at a rate per annum (based on a year of 360 days) equal to LIBOR (as defined in the Credit Agreement) plus 7.625%, which interest is payable quarterly commencing March 5, 2019.

The Credit Agreement contains customary events of default, including for non-payment, misrepresentation, breach of covenants, defaults under other material indebtedness, material adverse change, bankruptcy, change of control and material judgments.

The Loans mature on the third anniversary of the closing date. The Company is required to repay a portion of the Tranche One Loans with $500,000 installment payments on each of June 30, 2020, December 31, 2020 and June 30, 2021. Upon the occurrence and during the continuance of an event of default, the Lenders may declare all outstanding amounts thereunder immediately due and payable, and may terminate commitments to make any additional advances under the Tranche Two Loans. The Tranche Two Loans are required to be prepaid in an amount equal to the payments received from the subject purchase orders. The Company is also obligated to repay the Loans with a specified percentage of the net cash proceeds the Company receives in connection with certain dispositions of assets, casualty events, incurrences of debt and any issuances of capital stock (other than issuances of capital stock during the first 9 months after closing). The Company is required to prepay the Loans utilizing 100% of the net proceeds from any casualty event or the issuance or incurrence of debt and 50% of the net proceeds from any disposition. If the Company receives net cash proceeds from the issuance of capital stock after the nine-month anniversary of the closing date, the Company is required to prepay the Loans utilizing 35% of the net cash proceeds from such issuance. With limited exceptions, if the Company prepays any portion of the Tranche One Loans or the Tranche Two Loans (with the concomitant termination of the portion of the commitments under the Tranche Two Loans that is repaid) during the 12 months following the closing date, it is required to pay 100% of the interest that would have been due on such prepaid Loans if the prepaid amounts had been outstanding for a period of 12 months after the date of prepayment. If such prepayment occurs during the period beginning after the 12 month anniversary of the closing date and continuing through the 18 month anniversary of the closing date, the Company is required to pay 50% of the interest that would have been due on such prepaid Loans for the 12 month period following the date of such prepayment on a prorated basis.

The Company, the Company's subsidiaries and Wilmington, as agent for the Lenders, entered into a Security Agreement, a Pledge Agreement and a Guarantee, among other loan documents, providing that the Company's obligations to the Lenders are secured by a first priority security interest in substantially all of the Company's and its subsidiaries' tangible and intangible assets including the Company's real property located in Loveland, Ohio and Union City, Indiana.

For so long as the Credit Agreement is in effect, the Lenders holding a majority of the Loans and unused commitments for the Tranche Two Loan will be entitled to have one representative acceptable to the Company attend all meetings of the Company's board of directors (and any committees thereof), in a non-voting observer capacity, and such representative will receive copies of all notices, minutes, consents and other materials the Company provides to its directors in connection with such meeting. The Company may exclude such representative from access to any of such materials or meetings or portions thereof if it believes that any such material or portion thereof is a trade secret or similar confidential information or such exclusion is necessary to preserve the attorney-client privilege.

In accordance with the Credit Agreement, the Company issued each Lender a Common Stock Purchase Warrant to purchase, in the aggregate, 8,053,390 shares of common stock of the Company at an exercise price of $1.25 per share exercisable in cash only for a period of three years and then for cash or cashless thereafter (collectively, the "Initial Warrants"). Until the later of the repayment of all obligations owed to the Lenders or two years from the closing date, the Company will be required to issue additional Common Stock Purchase Warrants (the "Additional Warrants") to the Lenders equal to 10%, in the aggregate, of any additional issuance, subject to certain exceptions, on substantially the same terms and conditions of the Initial Warrants, except that (i) the applicable expiration date thereof shall be five years from the issuance date of the applicable warrant, (ii) the initial exercise price shall be a price equal to the price per share of common stock used in the relevant issuance multiplied by 110% and (iii) the holder shall be entitled to exercise the warrant on a cashless exercise at any time the warrant is exercisable.

The Company relied on the exemption from registration contained in Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated under Regulation D thereunder, for the issuance of the Initial Warrants and the shares of common stock issuable upon exercise of the Initial Warrants. In connection with the issuance of each Initial Warrant, each Lender represented that it is an "accredited investor" as defined in Regulation D of the Securities Act and that the securities purchased by it will be acquired solely for its own account for investment and not with a view to or for sale or distribution of the applicable Initial Warrant or any part thereof. This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall such securities be offered or sold in the United States absent registration or an applicable exemption from the registration requirements and certificates evidencing such shares contain a legend stating the same.

As a condition to the closing of the Credit Agreement, the Company entered into a Registration Rights Agreement with the Lenders (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, the Company is required, not later than 90 days following the execution of the Credit Agreement, to file a shelf registration statement on Form S-3 with the SEC with respect to the resale of the shares of common stock issuable upon exercise of the Initial Warrants or any Additional Warrant, if any (the "Warrant Shares"). The Company is required to use its reasonable best efforts to have such registration statement declared effective as soon as reasonably practicable but in no event no later than 180 days after the closing date of the Credit Agreement. The Company is required to keep such shares registered for as long as they are deemed Registrable Securities (as defined in the Registration Rights Agreement). In addition, any holder of Registrable Securities (as defined in the Registration Rights Agreement) will have the right, subject to certain limitations, to request an underwritten takedown of any Warrant Shares. Any holder of Registrable Securities (as defined in the Registration Rights Agreement) will have the right, on up to four occasions, to demand that the Company file a registration statement with the SEC with respect to the resale of the Warrant Shares, subject to certain limitations. In addition, any holder of Registrable Securities (as defined in the Registration Rights Agreement) is entitled to unlimited piggyback registration rights with respect to the registration of any equity securities of the Company, subject to certain limitations. These registration rights are subject to customary conditions and limitations regarding cutbacks and indemnification, among others. Subject to certain exceptions, the Company is generally required to bear all expenses of such registration, other than underwriting discounts and commissions and certain travel expenses.

The Company, at closing, paid a fee equal to 1.0% of the Tranche One Loans and the commitment for the Tranche Two Loans. Upon the first drawing of any Tranche Two Loans, the Company is required to pay another fee equal to 1.0% of the Tranche One Loans and the commitment for the Tranche Two Loans.

In connection with entry into the Credit Agreement, the Company agreed to pay Cowen & Company, LLC a cash fee equal to 2% of the gross proceeds received from the Lenders on the earlier of the next capital raise and March 31, 2019.

On December 31, 2018, concurrently with the closing of the Credit Agreement and the initial borrowing of the Tranche One Loans, the Company utilized a portion of the proceeds from the Tranche One Loans to repay in full all outstanding amounts under the Company's existing Loan Agreement, dated July 6, 2018, as amended to date, by and among the Company, and Arosa Opportunistic Fund LP, as lender (the "Existing Loan Agreement") and terminated all commitments by Arosa to extend further credit thereunder and all guarantees and security interests granted by the Company to Arosa in connection therewith. Pursuant to the Existing Loan Agreement, the Company issued Arosa a Warrant to purchase 894,821 shares of common stock exercisable at $1.25 per share. As the full amount of all outstanding amounts under the Company's Existing Loan Agreement have been repaid in full, the Company is no longer required to issue additional warrants to Arosa going forward.

The description of the terms and conditions of the agreements above do not purport to be complete and are qualified in their entirety by the full text of the form of the agreements described above, which are filed as exhibits to this Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Form of Common Stock Purchase Warrants, each dated December 31, 2018
10.1	Credit Agreement among Workhorse Group Inc., as the Borrower, Marathon Structured Product Strategies Fund, LP, Marathon Blue Grass Credit Fund, LP, Marathon Centre Street Partnership, L.P. and TRS Credit Fund, LP, as the Lenders, and Wilmington Trust, National Association, as the Agent, dated December 31, 2018
10.2	Security Agreement, dated December 31, 2018, among Workhorse Group Inc., a Nevada corporation, Workhorse Technologies Inc., an Ohio corporation, Workhorse Properties Inc., an Ohio corporation, Workhorse Motor Works Inc, an Indiana corporation, Surefly, Inc., a Delaware corporation, and Wilmington Trust, National Association, in its capacity as agent
10.3	Pledge Agreement, dated December 31, 2018, among Workhorse Group Inc., a Nevada corporation, Workhorse Technologies Inc., an Ohio corporation, Workhorse Properties Inc., an Ohio corporation, Workhorse Motor Works Inc, an Indiana corporation, Surefly, Inc., a Delaware corporation, Wilmington Trust, National Association, in its capacity as agent
10.4	Guarantee, dated December 31, 2018, by Workhorse Technologies Inc., an Ohio corporation, Workhorse Properties Inc., an Ohio corporation, Workhorse Motor Works Inc, an Indiana corporation, and Surefly, Inc., a Delaware corporation
10.5	Registration Rights Agreement, dated December 31, 2018, among Workhorse Group Inc., Marathon Structured Product Strategies Fund, LP, Marathon Blue Grass Credit Fund, LP, Marathon Centre Street Partnership, L.P. and TRS Credit Fund, LP

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.

WORKHORSE GROUP INC.

Date: January 2, 2019

By: /s/ Paul Gaitan
Name: Paul Gaitan
Title: Chief Financial Officer

THIS COMMON STOCK PURCHASE WARRANT AND THE SHARES THAT MAY BE PURCHASED HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY STATE. THIS COMMON STOCK PURCHASE WARRANT HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO DISTRIBUTION, AND THIS COMMON STOCK PURCHASE WARRANT AND THE SHARES THAT MAY BE PURCHASED HEREUNDER MAY NOT BE SOLD OR OFFERED FOR SALE IN VIOLATION OF THE SECURITIES ACT OF 1933 OR APPLICABLE STATE SECURITIES LAWS.

WORKHORSE GROUP INC.

COMMON STOCK PURCHASE WARRANT

WHEREAS, on the date hereof, the Company and the Holder and certain other parties thereto are entering into that certain Credit Agreement (as amended, modified or supplemented, the "Credit Agreement") pursuant to which the Holder will lend to the Company certain term loans in an aggregate principal amount of $35,000,000.

WHEREAS, in connection with the entry into the Credit Agreement, the Company also wishes to issue to the Holder this Warrant and the Holder wishes to receive this Warrant; and

WHEREAS, the Company and the Holder desire to set forth herein the rights and obligations of the Company and the Holder both prior to and following the exercise of the Warrant.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby issues this Warrant to the Holder, and the Company and the Holder hereby agree as follows:

Date of Issuance: [●] [●], 2018 Certificate No. [●]

THIS IS TO CERTIFY that [●], a [●] [●], and its permitted transferees, successors and permitted assigns (the "Holder"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, is the holder of this Warrant (the or this "Warrant") entitling the Holder to purchase from **WORKHORSE GROUP INC.**, a Nevada corporation (the "Company"), at the price of $1.25 per share (the "Exercise Price"), at any time after the date hereof (the "Commencement Date") and expiring on [●][1] (the "Expiration Date"), [●][2] shares of the fully paid and non-assessable common stock, par value $0.001 per share, of the Company (as such number may be adjusted as provided herein). The [●] shares of Common Stock (as hereinafter defined) which may be purchased pursuant to this Warrant are referred to herein as the "Aggregate Number".

The Aggregate Number and Exercise Price set forth above shall also be adjusted under certain conditions specified in Section 5 of this Warrant. Capitalized terms used herein shall have the meanings ascribed to such terms in Section 12 hereof, unless otherwise defined herein.

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1 Note to Draft: Date to be 5 years from issuance.

2 Note to Draft: Number of shares to equal 10% of fully diluted interests of the Company.

SECTION 1. The Warrant; Transfer and Exchange.

(a) The Warrant. This Warrant and the rights and privileges of the Holder hereunder may be exercised by the Holder in whole or in part as provided herein, shall survive any termination of the Credit Agreement, and, as more fully set forth in Sections 1(b) and 7 hereof, may, subject to the terms of this Warrant, be transferred by the Holder to any other Person or Persons at any time or from time to time, in whole or in part, regardless of whether the Holder retains any or all rights under the Credit Agreement.

(b) Transfer and Exchanges. The Company shall initially record this Warrant on a register to be maintained by the Company and, subject to Section 8 hereof, from time to time thereafter shall reflect the transfer of this Warrant on such register when surrendered for transfer in accordance with the terms hereof and properly endorsed, accompanied by appropriate instructions, and further accompanied by payment in cash or by check, bank draft or money order payable to the order of the Company, in United States currency, of an amount equal to any stamp or other tax or governmental charge or fee required to be paid in connection with the transfer thereof. Upon any such transfer, a new warrant or warrants shall be issued to the transferee and the Holder (in the event this Warrant is only partially transferred) and the surrendered warrant shall be cancelled. This Warrant may be exchanged at the option of the Holder, when surrendered at the Principal Office of the Company, for another warrant or other warrants of like tenor and representing in the aggregate the right to purchase a like number of shares of Common Stock.

SECTION 2. Exercise.

(a) Right to Exercise. At any time after the Commencement Date and on or before the Expiration Date, the Holder, in accordance with the terms hereof, may exercise this Warrant, in whole at any time or in part from time to time, by delivering this Warrant to the Company during normal business hours on any Business Day at the Company's Principal Office, together with the Notice of Exercise, in the form attached hereto as Exhibit A and made a part hereof (the "Notice of Exercise"), duly executed, and payment of the Exercise Price per share for each share purchased, as specified in the Notice of Exercise. The aggregate Exercise Price (the "Aggregate Exercise Price") to be paid for the shares to be purchased (the "Exercise Amount") shall equal the product of (i) the Exercise Amount *multiplied by* (ii) the Exercise Price. If the Expiration Date is not a Business Day, then this Warrant may be exercised on the next succeeding Business Day.

(b) Payment of the Aggregate Exercise Price. Payment of the Aggregate Exercise Price shall be made to the Company in cash or other immediately available funds or, following [●][3] as provided in Section 2(c), or a combination thereof. In the case of payment of all or a portion of the Aggregate Exercise Price pursuant to Section 2(c), the direction by the Holder to make a "Cashless Exercise" shall serve as accompanying payment for that portion of the Exercise Price.

(c) Cashless Exercise. At any time after [●][4], the Holder shall have the option to provide written notice to the Company at the time of exercise of this Warrant that the Holder elects to make a "Cashless Exercise" of this Warrant, the Company shall deliver to the Holder (without payment by the Holder of any Exercise Price in cash) that number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A - B)}{A}$$

[3] Note to Draft: Date to be third anniversary of warrant issue date.

[4] Note to Draft: Date to be third anniversary of warrant issue date.

Where

X = The number of Warrant Shares to be issued to the Holder.

Y = The number of Warrant Shares purchasable under this Warrant (at the date of such calculation) or, if only a portion of this Warrant is being exercised, the number of Warrant Shares purchasable under the portion of this Warrant being exercised (at the date of such calculation).

A = The Fair Market Value Per Share.

B = The Exercise Price (as adjusted to the date of such calculation).

(d) Issuance of Shares of Common Stock. Upon receipt by the Company of this Warrant at its Principal Office in proper form for exercise, and accompanied by the Notice of Exercise and payment of the Aggregate Exercise Price as aforesaid, the Holder shall be deemed to be the holder of record of the shares of Common Stock issuable upon such exercise, notwithstanding that certificates representing such shares of Common Stock may not then be actually delivered. Within 10 Business Days after such surrender of this Warrant, delivery of the Notice of Exercise and payment of the Aggregate Exercise Price as aforesaid, the Company shall cause its transfer agent to issue the Warrant Shares so purchased to the Holder in book-entry format by crediting the account of the Holder's 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 registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of the Warrants) and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder. Any reference in this Warrant to the issuance of a certificate or the certificates representing the Warrant Shares shall also be deemed a reference to the book-entry issuance of such Warrant Shares.

(e) Fractional Shares. The Company may, but shall not be required to, deliver fractions of shares of Common Stock upon exercise of this Warrant. If any fraction of a share of Common Stock would be deliverable upon an exercise of this Warrant, the Company may, in lieu of delivering such fraction of a share of Common Stock, make a cash payment to the Holder in an amount equal to the same fraction of the Fair Market Value Per Share.

(f) Partial 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.

SECTION 3. Payment of Taxes. The Company shall pay all stamp taxes attributable to the initial issuance of shares or other securities issuable upon the exercise of this Warrant or issuable pursuant to Section 5 hereof, excluding any tax or taxes which may be payable because of the transfer involved in the issuance or delivery of any certificates for shares or other securities issued or delivered upon exercise of this Warrant in a name other than that of the Holder.

SECTION 4. Replacement Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall issue and deliver in exchange and substitution for and upon cancellation of the mutilated Warrant, or in lieu of and in substitution for the Warrant lost, stolen or destroyed, a new Warrant of like tenor and representing an equivalent right or interest. This Warrant is exchangeable, upon the surrender hereof at the Principal Office of the Company, for a new Warrant or Warrants of like tenor and terms and representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender.

SECTION 5. Adjustments to the Aggregate Number and the Exercise Price.

In order to prevent dilution of the purchase rights granted under this Warrant, the Exercise Price and the Aggregate Number shall be subject to adjustment from time to time as provided in this Section 5 (in each case, after taking into consideration any prior adjustments pursuant to this Section 5).

(a) Dividends and Distributions. Subject to the provisions of this Section 5, if the Company shall, at any time or from time to time after the Commencement Date, make or declare, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or any other distribution payable in securities of the Company (other than a dividend or distribution of shares of Common Stock, Options or Convertible Securities in respect of outstanding shares of Common Stock), cash or other property, then, and in each such event, provision shall be made so that the Holder shall receive upon exercise of the Warrant, in addition to the Aggregate Number, the kind and amount of securities of the Company, cash or other property which the Holder would have been entitled to receive had the Warrant been exercised in full into Warrant Shares on the date of such event and had the Holder thereafter, during the period from the date of such event to and including the date of exercise, retained such securities, cash or other property receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section 5 with respect to the rights of the Holder; *provided*, that no such provision shall be made if the Holder receives, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities, cash or other property as the Holder would have received if the Warrant had been exercised in full into Warrant Shares on the date of such event.

(b) Adjustment to Exercise Price and Warrant Shares Upon Dividend, Subdivision or Combination of Common Stock. If the Company shall, at any time or from time to time after the Commencement Date, (i) pay a dividend or make any other distribution upon the Common Stock or any other capital stock of the Company payable in shares of Common Stock or in Options or Convertible Securities, or (ii) subdivide (by any stock split, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to any such dividend, distribution or subdivision shall be proportionately reduced and the Aggregate Number shall be proportionately increased. If the Company at any time combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall be proportionately increased and the Aggregate Number shall be proportionately decreased. Any adjustment under this Section 5(b) shall become effective at the close of business on the date the dividend, subdivision or combination becomes effective.

(c) Adjustment to Exercise Price and Warrant Shares Upon Reorganization or Reclassification. In the event of any (i) capital reorganization of the Company, (ii) reclassification of the stock of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares) or (iii) other similar transaction (other than any such transaction covered by Section 5(b)), in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, each Warrant shall, immediately after such reorganization, reclassification or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Warrant Shares then exercisable under this Warrant, be exercisable for the kind and number of shares of stock or other securities or assets of the Company or of the successor Person resulting from such transaction to which the Holder would have been entitled upon such reorganization, reclassification or similar transaction if the Holder had exercised this Warrant in full immediately prior to the time of such reorganization, reclassification or similar transaction and acquired the applicable number of Warrant Shares then issuable hereunder as a result of such exercise (without taking into account any limitations or restrictions on the exercisability of this Warrant); and, in such case, appropriate adjustment (in form and substance satisfactory to the Holder) shall be made with respect to the Holder's rights under this Warrant to insure that the provisions hereof shall thereafter be applicable, as nearly as possible, to this Warrant in relation to any shares of stock, securities or assets thereafter acquirable upon exercise of this Warrant. The provisions of this Section 5(c) shall similarly apply to successive reorganizations, reclassifications or similar transactions. Notwithstanding anything to the contrary contained herein, with respect to any corporate event or other transaction contemplated by the provisions of this Section 5(c), the Holder shall have the right to elect, prior to the consummation of such event or transaction, to give effect to the exercise rights contained in Section 2 instead of giving effect to the provisions contained in this Section 5(c) with respect to this Warrant.

(d) Other Adjustment Events. Subject to the prior consent of the Principal Market, the Company may at any time reduce the Exercise Price or increase the Aggregate Number to an amount and for any period of time deemed appropriate by the board of directors of the Company.

(e) Certificate as to Adjustment.

(i) As promptly as reasonably practicable following any adjustment of the Exercise Price or the Aggregate Number, but in any event not later than three Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Company of a written request by the Holder, but in any event not later than three Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer certifying the Exercise Price then in effect and the Aggregate Number or the amount, if any, of other shares of stock, securities or assets then issuable upon exercise of the Warrant.

(f) Notices. In the event:

(i) that the Company shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon exercise of the Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(ii) of any capital reorganization of the Company, any reclassification of the Common Stock of the Company, any consolidation or merger of the Company with or into another Person, or sale of all or substantially all of the Company's assets to another Person; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, and in each such case, the Company shall send or cause to be sent to the Holder at least five Business Days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, meeting or consent or other right or action, and a description of such dividend, distribution or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Company shall close or a record shall be taken with respect to which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon exercise of the Warrant) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Warrant and the Warrant Shares.

(g) Treatment of Warrant upon a Change of Control. If, at any time while this Warrant is outstanding, the Company consummates a Change of Control, then the Holder shall have the right thereafter to receive, upon exercise of this Warrant (in whole at any time or in part from time to time), the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Change of Control if it had been, immediately prior to such Change of Control, a holder of the number of Warrant Shares then issuable upon such exercise of this Warrant (the "Alternate Consideration"). The Company shall not affect any such Change of Control unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Warrant.

SECTION 6. Purchase Rights. In addition to any adjustments pursuant to Section 5 above, if at any time the Company grants, issues or sells any shares of Common Stock, Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of Common Stock (the "Purchase Rights"), then the Holder shall be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder would have acquired if the Holder had held the number of Warrant Shares acquirable upon complete exercise of this Warrant 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 Common Stock are to be determined for the grant, issue or sale of such Purchase Rights. Anything herein to the contrary notwithstanding, the Holder shall not be entitled to the Purchase Rights granted herein with respect to any Excluded Issuance.

SECTION 7. Issuance of Additional Warrant Securities. If at any time after the Commencement Date and prior to the later to occur of (a) repayment in full in cash of the Obligations (as defined in the Credit Agreement) and (b) [●][5] the Company shall issue or sell any shares of Common Stock or Common Stock Equivalents (including the issuance or sale of shares of Common Stock or Common Stock Equivalents owned or held by or for the account of the Company) by any means other than an Excluded Issuance, then, on the date of equity issuance (or, in the case of any securities sold pursuant to the Sales Agreement representing in the aggregate no more than 2.5% of fully-diluted capital stock of the Company, unless the Holder shall request the applicable new warrant be issued on the date of such issuance, within two Business Days of the end of each fiscal quarter), the Company shall issue to the Holder a new warrant to purchase such number of shares of Common Stock of the Company calculated in accordance with the following sentence on substantially the same terms and conditions set forth herein, except that (i) the applicable expiration date shall be five years from the issuance date of the applicable warrant, (ii) the initial exercise price shall be a price equal to the price per share of Common Stock used in the relevant issuance multiplied by 110% and (iii) the Holder shall be entitled to exercise the warrant in a cashless exercise at any time the warrant is exercisable. The number of shares of Common Stock which may be purchased pursuant to the new warrant shall equal (x) the number of shares of Common Stock equal to 10% of the fully-diluted equity interests of the Company immediately following the equity issuance described above in this Section 7, after taking into effect any adjustments to any warrants or other securities and the issuance of any other warrants or other securities required as a result of such issuance *minus* (y) the Aggregate Number then in effect (before giving effect to any adjustments pursuant to Section 5).

[5] Note to Draft: Date to be the date that is 24 months following issuance.

SECTION 8. Transfers of the Warrant Securities.

(a) Generally. Subject to compliance with applicable federal and state securities Laws and the restrictions set forth in this Section 8, the Holder may transfer this Warrant and the Warrant Shares in whole or in part to any Person, and, upon the reasonable request of the Holder, the Company agrees that it shall use commercially reasonable efforts to promptly assist the Holder in making any such transfer in compliance with any applicable federal and state securities Laws. This Warrant has not been, and the Warrant Shares at the time of their issuance may not be, registered under the Securities Act. For a transfer of this Warrant as an entirety by Holder, upon surrender of this Warrant to the Company, together with the Notice of Assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Holder, the Company shall issue a new Warrant of the same denomination to the assignee. For a transfer of this Warrant with respect to a portion of the Warrant Shares purchasable hereunder, upon surrender of this Warrant to the Company, together with the Notice of Assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Holder, the Company shall issue a new Warrant to the assignee, in such denomination as shall be requested by the Holder, and shall issue to the Holder a new Warrant covering the number of shares in respect of which this Warrant shall not have been transferred.

(b) Representation by the Holder. The Holder, by its acceptance of this Warrant, represents and warrants to the Company:

(i) this Warrant has been acquired by the Holder, and any Warrant Shares to be acquired by it will be acquired, for the account of the Holder for investment purposes for its own account and not with a view to or for sale in connection with any distribution or reselling thereof in a transaction that would violate the Securities Act or the securities laws of any state of the United States or any other applicable jurisdiction;

(ii) the Holder is an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Securities Act;

(iii) the Holder is experienced in evaluating and investing in companies engaged in businesses similar to that of the Company; the Holder understands that investment in the Warrant (and any Warrant Shares it acquires) involves substantial risks; and it has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Warrant (and any Warrant Shares it acquires) and it is able to bear the economic risk of that investment;

(iv) prior and as a condition to the sale or transfer of the Warrant Shares issuable upon exercise of this Warrant, the Holder shall furnish to the Company such customary certificates, representations, agreements and other information as the Company or the Company's transfer agent reasonably may require to confirm that such sale or transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, unless such Warrant Shares are being sold or transferred pursuant to an effective registration statement; and

(v) the Holder understands that this Warrant and the Warrant Shares are characterized as "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 this Warrant and the Warrant Shares may be resold without registration under the Securities Act only in certain limited circumstances. In this connection, the Holder represents that it is familiar with Rule 144 under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(c) Transfer Restrictions.

(i) Subject to compliance with applicable federal and state securities Laws and Section 8 hereof, this Warrant (or any warrants represented hereby) may only be sold, in whole or in part, (A) pursuant to an effective registration statement covering the re-sale by the Holder of this Warrant under the Securities Act or (B) pursuant to an exemption from registration under the Securities Act.

(ii) Any Warrant Shares may only be sold (A) pursuant to an effective registration statement under the Securities Act or (B) pursuant to an exemption from registration under the Securities Act. The Holder acknowledges that the Company may place a restrictive legend on any Warrant Shares issued upon exercise in order to comply with applicable securities Laws, unless such Warrant Shares are sold pursuant to an effective registration statement or are otherwise freely tradable under Rule 144 of the Securities Act.

SECTION 9. Covenants.

Until the later of (a) the Expiration Date and (b) the time when the Holder no longer holds any Warrant Shares, the Company hereby covenants to the Holder that:

(a) Validly Issued Shares. All shares of Common Stock that may be issued upon exercise of this Warrant, assuming full payment of the Aggregate Exercise Price (including those issued pursuant to Section 5 hereof) shall, upon delivery by the Company, be duly authorized and validly issued, fully paid and nonassessable, free from all stamp taxes, liens and charges with respect to the issue or delivery thereof and otherwise free of all other security interests, encumbrances and claims (other than security interests, encumbrances and claims to which the Holder is subject prior to or upon the issuance of the applicable Warrant Shares, restrictions under applicable federal and/or state securities Laws and other transfer restrictions described herein).

(b) Reservation of Shares. The Company shall at all times reserve and keep available out of the aggregate of its authorized but unissued shares, free of preemptive rights, such number of its duly authorized shares of Common Stock as shall be sufficient to enable the Company to issue Common Stock upon exercise of this Warrant.

(c) Affirmative Actions to Permit Exercise and Realization of Benefits. If any shares of Common Stock reserved or to be reserved for the purpose of the exercise of this Warrant, or any shares or other securities reserved or to be reserved for the purpose of issuance pursuant to Section 5 hereof, require registration with or approval of any Governmental Authority under any federal or state Law (other than securities Laws) before such shares or other securities may be validly delivered upon exercise of this Warrant, then the Company covenants that it will, at its sole expense, secure such registration or approval, as the case may be (including but not limited to approvals or expirations of waiting periods required under the Hart Scott Rodino Antitrust Improvements Act).

(d) Listing of the Warrant Shares. To the extent applicable, the Company shall promptly secure the listing of the Warrant Shares on the Principal Market after such time as the Warrant Shares are no longer required to contain the legend referred to in Section 8, and provide to the Holder evidence of such listing.

(e) Compliance with Rule 144. The Company shall timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. As long as the Holder owns any Warrant Securities, if the Company is not required to file reports pursuant to such Laws, it will prepare and furnish to the Holder and make publicly available in accordance with Rule 144 such information as is required for the Holder to sell Warrant Securities under Rule 144. So long as the Warrant Securities are not registered under the Securities Act, the Company further covenants that it will take such further action as the Holder may reasonably request and is within the Company's control, all to the extent required from time to time to enable the Holder to sell such Warrant Securities without registration under the Securities Act within the limits of the exemptions provided by Rule 144.

(f) Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of this Warrant in a manner that would require the registration under the Securities Act of the sale of this Warrant to the Holder or any assignee of the Holder.

(g) Registration Rights Agreement. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, take any action in violation of the terms of the Registration Rights Agreement entered into as of the date hereof with respect to the Warrant Securities.

(h) Noncircumvention. The Company shall not, by amendment of its charter, bylaws or any other organizational documents, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issuance 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, and will at all times in good faith carry out all of the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant.

(i) Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its subsidiaries, the Company shall contemporaneously with any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its subsidiaries.

(j) Sales Agreement Issuances. The Company will provide written notice to the Holder at the time of any sale of equity securities pursuant to the Sales Agreement.

SECTION 10. Representations and Warranties by the Company. The Company represents and warrants to the Holder that as of the Commencement Date:

(a) The Company (a) is duly organized and validly existing under the Laws of its jurisdiction of organization, (b) has all requisite corporate or other power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted except to the extent that failure to have the same would not reasonably be expected to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, (d) has full power, authority and legal right to make, issue, sell and perform this Warrant and the Warrant Shares, (e) is in compliance with all applicable Laws to which it is subject and all agreements to which it is a party, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect, and (f) has good title to all its assets, free and clear of any Liens or adverse claims except as expressly permitted by this Warrant or the Credit Agreement.

(b) The making, entry into, issuance and sale of this Warrant and the performance of the Company's obligations hereunder are within the Company's corporate powers and have been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Warrant has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar Laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) The making, entry into, issuance and sale of this Warrant and the performance of the Company's obligations hereunder (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for such as have been obtained or made and are in full force and effect, (b) will not violate any applicable Law or the charter, bylaws or other organizational documents of the Company or any of its Subsidiaries or any order of any Governmental Authority, other than any such violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Company, any of its Subsidiaries or the Company's or its Subsidiaries' assets, or give rise to a right thereunder to require any payment to be made by any such Person, other than any of the foregoing that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset of any of the Company or any of its Subsidiaries.

(d) Assuming the accuracy of the representations made by the Holder herein, the offer and sale by the Company of this Warrant are not required to be registered pursuant to the provisions of Section 5 of the Securities Act.

(e) The authorized capital stock of the Company consists of 175,000,000 shares, of which 100,000,000 shares are designated as common stock and 75,000,000 shares are designated as preferred stock. As of the date hereof, (i) 58,270,934 shares of common stock of the Company are issued and outstanding, (ii) zero shares of preferred stock of the Company are issued and outstanding, (iii) zero shares of common stock of the Company are held in treasury (iv) zero shares of preferred stock of the Company are held in treasury (v) 8,870,633 shares have been reserved for issuance upon exercise of outstanding warrants (excluding any shares issuable upon exercise of this Warrant) and (vi) 4,444,121 shares have been reserved for issuance upon exercise of outstanding stock options. All of the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and nonassessable.

(f) There is no indebtedness of the Company having the right to vote on any matters on which holders of shares of capital stock or other equity interests of the Company may vote. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to the Company, nor are there any Contracts with respect to the voting, sale or transfer of any shares of capital stock or other equity interests of the Company. Except for this Warrant and the securities reserved for issuance as described in subsection (e) above, there are no options, warrants or other rights to subscribe for or purchase any capital stock or other equity interests of the Company, or securities convertible into or exchangeable for, or that otherwise confer on the holder any right to acquire, any capital stock or other equity interests of the Company. There are no preemptive rights or rights of first refusal or first offer, nor are there any Contracts by which the Company is bound, relating to any capital stock or other equity interests of the Company. Except as set forth in the reports, schedules, forms, statements and other documents required to be filed by the Company under the Exchange Act (including the exhibits thereto and documents incorporated by reference therein), the Company does not currently maintain, nor does the Company have any ongoing liability for, any stock option plan or any other plan or agreement providing for equity compensation of any Person.

(g) All taxes imposed on the Company in connection with the issuance, sale and delivery of the Warrant Securities have been or will be timely and fully paid, and all Laws imposing such taxes have been or will be fully satisfied by the Company.

(h) Neither the Company nor anyone acting on its behalf has offered or will offer to sell the Warrant Securities or any similar securities to, or solicit offers with respect thereto from, or enter into any preliminary conversations or negotiations relating thereto with, any Person, so as to require the issuance and sale of the Warrant Securities to be registered under the Securities Act. Neither the Company nor anyone acting on its behalf has engaged, directly or indirectly, in any form of general solicitation or general advertising with respect to the offering of the Warrant Securities (as those terms are used in Regulation D) or otherwise in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act. Assuming the accuracy of the representations made by the Holder herein, the offer and sale of the Warrant Securities are exempt from registration under the Securities Act.

(i) Each of the representations and warranties made by the Company in Sections 5.4 through 5.7, 5.9 through 5.12, 5.14 and 5.15 of the Credit Agreement are hereby incorporated herein by reference as if made herein.

SECTION 11. Equitable Relief. Each of the Company and the Holder acknowledges that a breach by such party of any of its obligations under this Warrant would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief.

SECTION 12. Definitions.

As used herein, in addition to the terms defined elsewhere herein, the following terms shall have the following meanings.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Exercise Price" has the meaning set forth in Section 2(a).

"Aggregate Number" has the meaning set forth in the Preamble.

"Alternate Consideration" has the meaning set forth in Section 5(g).

"Business Day" means any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Capital Stock" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Change of Control" means shall mean (i) a merger or consolidation of the Company with another corporation (other than a merger effected exclusively for the purpose of changing the domicile of the Company), (ii) the sale, assignment, transfer, conveyance or other disposal of all or substantially all of the assets or all or a majority of the outstanding voting shares of capital stock of the Company, (iii) a purchase, tender or exchange offer accepted by the holders of a majority of the outstanding voting shares of capital stock of the Company, or (iv) a "person" or "group" (as these terms are used for purposes of Section 13(d) and 14(d) of the Exchange Act) is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly of at least a majority of the voting power of the capital stock of the Company.

"Commencement Date" has the meaning set forth in the Preamble.

"Commission" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Common Stock" includes (a) the Company's common stock, par value $0.001 per share, (b) any other class of Capital Stock hereafter authorized having the right to share in distributions either of earnings or assets of the Company without limit as to amount or percentage and (c) any other Capital Stock into which any of the foregoing is reclassified or reconstituted.

"Common Stock Equivalents" means any stock or securities directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

"Company" has the meaning set forth in the Preamble.

"Contracts" means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied).

"Control" means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract relating to the equity interests of such Person or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Convertible Securities" means evidences of indebtedness, shares of stock or other securities (including, but not limited to, options and warrants) which are directly or indirectly convertible, exercisable or exchangeable, with or without payment of additional consideration in cash or property, for shares of Common Stock, either immediately or upon the onset of a specified date or the happening of a specified event.

"Credit Agreement" has the meaning set forth in the recitals hereto.

"Date of Determination" means any date of a Notice of Exercise.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Excluded Issuances" means any issuance or sale by the Company after the Commencement Date of: (a) shares of Common Stock issued upon the exercise of this Warrant, (b) shares of Common Stock (as such number of shares is equitably adjusted for subsequent stock splits, stock combinations, stock dividends and recapitalizations) issued directly or upon the exercise of Options to directors, officers, employees, or consultants of the Company in connection with their service as directors of the Company, their employment by the Company or their retention as consultants by the Company, in each case authorized by the Company's board of directors and issued pursuant to an equity incentive plan of the Company (including all such shares of Common Stock and Options outstanding prior to the Commencement Date) or (c) securities issuable upon the exercise or exchange of or conversion of any securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Warrant, provided that such securities have not been amended since the date hereof to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or (d) securities issued by the Company as consideration in acquisitions or strategic transactions; *provided* that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities for the purpose of raising capital or to an entity whose primary business is investing in securities; *provided*, further that, if the Company or any of its Subsidiaries receives any cash or cash equivalents pursuant to any such acquisition or strategic transaction or related transaction, such cash or cash equivalents will be deemed to have been paid for any securities issued in such transaction at the Fair Market Value Per Share, and those securities deemed to have been purchased for cash or cash equivalents will not constitute securities sold or issued in an Excluded Issuance.

"Exercise Amount" has the meaning set forth in Section 2(a).

"Exercise Price" has the meaning set forth in the Preamble.

"Expiration Date" has the meaning set forth in the Preamble.

"Fair Market Value Per Share" means (as of immediately before the Date of Determination) (x) the last reported sale price and, if there are no sales, the last reported bid price, of the Common Stock on the Business Day immediately prior to the date of exercise on the Principal Market as reported by Bloomberg Financial Markets (or a comparable reporting service of national reputation selected by the Company and reasonably acceptable to the Holder if Bloomberg Financial Markets is not then reporting sales prices of the Common Stock) (collectively, "Bloomberg"), or (y) if the foregoing does not apply, the last sales price of the Common Stock on the OTCQX or the OTCQB maintained by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices) or 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 in the "Pink Sheets" published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices) on the Business Day immediately prior to the date of exercise as reported by Bloomberg, and, if there are no sales, the last reported bid price of the Common Stock on the Business Day immediately prior to the date of exercise as reported by Bloomberg, or (z) if fair market value cannot be calculated as of such date on either of the foregoing bases, the price determined in good faith by the Company's board of directors.

"GAAP" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination.

"Governmental Authority" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any State, territory, county, city or other political subdivision of the United States.

"Holder" has the meaning set forth in the Preamble.

"Law" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Lien" means any mortgage, lien, pledge, charge, encumbrance or other security interest, leases, title retention agreements, mortgages, restrictions, easements, rights-of-way, options or adverse claims or encumbrances of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest.

"Material Adverse Effect" means a material adverse effect on (i) the operations, assets, business, properties or condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries, taken as a whole, (ii) the ability of the Company to perform its material obligations under this Warrant or (iii) the legality, validity or enforceability of this Warrant.

"Notice of Exercise" has the meaning set forth in Section 2(a).

"Options" means any warrants or other rights or options to subscribe for or purchase Common Stock or Convertible Securities.

"Person" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"Principal Market" initially means the NASDAQ Stock Market LLC and any successor exchange thereto and shall also include the NASDAQ Global Market, the NASDAQ Global Select Market, the NASDAQ Capital Market, New York Stock Exchange, Inc., the NYSE MKT, OTCQX or the OTCQB , whichever is at the time the principal trading exchange or market for the Common Stock.

"Principal Office" means the Company's principal office as set forth in Section 17 hereof or such other principal office of the Company in the United States of America the address of which first shall have been set forth in a notice to the Holder.

"Purchase Rights" has the meaning set forth in Section 6 hereof.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"Sales Agreement" means the Company's At-the-Market Offering Program Sales Agreement with Cowen and Company, dated June 22, 2017.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Warrant" has the meaning set forth in the Preamble.

"Warrant Securities" means this Warrant and the Warrant Shares, collectively.

"Warrant Shares" means (a) the shares of Common Stock issued or issuable upon exercise of this Warrant in accordance with its terms and (b) all other shares of the Company's Capital Stock issued with respect to such shares by way of stock dividend, stock split or other reclassification or in connection with any merger, consolidation, recapitalization, or other reorganization affecting the Company's Capital Stock.

SECTION 13. Survival of Provisions. Upon the full exercise by the Holder of its rights to purchase Common Stock under this Warrant, all of the provisions of this Warrant shall terminate (other than the provisions of Sections 8 and 9 and Sections 12 through 24 of this Warrant which shall expressly survive such exercise until the later of (a) the Expiration Date and (b) the time when the Holder no longer holds any Warrant Shares).

SECTION 14. Delays, Omissions and Indulgences. It is agreed that no delay or omission to exercise any right, power or remedy accruing to the Holder upon any breach or default of the Company under this Warrant shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the Holder's part of any breach or default under this Warrant, or any waiver on the Holder's part of any provisions or conditions of this Warrant must be in writing and that all remedies, either under this Warrant, or by Law or otherwise afforded to the Holder, shall be cumulative and not alternative.

SECTION 15. Rights of Transferees. Subject to Section 8, the rights granted under this Warrant to the Holder shall pass to and inure to the benefit of all subsequent transferees of all or any portion of this Warrant (*provided*, that the Holder and any transferee shall hold such rights in proportion to their respective ownership of this Warrant and the Warrant Shares) until extinguished pursuant to the terms hereof.

SECTION 16. Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Warrant.

SECTION 17. Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Warrant) shall be given or made in writing (including by email with PDF attachment) delivered to the applicable addresses specified below or at such other address as shall be designated by the Company or the Holder, as applicable, in a notice to the other. Except as otherwise provided in this Warrant, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof (except in the case of an email with PDF attachment not given during normal business hours for the recipient, which shall be deemed to have been given at the opening of business on the next Business Day for the recipient), in each case given or addressed as aforesaid.

(a) If to the Company:

Workhorse Group Inc.
100 Commerce Drive
Loveland, Ohio 45140
Attention: Paul Gaitan, Chief Financial Officer
Email: paul.gaitan@workhorse.com

with a copy to:

Fleming PLLC
30 Wall Street, 8th Floor
New York, New York 10005
Attention: Stephen M. Fleming
Email: smf@flemingpllc.com

and

Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza, 39th Floor
New York, New York 10112
Attention: Stephen A. Cohen
Email: scohen@sheppardmullin.com

(b) If to the Holder:

[●]
One Bryant Park
38th Floor
New York, NY 10036
Attention: [●]
Email: [●]

with copy to:

[●]
One Bryant Park
38th Floor
New York, NY 10036
Attention: [●]
Email: [●]

with a copy to:

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attention: Peter A. Schwartz
Email: pschwartz@cov.com

SECTION 18. Successors and Assigns. This Warrant shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, *provided*, that the Company shall have no right to assign its rights, or to delegate its obligations, hereunder without the prior written consent of the Holder.

SECTION 19. Amendments. Neither this Warrant nor any term hereof may be amended, changed, waived, discharged or terminated without the prior written consent of the Holder and the Company to such action.

SECTION 20. Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by applicable Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

SECTION 21. Governing Law. This Warrant and the rights and obligations of the Holder and the Company hereunder shall be governed by, and construed in accordance with, the Law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the Laws of any other jurisdiction; *provided*, that Section 5-1401 of the New York General Obligations Law shall apply.

SECTION 22. Entire Agreement. This Warrant is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein.

SECTION 23. Rules of Construction. Unless the context otherwise requires "or" is not exclusive, and references to sections or subsections refer to sections or subsections of this Warrant. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

SECTION 24. No Effect Upon Lending Relationship. Notwithstanding anything herein to the contrary, nothing contained in this Warrant shall affect, limit or impair the rights and remedies of the Holder or any of its Affiliates in its capacity as a lender to the Company pursuant to any agreement under which the Company has borrowed money from the Holder or any of its Affiliates. Without limiting the generality of the foregoing, neither the Holder nor any Affiliate of the Holder, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have any duty to consider (i) its status or the status of any of its Affiliates as a direct or indirect equity holder of the Company, (ii) the equity of the Company or (iii) any duty it may have to any other direct or indirect equity holder of the Company, except as may be required by commercial Law applicable to creditors generally.

SECTION 25. No Rights as Stockholder Until Exercise. 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 except as expressly set forth herein.

SECTION 26. Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the Company has caused this Warrant to be issued and executed in its corporate name by a duly authorized officer as of the date first written above.

WORKHORSE GROUP INC.
a Nevada corporation

By: _____
Name: _____
Title: _____

Accepted and agreed.

[HOLDER]

By: _____
Name: _____
Title: _____

[Signature Page to Warrant]

EXHIBIT A

NOTICE OF EXERCISE

To: Workhorse Group Inc.

_____

_____

1. The undersigned, pursuant to the provisions of the attached Warrant, hereby elects to exercise this Warrant with respect to _____ shares of Common Stock (the "Exercise Amount"). Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the attached Warrant.

2. The undersigned herewith tenders payment for such shares in the following manner (please check type, or types, of payment and indicate the portion of the Exercise Price to be paid by each type of payment):

_____ Exercise for Cash

_____ Cashless Exercise

3. Please issue a certificate or certificates representing the shares issuable in respect hereof under the terms of the attached Warrant, as follows:

_____
(Name of Record Holder/Transferee)

and deliver such certificate or certificates to the following address:

_____
(Address of Record Holder/Transferee)

4. The undersigned represents that the aforesaid shares are being acquired for the account of the undersigned for investment purposes and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares.

5. The undersigned represents that, as of the date hereof, the undersigned (together with the undersigned's affiliates, and any other persons acting as a group together with the undersigned or any of the undersigned's affiliates) owns _____ shares of Common Stock (as such ownership is calculated pursuant to the Section 13(d) of the Exchange Act).

6. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

6. If the Exercise Amount is less than all of the shares of Common Stock purchasable under the attached Warrant, please issue a new warrant representing the remaining balance of such shares, as follows:

_____
(Name of Record Holder/Transferee)

and deliver such warrant to the following address:

_____
(Address of Record Holder/Transferee)

_____
(Signature)

_____
(Date)

EXHIBIT B

Notice of Assignment

NOTICE OF ASSIGNMENT FORM

FOR VALUE RECEIVED, the Holder (the "Assignor") hereby sells, assigns and transfers all of the rights of the undersigned Assignor under the attached Warrant with respect to the number of shares of common stock of Workhorse Group Inc. (the "Company") covered thereby set forth below, to the following "Assignee" and, in connection with such transfer, represents and warrants to the Company that the transfer is in compliance with Section 8 of the Warrant and applicable federal and state securities laws:

NAME OF ASSIGNEE ADDRESS

Number of shares: _____

Dated: _____ Signature: _____

ASSIGNEE ACKNOWLEDGMENT

The undersigned Assignee acknowledges that it has reviewed the attached Warrant and by its signature below it hereby represents and warrants that it is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and agrees to be bound by the terms and conditions of the Warrant as of the date hereof, including Section 8 thereof.

Signature: _____

By: _____
Its: _____

Address:

_____
_____
_____

_____

Exhibit 10.1

Execution Version

CREDIT AGREEMENT

dated as of December 31, 2018

among

WORKHORSE GROUP INC.
as the Borrower,

THE PERSONS PARTY HERETO
as Lenders,

and

WILMINGTON TRUST, NATIONAL ASSOCIATION
as the Agent

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE AND TREASURY REGULATIONS THEREUNDER, THE LOANS ARE BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. REQUESTS FOR INFORMATION REGARDING THE ISSUE PRICE, ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY ON THE LOANS MAY BE DIRECTED TO THE BORROWER AT 100 COMMERCE DRIVE, LOVELAND, OHIO 45140; ATTN: CHIEF FINANCIAL OFFICER.

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CREDIT AGREEMENT

This Credit Agreement dated as of December 31, 2018 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), is made among Workhorse Group Inc., a Nevada corporation (the "Borrower"), Wilmington Trust, National Association, not individually, but as the Agent (as defined below) for the financial institutions from time to time party to this Agreement (collectively, with their permitted successors and assignees, the "Lenders"), and the Lenders from time to time party hereto.

The Borrower has agreed to enter into this Agreement with the Lenders and the Agent evidencing the Lenders' agreement to advance, and the Borrower's agreement to incur the Loans on the terms and conditions set forth herein, and in connection therewith, for the parties to make the representations and warranties, covenants and undertakings as hereinafter set forth.

Section 1. Definitions; Interpretation.

1.1 Definitions. When used herein the following terms shall have the following meanings:

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of 50% of the Capital Stock of any Person, or otherwise causing any Person to become a Subsidiary, (c) a merger, consolidation, amalgamation or any other combination with another Person (other than a combination between two Persons that prior to the merger, consolidation, amalgamation or combination were already Loan Parties) and (d) the acquisition from any Person of a line of business, division, branch or new product line, or of material marketing rights, material patent rights or other material Intellectual Property rights with respect to a new product line, new operating division, new product or potential product.

"Affiliate" of any Person means any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person. A Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote 20% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither the Agent nor any Lender shall be deemed an Affiliate of any Loan Party.

"Agent" means Wilmington Trust, National Association in its capacity as administrative and collateral agent for the Lenders hereunder and any successor thereto in such capacity.

"Agent Fee Letter" means that certain Fee Letter, dated as of the Closing Date, between the Borrower and the Agent, in each case relating to the transactions contemplated by this Agreement.

"Agreement" has the meaning set forth in the Preamble.

"Amortization Dates" means June 30, 2020, December 31, 2020, and June 30, 2021.

"Applicable Contract Rate" means, as determined by the Agent in accordance with the terms hereof, the per annum rate of interest (based on a year of 360 days) equal to LIBOR plus 7.625%.

"Applicable Law" means, in relation to any subject, all provisions applicable to that subject of all (i) constitutions, treaties, statutes, laws, rules, regulations and ordinances of any Governmental Authority, (ii) authorizations, consents, approvals, permits or licenses issued by, or a registration or filing with, any Governmental Authority and (iii) orders, decisions, judgments, awards and decrees of any Governmental Authority (including common law and principles of public policy).

"Authorization" means all material licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and all declarations and filings with all applicable Governmental Authorities and self-regulatory authorities.

"Benefit Plan" means any: (i) Pension Plan, (ii) Multiemployer Pension Plan, or (iii) plan that provides welfare benefits to terminated employees, other than to the extent required by section 4980B(f) of the Code and the corresponding provisions of ERISA or similar local law and for which the participant pays the full cost.

"Board" means the Board of Directors of the Borrower.

"Board Observer" has the meaning set forth in Section 6.13.1.

"Borrower" has the meaning set forth in the Preamble.

"Borrowing Request" means an irrevocable written notice of borrowing delivered by the Borrower to the Agent and appropriately specifying (a) the aggregate principal amount of the Loans to be incurred, (b) the date of such borrowing (which shall be a Business Day), (c) the account details and wiring instructions for the Borrower and (d) that the applicable conditions set forth in Section 4 of this Agreement have been satisfied.

"Business Day" means any day on which commercial banks are open for commercial banking business in New York, New York.

"Capital Lease" means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person (or a finance lease upon adoption by the Borrower of *ASU No. 2016-02, Leases (Topic 842)*).

"Capital Stock" means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in, or Stock Equivalents (regardless of how designated) of, a Person (other than an individual), whether voting or non-voting.

"Cash Equivalent Investment" means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case rated at least A-l by S&P Global Ratings or P-l by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by a commercial banking institution that is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than $500,000,000, (d) any repurchase agreement entered into with any commercial banking institution of the nature referred to in clause (c) above which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such commercial banking institution thereunder, (e) money market accounts or mutual funds which invest predominantly in assets satisfying the foregoing requirements and (f) other short term liquid investments approved in writing by the Required Lenders.

"Casualty Event" means the damage, destruction or condemnation, as the case may be, of property of any Person or any of its Subsidiaries.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (within the meaning of the Exchange Act and the rules of the SEC thereunder) shall own, directly or indirectly, beneficially or of record, shares representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Borrower;

(b) a Key Person Event;

(c) a majority of the seats (other than vacant seats) on the Board shall at any time be occupied by persons who were neither (i) nominated by the Board or the Required Lenders nor (ii) appointed by directors so nominated;

(d) the Borrower shall cease to own, directly or indirectly, beneficially and of record, 100% of the issued and outstanding Capital Stock of the Guarantors (except, in the case of Surefly, Inc., pursuant to a transaction approved by the Required Lenders in their reasonable discretion); or

(e) all or substantially all of the assets of the Borrower and the Guarantors, taken as a whole, are sold, conveyed, transferred or otherwise disposed of in any one or more related transactions.

"Closing Date" means the date on which the conditions set forth in Section 4.1 have been satisfied or waived by the Lenders or, at the direction of the Lenders, the Agent, in its sole discretion.

"Collateral" shall mean the property of the Loan Parties described in any Collateral Document pursuant to, or in connection with which, any Loan Party or any other Person grants a Lien to the Agent for its benefit and the benefit of the Lenders.

"Collateral Access Agreement" means an agreement in form and substance reasonably satisfactory to the Required Lenders and the Agent in their reasonable discretion pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of inventory or other property owned by any Loan Party, acknowledges the Liens of the Agent and waives (or, if approved by the Required Lenders, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits the Agent reasonable access to and use of such real property during the continuance of an Event of Default to assemble, collect and sell any Collateral stored or otherwise located thereon.

"Collateral Documents" means, collectively, the Guarantee, the Security Agreement, each IP Security Agreement, each Mortgage, the Pledge Agreement, any Collateral Access Agreement, any Control Agreement and each other agreement or instrument pursuant to or in connection with which any Loan Party grants a security interest in any Collateral to the Agent, for its benefit and the benefit of the Lenders, or pursuant to which any such security interest in Collateral is perfected, each as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Commitments" means the Tranche One Commitment and the Tranche Two Commitment.

"Commitment Schedule" means the Schedule attached hereto as Schedule 1. 1.

"Compliance Certificate" means a certificate substantially in the form of Exhibit B or otherwise reasonably satisfactory to the Required Lenders in all respects.

"Consolidated Net Income" means, with respect to the Borrower and its Subsidiaries, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries for such period, excluding any gains or noncash losses from Dispositions (other than the sale of inventory), any extraordinary gains or extraordinary non-cash losses and any gains or non-cash losses from discontinued operations.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes. "Contingent Obligation" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, to provide security for the obligations of a debtor or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Stock of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall (subject to any limitation set forth therein) be deemed to be the principal amount of the indebtedness, obligation or other liability supported thereby or the amount of the dividends or distributions guaranteed, as applicable.

"Control" means the direct or indirect power to directly or indirectly direct the management or policies of a Person or control the membership or voting of the board of directors or other governing body of such Person (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in securities, bonds or instruments of the entity or otherwise).

"Control Agreement" means a tri-party deposit account, securities account or commodities account control agreement by and among the applicable Loan Party, the Agent and the depository, securities intermediary or commodities intermediary, for the purpose of establishing the Agent's control of such deposit account, bank account or securities account under applicable United States or other law, each in form and substance reasonably satisfactory to the Required Lenders and the Agent.

"Controlled Group" means all members of a controlled group of corporations, all members of a controlled group of trades or businesses (whether or not incorporated) under common control, and all members of an affiliated service group which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

"Copyrights" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

"Costs" means, with respect to any Person, (a) all fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, as selected by such Person in its sole discretion, and (b) all court costs and similar legal expenses.

"Cure Amount" has the meaning set forth in Section 7.20.

"Cure Quarter" has the meaning set forth in Section 7.20.

"Current Value" has the meaning set forth in Section 6.8(f).

"Debt" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business that do not have payment terms exceeding 90 days and are not overdue for more than 90 days), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the fair market value of such property), (f) all obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person for obligations of any other Person constituting Debt (under another clause of this definition) of such Person, (i) earn-out, purchase price adjustment and similar obligations, in each case, that would appear as a liability on a balance sheet under GAAP, (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for income tax purposes but the transaction is classified as an operating lease in accordance with GAAP and (k) all indebtedness of the types listed in clauses (a) through (j) of any partnership of which such Person is a general partner.

"Debt Service Coverage Ratio" means the ratio, as of any date of determination, of (a) EBITDA for the period of four consecutive Fiscal Quarters then most recently ended for which financial statements under Section 6.1.1 or Section 6.1.2, as applicable, have been delivered (or are required to have been delivered), in each case for the Borrower and its Subsidiaries on a consolidated basis to (b) the sum of (x) Interest Expense and (y) any payments in respect of operating leases, in each case of clauses (a) and (b) for the Borrower and its Subsidiaries on a consolidated basis; provided that for purposes of calculating the Debt Service Coverage Ratio (i) as of September 30, 2019, clause (a) above shall be calculated as (X) the consolidated EBITDA of the Borrower and its Subsidiaries for the Fiscal Quarter ended September 30, 2019 *multiplied by* (Y) four, (ii) as of December 31, 2019, clause (a) above shall be calculated as (X) the consolidated EBITDA of the Borrower and its Subsidiaries for the Fiscal Quarters ended September 30, 2019 and December 31, 2019 *multiplied by* (Y) two, and (iii) as of March 31, 2020, clause (a) above shall be calculated as (X) the consolidated EBITDA of the Borrower and its Subsidiaries for the Fiscal Quarters ended September 30, 2019, December 31, 2019 and March 31, 2020 *multiplied by* (Y) four *divided by* three.

"Default" means any event that, if it continues uncured and unwaived, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

"Default Rate" has the meaning set forth in Section 2.3.1(c).

"Disclosure Letter" means the letter dated as of the Closing Date delivered by the Loan Parties to the Agent and the Lenders in connection with the execution and delivery of this Agreement.

"Disposition" has the meaning set forth in Section 7.4(b).

"Disqualified Stock" means any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (other than customary asset sale offers and redemptions upon the change of control, in each case so long as any rights of the holders thereof upon the occurrence of such change of control or asset sale shall be subject to the prior repayment in full of the Obligations), less than 180 days after the last day of the term of this Agreement (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is or becomes convertible into or exchangeable for Debt or any other Capital Stock that would constitute Disqualified Stock.

"Dollar" and "$" mean lawful currency of the United States of America.

"EBITDA" means, for any Person and its Subsidiaries for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period (and without duplication), (i) Interest Expense, (ii) income tax expense (including tax accruals), (iii) depreciation and amortization (but excluding patent amortization, if any), (iv) any non-cash charges or expenses approved by the Required Lenders in their sole discretion (other than any such non-cash item to the extent it represents an accrual of, or reserve for, anticipated cash expenditures in any future period), (v) transaction costs and fees (A) related to the negotiation, execution and delivery of the Loan Documents, or (B) paid after the Closing Date to the Agent or a Lender in connection with the Loan Documents, (vi) any costs incurred with respect to liability, casualty events or business interruption, to the extent covered by insurance (as confirmed by the applicable insurance company), the proceeds of which are received during such period or within 120 days thereafter, and (vii) transaction costs incurred in connection with any sale of all or a portion of Surefly, Inc.

"Eligible Assignee" means (a) a Lender or an Affiliate of a Lender or (b) any other Person; provided that unless an Event of Default shall have occurred and be continuing at the time of any assignment, such Person does not engage in a business or activity contemplated by NAICS code 3361 (Motor Vehicle Manufacturing).

"Environmental Claims" means all claims, however asserted, by any governmental, regulatory or judicial authority or other Person alleging potential liability or responsibility under or for violation of any Environmental Law, or for release of Hazardous Substances or injury thereby to the environment or any Person or property or natural resources.

"Environmental Laws" means all present or future federal, state, provincial or local laws, statutes, common law duties, rules, regulations, ordinances and codes, including all amendments, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to health and safety, or pollution or protection of the environment or natural resources, including any of the foregoing relating to the presence, use, production, recycling, reclamation, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, emission, control, cleanup or investigation or management of any Hazardous Substance.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Event of Default" means any of the events described in Section 8.1.

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

"Excluded Accounts" means any accounts maintained by the Borrower or any Subsidiary exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Borrower's, or any of its Subsidiaries', employees; provided amounts therein are transferred into such accounts no earlier than two Business Days prior to the use of all amounts contained therein for making such payments.

"Excluded Taxes" means any of the following Taxes required to be withheld or deducted from a payment to any Lender or the Agent: (a) Taxes imposed on or measured by net income (however denominated) or gross profits, franchise Taxes, and branch profits Taxes, in each case (i) imposed as a result of any Lender or the Agent being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of any Lender with respect to an applicable interest in a Loan pursuant to a law in effect at the time such Lender first becomes a party to this Agreement or such Lender changes its lending office, except to the extent that, pursuant to Section 3.1(a), amounts with respect to such Taxes were payable to such Lender's assignor immediately before such Lender became a party hereto or changed its lending office, (c) Taxes attributable to any Lender's or the Agent's failure to comply with Section 3.1(d), and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Facility" means any New Facility hereafter acquired by Holdings or any of its Subsidiaries, including, without limitation, the land on which each such facility is located, all buildings and other improvements thereon, and all fixtures located thereat or used in connection therewith.

"Facility Fee" has the meaning set forth in Section 2.12.1.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor provision that is substantively comparable and not materially more burdensome to comply with), and any current or future regulations issued thereunder or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the IRC, any intergovernmental agreement entered into in connection with the implementation of such sections of the IRC, and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

"Fiscal Quarter" means the three-month period ending on the last day of March, June, September or December of any Fiscal Year.

"Fiscal Year" means the 12-month period ending on December 31st of each year.

"Flood Hazard Property" has the meaning set forth in clause (g) of the definition of Real Property Deliverables.

"FRB" means the Board of Governors of the Federal Reserve System or any successor thereto.

"Funded Debt" means, as of any date of determination, the aggregate principal amount of Debt for borrowed money of the Borrower and its Subsidiaries outstanding as of such date, in the amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (including all capital lease obligations, whether or not reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP).

"Funding Losses" has the meaning set forth in Section 2.14.

"GAAP" means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

"Governmental Approvals" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"Governmental Authority" means any nation or government, any state, province, municipality or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Group" means the group of companies constituted by the Borrower and its Subsidiaries.

"Guarantee" means the guarantee executed and delivered by each Guarantor, in form and substance reasonably acceptable to the Required Lenders and the Agent, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Guarantors" mean Workhorse Technologies Inc., an Ohio corporation, Workhorse Properties Inc., an Ohio corporation, Workhorse Motor Works Inc, an Indiana corporation, and Surefly, Inc., a Delaware corporation, and each other Person who now or hereafter guarantees payment of all or a portion of the Obligations.

"Hazardous Substances" means any waste, chemical, substance, or material listed, defined, classified, or regulated as a hazardous waste, hazardous substance, pollutant, contaminant, toxic substance, or hazardous, dangerous or radioactive material, chemical or waste by any Environmental Law, including, without limitation, any petroleum or any derivative, waste, or byproduct thereof, radon, asbestos, and polychlorinated biphenyls, and any other substance, the storage, manufacture, disposal, treatment, generation, use, transportation, remediation, release into or concentration in the environment of which is prohibited, controlled or regulated as "hazardous", "dangerous" or "toxic" (or words of similar meaning or effect) by any governmental authority under any Environmental Law.

"Hedging Obligation" means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the net obligations of such Person thereunder that would be reflected in the financial statements of such Person in accordance with GAAP.

"Indemnified Liabilities" has the meaning set forth in Section 10.4.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Intellectual Property" means all rights, title and interests in intellectual property arising under any Applicable Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets, industrial designs, integrated circuit topographies, confidential proprietary information and rights under IP Licenses.

"Interest Expense" means for any period the consolidated interest expense of the Borrower and its Subsidiaries for such period (including all imputed interest on Capital Leases).

"Interest Payment Date" means the fifth calendar day of each March, June, September and December.

"Interest Period" means, with respect to each Loan, (a) initially, the period commencing on the date of the making of such Loan and ending on the Interest Payment Date immediately succeeding the Closing Date, and (b) thereafter, the period commencing on the first day after the end of the previous Interest Period and ending on the earlier of (i) the immediately succeeding Interest Payment Date and (ii) the Maturity Date; provided, however, that (A) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (C)-(D) below) to the next succeeding Business Day, (B) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (C) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day and (D) other than with respect to the initial Interest Period hereunder, with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is three months after the date on which the Interest Period began, as applicable.

"Internet Domain Name" means all right, title and interest (and all related IP Ancillary Rights) arising under any Applicable Law in Internet domain names.

"Investment" means any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, payment or capital contribution to any Person.

"IP Ancillary Rights" means, with respect to an item of Intellectual Property all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

"IP License" means all contractual obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in any Intellectual Property.

"IP Security Agreement" means any security agreement executed by any Loan Party that grants (or is prepared as a notice filing or recording with respect to) a Lien or security interest in favor of the Agent, for its benefit and the benefit of the Lenders, on Intellectual Property.

"IRC" means the Internal Revenue Code of 1986, as amended.

"IRS" means the Internal Revenue Service.

"Key Person Event" means either of the following events shall have occurred: (i) Stephen Burns shall no longer serve as chief executive officer of the Borrower and in the active management of the Group for any reason and he is not replaced within 120 days thereof with an individual of like qualification and experience and which has been approved in such capacity in writing by the Required Lenders, acting in their reasonable discretion, or (ii) Duane Hughes shall no longer serve as chief operating officer and president of the Borrower and in the active management of the Group for any reason and he is not replaced within 120 days thereof with an individual of like qualification and experience and which has been approved in such capacity in writing by the Required Lenders, acting in their reasonable discretion. If a person named in this definition is replaced under paragraphs (i) or (ii) (as the case may be), this definition shall automatically be deemed amended to substitute for the name of the person replaced (including names included by any previous operations of this provision) the name of the replacement individual.

"Lenders" has the meaning set forth in the Preamble.

"Lender Party" has the meaning set forth in Section 10.4.

"LIBOR" means, with respect to any Loan for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Interest Period as displayed on page LIBOR01 or LIBOR02 of the Reuters Screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Agent (at the direction of the Required Lenders) in its reasonable discretion; in each case, the "Screen Rate") at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided, that, if the Screen Rate shall not be available at such time for such Interest Period (an "Impacted Interest Period") with respect to Dollars, then the LIBOR Rate shall be the Interpolated Rate at such time. For purposes hereof, "Interpolated Rate" means, at any time, the rate per annum determined by the Agent (at the direction of the Required Lenders) (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time.

"LIBOR Rate" means, for each Interest Period for each Loan, the greater of (a) LIBOR for such Interest Period adjusted for any reserve requirement applicable to each Lender, such rate to be rounded up to the nearest 1/16 of 1% and (b) 1.75%.

"Lien" means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any Mortgage, lien, encumbrance, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

"Liquidity" means, as of any date of determination, Qualified Cash of the Borrower and its Subsidiaries.

"Loan Documents" means this Agreement, the Notes, the Collateral Documents, the Perfection Certificate delivered by the Loan Parties on or prior to the Closing Date (as supplemented pursuant to the terms of the Security Agreement), the Disclosure Letter, the Agent Fee Letter and all other documents, certificates, instruments and agreements delivered in connection with the foregoing, all as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Loan Party" means the Borrower, each Guarantor and each other Person that joins this Agreement as a Borrower or otherwise guarantees the Obligations.

"Loans" means the Tranche One Loans and the Tranche Two Loans.

"Margin Stock" means any "margin stock" as defined in Regulation T, U or X of the FRB.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, assets, business, properties or condition (financial or otherwise) or prospects of any Loan Party, (b) a material impairment of the ability of any Loan Party to perform any of its obligations and liabilities under any Loan Document to which it is a party, (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or (d) a material impairment in the perfection or priority of the Agent's Lien in the Collateral.

"Material Contract" has the meaning set forth in Section 5.22.

"Maturity Date" means December 31, 2021 or such earlier date on which the Obligations are accelerated in accordance with Section 8.2, including an automatic acceleration relating to or arising from the occurrence of an Event of Default under Section 8.1.3.

"Mortgage" means any mortgage, leasehold mortgage, deed of trust, leasehold deed of trust, deed to secure debt, leasehold deed to secure debt or other document, in form and substance reasonably satisfactory to the Agent and the Required Lenders, creating in favor of the Agent a Lien on Real Estate or any interest in Real Estate.

"Multiemployer Pension Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to or on account of which any Loan Party or any member of the Controlled Group may have any liability.

"Net Cash Proceeds" means with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by the Loan Parties pursuant to such Disposition, net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (*provided* that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (in the case of estimated payments, after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien, if any, that has priority over the Lien of the Agent on the asset subject to such Disposition, and (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (*provided* that if, upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds).

"Net Casualty Proceeds" means, with respect to any Casualty Event, the amount of any insurance proceeds (including proceeds of business interruption insurance) or condemnation awards received by any Loan Party in connection with such Casualty Event, net of all taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (in the case of estimated payments, after taking into account any available tax credits or deductions and any tax sharing arrangements) and reasonable and customary collection expenses thereof, but excluding any proceeds or awards required to be paid to a creditor (other than any Lender) which holds a first priority Lien permitted by clause (c)(i) of Section 7.2 on the property which is the subject of such Casualty Event.

"New Facility" has the meaning set forth in Section 6.8(f).

"Nominee" has the meaning set forth in Section 6.13.1.

"Note" means a promissory note in substantially the form of Exhibit A or otherwise in form and substance reasonably acceptable to the Required Lenders and the Agent, as the same may be replaced, substituted, amended, restated or otherwise modified from time to time.

"Obligations" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Loan Document after the commencement of a bankruptcy proceeding whether or not a claim for such interest is allowed) of any Loan Party under this Agreement or otherwise with respect to the Unused Tranche Two Commitment or any Loan or Protective Advance, or any Loan Party under any other Loan Document or any Collateral Document, including the Facility Fee and the Prepayment Premium Amount, 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.

"OFAC" has the meaning set forth in Section 5.20.1.

"Other Connection Taxes" means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than any such connection arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction with respect to, or enforced or sold or assigned an interest in, any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Paid in Full" or "Payment in Full" means, with respect to any Obligations, the payment in full in cash and performance of all such Obligations, other than contingent indemnification obligations as to which no unsatisfied claim has been asserted.

"Participant" has the meaning set forth in Section 10.16.

"Participant Register" has the meaning set forth in Section 10.16.

"Patent Rights" means, with respect to the Products, any and all (a) issued patents, (b) pending patent applications, including all provisional applications, substitutions, continuations, continuations-in-part, divisionals and renewals, and all patents granted thereon, (c) patents-of-addition, reissues, reexaminations and extensions or restorations by existing or future extension or restoration mechanisms, including patent term adjustments, patent term extensions, supplementary protection certificates or the equivalent thereof, (d) inventor's certificates, (e) other forms of government-issued rights substantially similar to any of the foregoing, and (f) United States and foreign counterparts of any of the foregoing.

"Patents" means all (i) all patents and certificates of invention, or similar property rights, and applications for any of the foregoing, of the United States, any other country or any political subdivision thereof, (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom, (vii) all proceeds of the foregoing, including, without limitation, licenses, royalties, and income, and (viii) without duplication, all IP Ancillary Rights in respect of the foregoing.

"Pension Plan" means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which any Loan Party or any member of the Controlled Group is obligated to contribute or otherwise may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years.

"Perfection Certificate" means the Perfection Certificate dated as of the date hereof delivered by the Loan Parties to the Agent and the Lenders in connection with the execution and delivery of this Agreement, as amended, supplemented or otherwise modified from time to time.

"Permitted Lien" means any Lien expressly permitted by Section 7.2.

"Person" means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

"Phase I ESA" has the meaning set forth in clause (f) of the definition of Real Property Deliverables.

"Pledge Agreement" shall mean that certain Pledge Agreement, dated as of the Closing Date, executed by each Loan Party in favor of the Agent, for the benefit of the Agent and the Lenders, covering all the Capital Stock respectively owned by the Loan Parties.

"Prepayment Premium Amount" means an amount equal to (x) if any prepayment occurs, or upon any amounts becoming immediately due and payable upon the acceleration of the Obligations in accordance with Section 8.2 and (y) if any portion of the Tranche Two Commitment is terminated (including upon the acceleration of the Obligations in accordance with Section 8.2), in each case, including an automatic acceleration relating to or arising from the occurrence of an Event of Default under Section 8.1.3, (a) on or after the Closing Date but prior to the 12 month anniversary of the Closing Date, 100% of the interest that would have been due on the Loans prepaid or required to be prepaid, and the portion of the Tranche Two Commitment terminated, in each case, for the 12 month period following the date such Loans are prepaid or required to be prepaid or such portion of the Tranche Two Commitment is terminated, and (b) on or after the 12 month anniversary of the Closing Date but prior to the 18 month anniversary of the Closing Date, the product of (i) 50% of the interest that would have been due on the Loans prepaid or required to be prepaid for the 12 month period following the date such Loans are prepaid or required to be prepaid, and the portion of the Tranche Two Commitment terminated, multiplied by (ii) the ratio of (x) a number equal to the days from the earlier of the date of prepayment, acceleration or termination to the 18 month anniversary of the Closing Date over (y) 183; provided that for purposes of the calculations in clauses (a) and (b) in this definition, the LIBOR Rate used shall be deemed to be the LIBOR Rate on the earlier of the date such amounts are prepaid or required to be prepaid or such portion of the Tranche Two Commitment is terminated.

"Prime Based Rate" means the greater of (a) (i) the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Agent (at the direction of the Required Lenders)) or any similar release by the Federal Reserve Board (as reasonably determined by the Agent (at the direction of the Required Lenders)), minus (ii) 1.00%, and (b) 1.75%. Any change in the Prime Based Rate shall be effective from and including the effective date of such change.

"Prior Debt" has the meaning set forth in Section 2.1.2.

"Product" means any products manufactured, sold, developed tested or marketed by the Borrower or any of its Subsidiaries.

"Property" means each of (i) the real property and facility described as 119 Northeast Drive, Loveland, Ohio 45140 (Parcel ID: 621-0016-0019-00) and (ii) the real property and facility described as 4760 Airport Road, Cincinnati, OH 45226 (Parcel ID: 010-0004-0001-00).

"Qualified Cash" means, as of any date of determination, the aggregate amount of unrestricted cash on-hand of the Loan Parties maintained in deposit accounts in the name of a Loan Party in the United States as of such date, which deposit accounts are subject to Control Agreements; provided that in any event all amounts in the Reserve Account shall be counted as Qualified Cash.

"Qualified Stock" means any Capital Stock other than Disqualified Stock.

"Protective Advance" has the meaning set forth in Section 2.11.

"Real Estate" means any real property owned, leased, subleased or otherwise occupied by any Loan Party, including, without limitation, the Property.

"Real Property Deliverables" means each of the following agreements, instruments and other documents in respect of any owned Real Estate:

(a) a Mortgage duly executed by the applicable Loan Party;

(b) evidence of the recording of each Mortgage in such office or offices as may be necessary or, in the reasonable opinion of the Agent or the Required Lenders, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Agent and the Lenders thereunder;

(c) a Title Insurance Policy with respect to each Mortgage;

(d) a current ALTA survey and a surveyor's certificate, in form and substance reasonably satisfactory to the Agent and the Required Lenders, certified to the Agent and to the issuer of the Title Insurance Policy with respect thereto by a professional surveyor licensed in the state in which such Facility is located and reasonably satisfactory to the Required Lenders;

(e) an opinion of counsel, reasonably satisfactory to the Agent and the Required Lenders, in the state where such Facility is located with respect to the enforceability of the Mortgage to be recorded and such other matters as the Agent or the Required Lenders may reasonably request;

(f) a copy of each letter issued by the applicable Governmental Authority, evidencing each Facility's compliance with all applicable building codes, fire codes, other health and safety rules and regulations, parking, density and height requirements and other building and zoning laws together with a copy of all certificates of occupancy issued with respect to each Facility;

(g) a reasonably satisfactory ASTM 1527-00 Phase I Environmental Site Assessment ("Phase I ESA") provided by the Borrower to the Lenders (and, if requested by the Required Lenders based upon the results of such Phase I ESA, an ASTM 1527-00 Phase II Environmental Site Assessment) of each Facility, in form and substance and by an independent firm reasonably satisfactory to the Required Lenders;

(h) evidence as to (i) whether such real property is in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards (a "Flood Hazard Property") and (iii) if such real property is a Flood Hazard Property, (A) whether the community in which such real property is located is participating in the National Flood Insurance Program, (B) the applicable Loan Party's written acknowledgment of receipt of written notification from the Required Lenders or the Agent (1) as to the fact that such real property is a Flood Hazard Property and (2) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (C) copies of insurance policies or certificates of insurance of the Borrower and its Subsidiaries evidencing flood insurance reasonably satisfactory to the Agent and the Required Lenders and naming the Agent and its successors and/or assigns as sole loss payee on behalf of the Lenders; and

(i) such other agreements, instruments and other documents (including guarantees and opinions of counsel) as the Agent or the Required Lenders may reasonably require.

"Refinancing" means any issuance of Debt which is in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund the Debt being refinanced (or previous Refinancings thereof); provided that if the Debt that is extended, refinanced, renewed, replaced, defeased or refunded was subordinated in right of payment to the Obligations, then the terms and conditions of the extension, refinancing, renewal, replacement, defeasement or refunding must include subordination terms and conditions that are at least as favorable to the Agent and the Lenders as those that were applicable to the extended, refinanced, renewed, replaced, defeased or refunded Debt.

"Register" has the meaning set forth in Section 10.13.

"Registered Intellectual Property" has the meaning set forth in Section 5.17(a).

"Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of the Closing Date, by and among the Borrower, Marathon Structured Product Strategies Fund, LP, Marathon Blue Grass Credit Fund, LP, Marathon Centre Street Partnership, L.P., and TRS Credit Fund, LP.

"Related Parties" has the meaning set forth in Section 9.2.

"Required Lenders" means, at any time, Lenders having Loans or the Unused Tranche Two Commitment representing more than 50% of the sum of the Loans and the Unused Tranche Two Commitment.

"Reserve Account" means the deposit account of the Borrower maintained with PNC Bank, N.A. and which is subject to a blocked Control Agreement in favor of the Agent.

"Restricted Payment" has the meaning set forth in Section 7.3.

"SDN" has the meaning set forth in Section 5.20.1.

"SEC" means the United States Securities and Exchange Commission.

"Security Agreement" means that certain Security Agreement, dated as of the Closing Date, among the Loan Parties and the Agent, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Specified Equity Contribution" has the meaning set forth in Section 7.20.

"Stock Equivalents" means all securities convertible into or exchangeable for Capital Stock or any other Stock Equivalent, and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Capital Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable. For the avoidance of doubt, "Stock Equivalent" shall not include debt instruments that are convertible into Capital Stock or Stock Equivalents.

"Subject Purchase Orders" has the meaning set forth in Section 4.2.2.

"Subordinated Debt" means any Debt for borrowed money incurred by the Borrower or any of its Subsidiaries that is contractually subordinated in right of payment to the Obligations pursuant to a Subordination Agreement.

"Subordination Agreement" means any subordination agreements covering Subordinated Debt, each in form and substance satisfactory to the Required Lenders and the Agent and as the same may be amended, restated, supplemented or modified from time to time.

"Subsidiary" means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares of voting Capital Stock as to have more than 50% of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of the Borrower.

"Tax Returns" has the meaning set forth in Section 5.12.

"Taxes" means all present or future income, excise, stamp, documentary, property or franchise taxes or other taxes, assessment, fees, imposts, duties, levies, deductions, withholdings (including backup withholding) or other charges of any nature whatsoever imposed by any taxing authority, including any interest, additions to tax or penalties applicable thereto.

"Title Insurance Policy" means a mortgagee's loan policy, in form and substance reasonably satisfactory to the Agent and the Required Lenders, together with all endorsements made from time to time thereto, issued and delivered to the Agent by or on behalf of a title insurance company selected by or otherwise reasonably satisfactory to the Agent and the Required Lenders, insuring the Lien created by a Mortgage in an amount not less than the fair market value of the applicable property, and on terms and with such endorsements reasonably satisfactory to the Required Lenders and the Agent.

"Total Leverage Ratio" means the ratio, as of any date of determination, of (a) Funded Debt as of such date to (b) EBITDA for the period of four consecutive Fiscal Quarters then most recently ended for which financial statements under Section 6.1.1 or Section 6.1.2, as applicable, have been delivered (or are required to have been delivered), in each case for the Borrower and its Subsidiaries on a consolidated basis; provided that for purposes of calculating the Total Leverage Ratio (i) as of September 30, 2019, clause (b) above shall be calculated as (X) the consolidated EBITDA of the Borrower and its Subsidiaries for the Fiscal Quarter ended September 30, 2019 *multiplied by* (Y) four, (ii) as of December 31, 2019, clause (b) above shall be calculated as (X) the consolidated EBITDA of the Borrower and its Subsidiaries for the Fiscal Quarters ended September 30, 2019 and December 31, 2019 *multiplied by* (Y) two, and (iii) as of March 31, 2020, clause (b) above shall be calculated as (X) the consolidated EBITDA of the Borrower and its Subsidiaries for the Fiscal Quarters ended September 30, 2019, December 31, 2019 and March 31, 2020 *multiplied by* (Y) four *divided by* three.

"Trade Secrets" means all right, title and interest (and all related IP Ancillary Rights) arising under any Applicable Law in or relating to trade secrets.

"Trademark" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

"Tranche One Commitment" means, as to each Lender, such Lender's commitment to provide Tranche One Loans hereunder in the aggregate principal amount not to exceed the amount set forth opposite such Lender's name on the Commitment Schedule, as the same may be (a) reduced from time to time pursuant to Section 2.1.1(a) and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.13. The aggregate amount of the Lenders' Tranche One Commitments is $10,000,000.

"Tranche One Loans" means the term loan made by the Lenders pursuant to Section 2.1.1(a).

"Tranche Two Commitment" means, as to each Lender, such Lender's commitment to provide Tranche Two Loans hereunder in the principal amount up to but not to exceed the amount set forth opposite such Lender's name on the Commitment Schedule, as the same may be (a) reduced from time to time pursuant to Section 2.4 and Section 2.7 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.13. The amount of the Lenders' Tranche Two Commitments is $25,000,000 in the aggregate.

"Tranche Two Funding Date" means any date on which the conditions set forth in Section 4.2 have been satisfied or waived by the Agent (at the discretion of the Lenders) or the Lenders in their sole discretion and all or part of the Tranche Two Loan is funded.

"Tranche Two Loans" means the term loans made by the Lenders pursuant to Section 2.1.1(b).

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Agent for its benefit and the benefit of the Lenders pursuant to the applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

"Unused Tranche Two Commitment" means, as to each Lender at any time, the total Tranche Two Commitment held by such Lender at such time, minus the outstanding Tranche Two Loans held by such Lender at such time.

"Warrants" means (a) that certain Common Stock Purchase Warrant, dated as of the Closing Date, by and between the Borrower and Marathon Structured Product Strategies Fund, LP; (b) that certain Common Stock Purchase Warrant, dated as of the Closing Date, by and between the Borrower and Marathon Blue Grass Credit Fund, LP; (c) that certain Common Stock Purchase Warrant, dated as of the Closing Date, by and between the Borrower and Marathon Centre Street Partnership, L.P.; and (d) that certain Common Stock Purchase Warrant, dated as of the Closing Date, by and between the Borrower and TRS Credit Fund, LP.

"Wholly-Owned Subsidiary" means, as to any Subsidiary, all of the Capital Stock of which (except directors' qualifying shares) is at the time directly or indirectly owned by the Borrower and/or another Wholly-Owned Subsidiary of the Borrower.

1.2 Interpretation. In the case of this Agreement and each other Loan Document, (a) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (b) Annex, Exhibit, Schedule and Section references in each Loan Document are to the particular Annex, Exhibit, Schedule and Section of such Loan Document unless otherwise specified; (c) the term "including" is not limiting and means "including but not limited to"; (d) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including"; (e) unless otherwise expressly provided in such Loan Document, (i) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (f) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each of which shall be performed in accordance with its terms; and (g) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Loan Parties, the Lenders, the Agent and the other parties hereto and thereto and are the products of all parties; accordingly, this Agreement and the other Loan Documents, in each case, shall not be construed against the Agent or the Lenders merely because of the Agent's or the Lenders' involvement in their preparation. Any reference in any Loan Document to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to the adoption by the Borrower of *ASU No. 2016-02, Leases (Topic 842)*, to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2017.

Section 2. Credit Facilities.

2.1 Loans.

2.1.1 Loans. Subject to the terms and conditions set forth in this Agreement, the Lenders agree to lend to the Borrower funds in an aggregate principal amount not to exceed the aggregate Commitments as follows:

(a) on the Closing Date, subject to satisfaction of the conditions set forth in Section 4.1, the entire amount of the Tranche One Commitment, after which the Tranche One Commitment shall terminate in full; and

(b) on any Tranche Two Funding Date, subject to satisfaction of the conditions set forth in Section 4.2, the amount of the Tranche Two Loans requested by the Borrower to be funded on such date (not to exceed the amount of the Unused Tranche Two Commitment at such time).

2.1.2 General. No portion of the Tranche One Loans may be re-borrowed once repaid. Subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and re-borrow the Tranche Two Loans. The proceeds of the Tranche One Loans shall be used to refinance the Borrower's Debt owed to Arosa Opportunistic Fund LP (the "Prior Debt") and for general working capital purposes, including the payment of operating expenses, in each case, in compliance with the Loan Documents. The proceeds of the Tranche Two Loans shall be used for working capital required for vehicle production contracts, including tooling and equipment, in each case, in compliance with the Loan Documents. For the avoidance of doubt, the proceeds of the Loans shall be used in the manner set forth on Schedule 2.1.2 of the Disclosure Letter and as otherwise permitted by this Section 2.1.2. The proceeds of the Loans may also be used by the Borrower to pay its own fees and expenses associated with the transactions contemplated hereby (including the Facility Fee) and to pay any broker's, finder's or placement fee or commission set forth on Schedule 5.28 of the Disclosure Letter.

2.2 Loan Accounting.

2.2.1 Recordkeeping. The Agent, on behalf of the Lenders, shall record in its records the date and amount of the Loans made by each Lender, accrued interest and each repayment of principal or interest thereon. The aggregate unpaid principal amount so recorded shall, absent manifest error, be presumptive evidence of the principal amount of the Loans owing and unpaid. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of the Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.2.2 Notes. At the request of any Lender, the Loans shall be evidenced by one or more Notes, with appropriate insertions, payable to the order of such Lender in a face principal amount equal to the applicable Loan and payable in such amounts and on such dates as are set forth herein.

2.3 Interest.

2.3.1 Interest Rate.

(a) The Borrower promises to pay interest on the unpaid principal amount of the Tranche One Loans for the period commencing on the Closing Date and ending on (and including) the date on which the Tranche One Loans are Paid in Full, at the Applicable Contract Rate.

(b) The Borrower promises to pay interest on the full amount of the Unused Tranche Two Commitment and the unpaid principal amount of the outstanding Tranche Two Loans for the period commencing on the Closing Date and ending on (and including) the date on which the Tranche Two Loans are Paid in Full and the Tranche Two Commitment is terminated, at the Applicable Contract Rate. For the avoidance of doubt, interest paid on the Unused Tranche Two Commitment shall be the same amount of interest that would be paid on a Tranche Two Loan in the same principal amount as the amount of such Unused Tranche Two Commitment.

(c) The foregoing notwithstanding, (i) at any time an Event of Default has occurred and is continuing, the interest rate then applicable to the Loans and the unused Tranche Two Commitment shall automatically be increased, without demand or notice of any kind from the Agent or any Lender (including declaration or notice of an Event of Default), by five percent (5.00%) per annum (any such increased rate, the "Default Rate") and (ii) any such increase may thereafter be waived or rescinded by the Lenders in their sole discretion by written notice to the Borrower. In the event that the Obligations are not Paid in Full as of the Maturity Date, or in the event that the Obligations shall be declared or shall become due and payable pursuant to Section 8.2, the Obligations shall bear interest subsequent thereto at the Default Rate and such interest shall be payable in cash on demand. In no event shall interest or other amounts payable by the Borrower to the Lenders hereunder exceed the maximum rate permitted under Applicable Law, and if any such provision of this Agreement is in contravention of any such law, (x) any amounts paid hereunder shall be deemed to be and shall be applied against the principal amount of the Obligations to the extent necessary such that the amounts paid hereunder do not exceed the maximum rate under Applicable Law and (y) such provision shall otherwise be deemed modified as necessary to limit such amounts paid to the maximum rate permitted under Applicable Law.

2.3.2 Interest Payments. Interest accrued on the Unused Tranche Two Commitment and the Loans during the period from the Closing Date until the Maturity Date shall accrue and be payable in cash quarterly on each Interest Payment Date, in arrears, and, to the extent not paid in advance, upon a prepayment of the Loans or termination of all or any portion of the Tranche Two Commitment, as the case may be, in accordance with Section 2.4 and on the Maturity Date, in each such case, in cash. After the Maturity Date and at any time an Event of Default is continuing, all accrued interest on the Unused Tranche Two Commitment and the Loans shall be payable in cash on demand.

2.3.3 Computation of Interest. Interest on the Unused Tranche Two Commitment and the Loans shall be computed on the basis of a 360-day year for the actual number of days elapsed, including the first day but excluding the last day.

2.3.4 Original Issue Discount; Allocation of Issue Price .

(a) The Borrower and the Lenders acknowledge that the Loans will be treated as issued with original issue discount for U.S. federal income tax purposes, within the meaning of section 1273 of the IRC. The issue price, amount of original issue discount, issue date and yield to maturity for the Loans may be obtained by submitting a written request for such information to the Borrower at 100 Commerce Drive, Loveland, Ohio 45140; Attn: Chief Financial Officer.

(b) The Borrower and the Lenders acknowledge and agree that within 30 days after the Closing Date, they shall agree as to (i) the aggregate issue price the Loans and (ii) the portion of the issue price allocated to the Loans and the portion of the issue price allocated to the Warrants in the aggregate, which shall be divided among the Warrants on a pro rata basis based on their respective fair market value in accordance with Section 1273(c)(2) of the Code and Treasury Regulations §1.1273-2(h). The parties hereto agree to report all income tax matters with respect to the making of the Loans consistent with the provisions of this Section 2.3.4(b) unless otherwise required due to a change in Applicable Law.

2.4 Amortization; Prepayment.

2.4.1 Amortization. On each Amortization Date, the Borrower shall repay an aggregate principal amount of $500,000 of the Tranche One Loans, subject to earlier Payment In Full in accordance with the terms and provisions of this Agreement. On the Maturity Date, the Borrower shall repay the aggregate outstanding balance of the Loans, subject to earlier Payment In Full in accordance with the terms and provisions of this Agreement.

2.4.2 Mandatory Prepayment. (a) If any Loan Party receives Net Cash Proceeds from any Disposition (other than the sale or disposition of Surefly, Inc. or any portion of its related business and assets permitted by Section 7.4(b)(i)), Net Casualty Proceeds or net cash proceeds received by such Loan Party from the issuance or incurrence of Debt (other than Subordinated Debt permitted under Section 7.1(e)) or, in the case of the Borrower, the issuance of Capital Stock, the Borrower shall notify the Lenders and the Agent thereof. Unless the Required Lenders shall have sent written notice to the Borrower, by the fourth Business Day after the date on which the applicable Loan Party received such proceeds (except in the case of issuance of Capital Stock, in which case the following sentence shall apply), declining receipt of a prepayment under this Section 2.4.2(a), the Borrower shall prepay the Obligations within five Business Days after such receipt in an amount equal to (i) 50% of such Net Cash Proceeds (or such lesser amount as the Required Lenders may specify), (ii) 100% of such Net Casualty Proceeds (or such lesser amount as the Required Lenders may specify) and (iii) 100% of such net cash proceeds received by the such Loan Party from the issuance or incurrence of Debt (other than Subordinated Debt permitted under Section 7.01(e)) (or such lesser amount as the Required Lenders may specify). If the net cash proceeds are from the issuance of Capital Stock of the Borrower after September 30, 2019 and unless the Lenders shall have sent written notice to the Borrower, by the fourth Business Day after the date on which the Borrower received such proceeds, declining receipt of a prepayment under this Section 2.4.2(a), the Borrower shall prepay the Obligations within five Business Days after such receipt in an amount equal to 35% of such net cash proceeds received by the Borrower (or such lesser amount as the Lenders may specify).

(b) Immediately upon receipt by the Borrower of the proceeds of any Specified Equity Contribution pursuant to Section 7.20, the Borrower shall prepay the Loans in accordance with Section 2.7 in an amount equal to 100% of such proceeds.

2.4.3 Voluntary Prepayment; Voluntary Tranche Two Commitment Termination . The Borrower may prepay the principal of the Tranche One Loans and/or the Tranche Two Loans in whole or in part, at any time and from time to time upon (a) at least 10 Business Days' prior written notice to the Agent and (b) payment to the Agent, for the benefit of the Lenders, of the amounts described in Section 2.12.2. Amounts of the Tranche One Loans so prepaid may not be re-borrowed. Amounts of the Tranche Two Loans so prepaid may be re-borrowed. The Borrower may terminate the Tranche Two Commitment in whole or in part, at any time and from time to time upon (a) at least 10 Business Days' prior written notice to the Agent and (b) payment to the Agent, for the benefit of the Lenders, of the amounts described in Section 2.12.2. For the avoidance of doubt, Tranche Two Loans prepaid pursuant to Section 6.9 may be re-borrowed.

2.5 Payment Upon Maturity. The Tranche One Loans and the Tranche Two Loans, any accrued but unpaid interest thereon and on the Unused Tranche Two Commitment and any other Obligations then outstanding, shall be due and required to be Paid in Full on the Maturity Date.

2.6 Making of Payments. All payments on the Loans and the Unused Tranche Two Commitment in accordance with this Agreement, including all payments of fees and expenses, shall be made by the Borrower to the Agent without setoff, recoupment or counterclaim and in immediately available funds, in Dollars, by wire transfer to the account of the Agent specified by the Agent, in any case, not later than 1:00 p.m. New York City time on the date due, and funds received after that hour shall be deemed to have been received by the Agent on the following Business Day. The Agent shall promptly remit to the Lenders all payments received in collected funds by the Agent for the account of the Lenders.

2.7 Application of Payments and Proceeds. Each prepayment of the outstanding Tranche One Loans pursuant to Section 2.4.1 shall be applied to the installments of principal on such Loan in the inverse order of maturity. Each prepayment of the outstanding Loans pursuant to Section 2.4.2 shall be applied first to the installments of principal on the Tranche One Loans in the inverse order of maturity and then to the installments of principal on the Tranche Two Loans in the inverse order of maturity. Each prepayment of the outstanding Tranche One Loans and/or the Tranche Two Loans as determined by the Borrower pursuant to Section 2.4.3 shall be applied to the installments of principal on such Loan in the inverse order of maturity. The Tranche Two Commitment shall be permanently reduced in the amount of any prepayment of Tranche Two Loans pursuant to Section 2.4.2. If no Loans are outstanding at a time that a mandatory prepayment of Loans is required under Section 2.4.2, then the Tranche Two Commitment shall be permanently reduced in an amount equal to the Loans that would have otherwise been required to be prepaid. For the avoidance of doubt, the Tranche Two Commitment shall not be reduced by any prepayment of Tranche Two Loans pursuant to Section 6.9.

2.8 Payment Dates. If any payment of principal of or interest on a Loan or the Unused Tranche Two Commitment, or of any fees, falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day and, in the case of principal, additional interest shall accrue and be payable for the period of any such extension.

2.9 Set-off. The Borrower acknowledges that the Agent, the Lenders and their respective Affiliates have all rights of set-off, counterclaim and bankers' lien provided by Applicable Law, and in addition thereto, the Borrower acknowledges that at any time an Event of Default has occurred and is continuing, the Agent and the Lenders may apply to the payment of any Obligations of the Borrower hereunder, whether or not then due, any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter deposited with the Agent or the Lender.

2.10 Currency Matters. All amounts payable under this Agreement and the other Loan Documents to the Agent and/or the Lenders shall be payable in Dollars.

2.11 Protective Advances. If an Event of Default has occurred and is continuing, the Required Lenders are authorized by the Borrower, from time to time in the Required Lenders' reasonable discretion (but the Required Lenders shall have absolutely no obligation to), to make disbursements or advances to the Borrower or any other Loan Party in amounts which the Required Lenders, in their reasonable discretion, deem necessary (i) to preserve or protect the Collateral, or any portion thereof or (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations (any of such disbursements or advances are in this Section 2.11 referred to as "Protective Advances"). Unless otherwise agreed in writing by the Required Lenders in their reasonable discretion, if an Event of Default has occurred and is continuing, Protective Advances shall bear interest at a rate payable in cash per annum equal to the Applicable Contract Rate plus the Default Rate. Each Protective Advance shall be secured by the Liens in favor of the Agent in and to the Collateral and shall constitute Obligations hereunder. The Protective Advances shall constitute Obligations hereunder which are subject to the rights of the Agent, the Lenders and their respective Affiliates in accordance with Section 2.9. The Borrower shall pay the unpaid principal amount and all unpaid and accrued interest of each Protective Advance on the earliest of (i) the Maturity Date and (ii) the date on which demand for payment is made by the Required Lenders. In the event any Protective Advances are made by the Required Lenders following the Maturity Date, the Borrower shall pay the unpaid principal amount and all unpaid and accrued interest of each Protective Advance on the date on which demand for payment is made by the Required Lenders. The Required Lenders shall promptly notify the Borrower in writing of each such Protective Advance, which notice shall include a description of the amount and the purpose of such Protective Advance. Any other terms with respect to the extension of any Protective Advance may be set forth in a separate agreement reasonably satisfactory to the Required Lenders in their reasonable discretion.

2.12 Fees.

2.12.1 Facility Fee. As consideration for the agreements of the Lenders hereunder, the Borrower agrees to pay to each Lender, for its own account, a facility fee (the "Facility Fee") equal to 2.00% of such Lender's Commitments, which Facility Fee shall be due and earned in full (without rebate or proration) on the Closing Date; provided that, notwithstanding the foregoing, 50% of the Facility Fee shall be paid on the Closing Date and 50% of the Facility Fee shall be paid on the first Tranche Two Funding Date after the Closing Date.

2.12.2 Prepayment Premium Amount. Upon (a) prepayment of all or any portion of any Loan or termination of all or any portion of the Tranche Two Commitment, in each case, for any reason (including for the avoidance of doubt pursuant to Section 2.4.2 but not including pursuant to Section 6.9) or (b) all or any portion of any Loan becoming due and payable or all or any portion of the Tranche Two Commitment being terminated, in each case, automatically or by declaration upon the occurrence and during the continuance of an Event of Default (including for the avoidance of doubt as a result of an automatic acceleration relating to or arising from the occurrence of an Event of Default under Section 8.1.3), then, in each case, the principal portion of the Loan being prepaid (or all principal in the event of an acceleration) or the amount of Tranche Two Commitment being terminated plus the following amounts shall each be immediately due and payable: (i) all accrued and unpaid interest thereon (including, as applicable, interest accrued thereon at the Default Rate), (ii) in the event such Loan is prepaid or accelerated, or such portion of the Tranche Two Commitment is terminated, prior to the 18 month anniversary of the Closing Date, the applicable Prepayment Premium Amount. The Borrower acknowledges that the Lenders have the right to maintain their investments in the Loans and the Tranche Two Commitment free from repayment or termination, respectively, by the Borrower (except as herein specifically provided for) and that the provision for payment of the Prepayment Premium Amount, as applicable, by the Borrower in the event that any Loan is prepaid, or the Tranche Two Commitment is terminated, in each case, for any reason or is accelerated or terminated, respectively, as a result of the occurrence and during the continuance of an Event of Default or otherwise (including for the avoidance of doubt an automatic acceleration relating to or arising from the occurrence of an Event of Default under Section 8.1.3), in each case prior to the 18 month anniversary of the Closing Date, is intended to provide compensation for the deprivation of such right under such circumstances.

2.12.3 Agent Fees. The Borrower shall to pay to the Agent, for its own account, fees payable in the amounts and at the times set forth in the Agent Fee Letter.

2.13 LIBOR.

(a) During the term of this Agreement, the Interest Period shall be three months and each such Interest Period shall automatically continue after expiration thereof for an additional three month period.

(b) The Borrowers may prepay Loans at any time; provided, however, that in the event that Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any mandatory prepayment pursuant to Section 2.4.2 or any application of payments or proceeds of Collateral or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, the Borrower shall indemnify, defend, and hold the Lenders and their participants harmless against any and all Funding Losses in accordance with Section 2.14.

2.14 Funding Losses. The Borrower shall indemnify, defend, and hold the each Lender harmless against any loss, cost or expense incurred by such Lender as a result of (a) the payment of any principal of any Loan other than on the last day of an Interest Period applicable thereto (including as a result of a Default or an Event of Default or any mandatory prepayment required pursuant to Section 2.4.2), or (b) the failure to borrow, continue or prepay any Loan on the date specified in any Borrowing Request or other notice delivered pursuant hereto (such losses, costs and expenses, collectively, "Funding Losses").

2.15 Changes in Law; Impracticability or Illegality; Alternate Rate of Interest.

(a) The LIBOR Rate may be adjusted by the Agent (at the direction of the Required Lenders) with respect to the Lenders on a prospective basis to take into account any additional or increased costs to the Lenders of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed on the Lenders by the Board of Governors of the Federal Reserve System of the United States of America (or any successor), excluding any adjustments to reserve requirements, which additional or increased costs would increase the cost to the Lenders of funding loans bearing interest at the LIBOR Rate. In any such event, each affected Lender shall give the Borrower and the Agent notice of such a determination and adjustment and, upon its receipt of the notice from such Lender, the Borrower may, by notice to the affected Lender (b) require the affected Lender to furnish to the Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (c) repay the Loans with respect to which such adjustment is made (together with any amounts due under Section 3.1).

(b) In the event that any change in market conditions or any law, regulation, treaty or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans or the Tranche Two Commitment or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to the Borrower and the Agent and in the case of any Loans that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans and the Tranche Two Commitment, and interest upon the Loans, and the Tranche Two Commitment, thereafter shall accrue interest at a rate per annum determined by replacing references herein to the LIBOR Rate with the Prime Based Rate in effect from time to time.

(c) If at any time the Required Lenders determine (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.15(b) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.15(b) have not arisen but the supervisor for the administrator of the LIBOR Rate has made a public statement identifying a specific date after which the LIBOR Rate shall no longer be used for determining interest rates for loans, then the Required Lenders in their reasonable discretion shall establish an alternate rate of interest to that based on the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans in the United States of a similar type as the Loans at such time, and the Agent, the Lenders and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes as the Lenders and the Borrower may determine to be appropriate. Until an alternate rate of interest shall be determined in accordance with this Section 2.15(c), the provisions in Section 2.15(b) shall apply.

Section 3. Yield Protection.

3.1 Taxes.

(a) All payments of principal and interest on the Loans and all other amounts payable under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by Applicable Law. If any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any Applicable Law (as determined in the good faith reasonable discretion of the Borrower or the Required Lenders), then the Borrower shall: (i) timely pay directly to the relevant taxing authority the full amount required to be so withheld or deducted in accordance with Applicable Law; (ii) as soon as practicable and within 30 days after the date of any such payment of Taxes, forward to the Agent an official receipt or other documentation reasonably satisfactory to the Required Lenders and the Agent evidencing such payment to such relevant taxing authority; and (iii) in the case of Indemnified Taxes, pay to the Agent for the account of the Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by the Lenders after such deduction or withholding (including withholdings and deductions applicable to any additional sums payable under this Section 3.1) has been made will equal the full amount the Lenders would have received had no such withholding or deduction been required.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of each Lender timely reimburse it for the payment of, any Other Taxes.

(c) The Loan Parties shall jointly and severally reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to the Agent), the Agent and the Lenders for all Indemnified Taxes (including any Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.1) paid or payable by the Agent or the Lenders, or required to be withheld or deducted from a payment to the Agent or the Lenders, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally asserted. A certificate of the Agent or any Lender (or of the Agent on behalf of any Lender) claiming any reimbursement or indemnification under this clause (c), setting forth the amounts to be paid thereunder and delivered to the Borrower with a copy to the Agent, shall be conclusive, binding and final for all purposes, absent manifest error.

(d) On or prior to the date it becomes a party to this Agreement, and from time to time thereafter as required by law or reasonably requested in writing by the Borrower or the Agent, each Lender (including, for purpose of this section, any assignee of any Lender that becomes a party to this Agreement) shall (but only so long as such Lender remains lawfully able to do so) provide the Borrower with such properly completed and executed documents and forms necessary to certify that payments to such Lender are exempt from or entitled to a reduced rate of withholding tax on payments pursuant to this Agreement or any other Loan Document. In addition, on or prior to the date it becomes a party to this Agreement, and from time to time thereafter as required by law or reasonably requested in writing by the Borrower or the Agent, each Lender shall (but only so long as such Lender remains lawfully able to do so) deliver such other properly completed and executed documents or forms necessary to certify that such Lender is not subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, each Lender that is the beneficial owner of U.S. source payments made under this Agreement will (but only so long as such Lender remains lawfully able to do so) provide to the Borrower and the Agent: (i) in the case of a beneficial owner that is U.S. person within the meaning of Section 7701 of the IRC, executed copies of IRS Form W-9 certifying that such beneficial owner is exempt from U.S. federal backup withholding tax, (ii) in the case of a beneficial owner claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, both (A) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable and (B) a certificate to the effect that such beneficial owner is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC, (iii) in the case of a beneficial owner that is not a U.S. person within the meaning of Section 7701 of the IRC claiming the benefits of an income tax treaty to which the United States is a party, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest," "business profits" or "other income" article of such tax treaty; and (iv) in the case of a beneficial owner for whom payments under this Agreement constitute income that is effectively connected with such beneficial owner's conduct of a trade or business in the United States, executed copies of IRS Form W-8ECI. Any Lender that is not the beneficial owner of U.S. source payments made under this Agreement, such as an entity treated as a partnership for U.S. federal income tax purposes, will (but only so long as such Lender remains lawfully able to do so) provide (x) executed copies of an IRS Form W-8IMY on behalf of itself and (y) on behalf of each such beneficial owner, the forms set forth in clauses (i) through (iv) of the preceding sentence that would be required of such beneficial owner if such beneficial owner were a Lender. If a payment made to any Lender under this Agreement would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA, such Lender shall (but only so long as such Lender remains lawfully able to do so) deliver to the Borrower and the Agent, at the time or times prescribed by law or reasonably requested in writing by the Borrower or the Agent, such documentation prescribed by applicable law or reasonably requested in writing by the Borrower or the Agent as may be necessary for the Borrower or the Agent to comply with its obligations under FATCA, to determine that such Lender has complied with its obligations under FATCA, or to determine the amount to deduct and withhold from such payment. Solely for purposes of the preceding sentence, FATCA shall include any amendments made to FATCA after the date of this Agreement.

(e) If any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.1, such Lender shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Lender, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund), provided that the Borrower, upon the request of such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such Lender in the event such Lender is required to repay such refund to such taxing authority. Notwithstanding anything to the contrary in this clause (e), in no event will any Lender be required to pay any amount to the Borrower pursuant to this clause (e) the payment of which would place such Lender in a less favorable net after-Tax position than such Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This clause (e) shall not be construed to require any Lender to make available its Tax Returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(f) The provisions of this Section 3.1 shall survive the termination of this Agreement and repayment of all Obligations.

3.2 Increased Cost.

(a) If, after the Closing Date, the adoption or taking effect of, or any change in, any Applicable Law, rule, regulation or treaty, or any change in the interpretation or administration of any Applicable Law, rule, regulation or treaty by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender with any request, rule, guideline or directive (whether or not having the force of law) of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by such Lender or any Person controlling such Lender; (ii) shall subject such Lender or the Agent to any Taxes (other than Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, Indemnified Taxes and Connection Income Taxes); or (iii) shall impose on such Lender or any Person controlling such Lender any other condition affecting any Loan, its Notes or its obligation to make any Loan; and the result of anything described in clauses (i) through (iii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any Loan, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Notes with respect thereto, then, upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to the Agent) therefor, the Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction.

(b) If any Lender shall reasonably determine that any change in, or the adoption or phase-in of, any Applicable Law, rule or regulation regarding capital adequacy, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by such Lender or any Person controlling such Lender with any request or directive regarding capital adequacy applicable to such Lender or any such Person (whether or not having the force of law) of any such authority, central bank or comparable agency, which is not covered by paragraph (a) above, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to the Agent), the Borrower shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction.

(c) Notwithstanding anything herein to the contrary, (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a change in Applicable Law, regardless of the date enacted, adopted, issued or implemented. Notwithstanding anything to the contrary in this Section 3.2, the Borrower shall not be required to compensate any Lender for any amounts in this Section 3.2 (excluding Taxes described in Section 3.2(a)(ii)) incurred more than 180 days prior to the date that such Lender delivers the statement making the demand for such payment (except that, if the change in law giving rise to such increased costs or reductions is retroactive, then the foregoing 180 day period shall be extended to include the retroactive effect thereof).

(d) All amounts payable under this Section 3.2 shall bear interest from the date that is 10 days after the date of demand by any Lender or the Agent (at the direction of the applicable Lender) until payment in full to such Lender at the rate applicable to the Loans then outstanding. A certificate of the Agent or any Lender (or of the Agent on behalf of the applicable Lender) claiming any compensation under this Section 3.2, setting forth the amounts to be paid thereunder and delivered to the Borrower with a copy to the Agent, shall be conclusive, binding and final for all purposes, absent manifest error.

(e) The obligations of the Loan Parties under this Section 3.2 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

3.3 Mitigation of Circumstances. Each Lender will use commercially reasonable efforts available to it (and not, in such Lender's sole judgment, otherwise disadvantageous to such Lender) to mitigate or avoid, any obligation by the Borrower to pay any amount pursuant to Section 3.1 or 3.2; provided, that this Section 3.3 shall not apply to, or operate to prevent, any assignment of the Loans and the rights and obligations of any Lender pursuant to Section 10.13. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by each Lender in connection with this Section 3.3.

3.4 Conclusiveness of Statements; Survival. Determinations and statements of any Lender pursuant to Sections 3.1 or 3.2 shall be conclusive absent manifest error provided that such Lender or the Agent provides the Borrower with written notification of such determinations and statements. Each Lender may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2 and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4. Conditions Precedent.

4.1 Closing Date. The occurrence of the Closing Date, the effectiveness of this Agreement and the obligation of the Lenders to make Tranche One Loans is subject to the satisfaction or waiver in writing by the Lenders or, at the direction of the Lenders, the Agent of the following conditions precedent, each of which shall be reasonably satisfactory in all respects to the Agent and the Lenders:

4.1.1 Delivery of Loan Documents. The Borrower shall have delivered the following documents in form and substance reasonably satisfactory to the Lenders and the Agent (and, as applicable, duly executed by all Persons named as parties thereto and dated as of the Closing Date or an earlier date reasonably satisfactory to the Lenders and the Agent):

(a) Agreement. This Agreement.

(b) Loan Documents. The Loan Documents and all instruments, documents, certificates and agreements executed or delivered pursuant thereto (including Intellectual Property assignments as collateral and pledged equity and limited liability company interests in the Subsidiaries, if any, with undated irrevocable transfer powers executed in blank), in each case, executed and delivered by each Loan Party and each other Person named as a party thereto.

(c) Financing Statements; Mortgages. Properly completed UCC financing statements and other filings and documents required by law or the Loan Documents to provide the Agent with perfected first priority Liens (subject only to Permitted Liens) in the Collateral.

(d) Lien and Judgment Searches. Copies of UCC, tax lien and judgment search reports listing all effective financing statements, tax liens and equivalent filings and judgments filed against any Loan Party, with copies of all such filings, and copies of search results for Registered Intellectual Property (to the extent reasonably available) conducted by the Borrower listing all effective collateral assignments in respect of such Intellectual Property filed with respect to any Loan Party, with copies of such collateral assignment documentation, all in each jurisdiction reasonably determined by the Required Lenders.

(e) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified as of a recent date by the appropriate Governmental Authority (as applicable) in its jurisdiction of incorporation (or formation), (ii) limited liability company agreement, partnership agreement and bylaws (and similar governing document) (as applicable), (iii) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, (vi) signature and incumbency certificates of its officers authorized to execute the Loan Documents, in each case with respect to clauses (i) through (iv), all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification and (v) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction reasonably requested by the Agent or the Required Lenders, in each case, dated as of a recent date.

(f) Opinions of Counsel. Opinions, addressed to the Agent and dated as of the Closing Date, from counsel to the Borrower, covering such matters as are customary for the transactions contemplated by the Loan Documents.

(g) Insurance. Certificates or other evidence of insurance in effect as required by Section 6.3(b).

(h) [Reserved.]

(i) [Reserved.]

(j) Payoff; Release of Prior Debt. Payoff letters with respect to the repayment in full of the Prior Debt, termination of all agreements related thereto and the release of all Liens granted in connection therewith, with UCC or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(k) Disclosure Letter. The Disclosure Letter.

(l) Warrants and Registration Rights Agreement. The Warrants and the related Registration Rights Agreement.

(m) Officer's Certificate. A certificate, dated the Closing Date and signed by the chief executive officer or the chief financial officer of the Borrower, confirming compliance with the conditions set forth in Section 4.1.2, 4.1.3 and 4.1.4.

(n) Solvency Certificate. The Agent shall have received a certificate of the chief financial officer (or, in the absence of a chief financial officer, the chief executive officer or manager) of each Loan Party, in his or her capacity as such and not in his or her individual capacity, in form and substance reasonably satisfactory to the Required Lenders, certifying as to the matters set forth in Section 5.13.

(o) [Reserved.]

(p) Delivery of Borrowing Request. A Borrowing Request, delivered to the Agent at least two Business Days prior to the Closing Date, requesting that the entire amount of the Tranche One Loans be funded on the Closing Date.

(q) Notes. The Notes in respect of the Tranche One Loans and the Tranche Two Loans, each in form and substance satisfactory to the Lender holding each Note, duly executed by the Borrower.

(r) Agent Fee Letter. The Agent Fee Letter, dated the Closing Date, by and among the Agent and the Borrower.

(s) Expenses. The payment of all fees, expenses and other amounts due and payable under each Loan Document or set forth on Schedule 5.28 of the Disclosure Letter.

(t) Other Documents. Such other certificates, documents and agreements that may be listed on the closing checklist provided by the Lenders to the Borrower or as the Agent or the Required Lenders may request.

4.1.2 Representations and Warranties. Each representation and warranty by each Loan Party contained herein or in any other Loan Document to which such Loan Party is a party, shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the Closing Date (or as of a specific earlier date if such representation or warranty expressly relates to an earlier date).

4.1.3 No Default. No Default or Event of Default shall have occurred and be continuing.

4.1.4 No Material Adverse Change. Since December 31, 2017, no event or occurrence shall have occurred that has resulted or could reasonably be expected to result in a Material Adverse Effect.

4.1.5 Payment of Fees and Expenses. The Borrower shall have paid, on or prior to the Closing Date, (i) the Facility Fee payable under Section 2.12.1, (ii) the fees payable on or before the Closing Date in the amounts set forth in the Agent Fee Letter and (iii) all costs and expenses (including payment or reimbursement of all Costs, diligence costs and consulting costs (including actual, reasonable and documented fees and charges of any accountants, auditors, appraisers, consultants and other professionals)) incurred by the Agent and the Lenders in connection with the preparation, execution and delivery of this Agreement, the other Loan Documents and the transactions contemplated hereby and thereby which are required to be paid by the Borrower.

4.2 Tranche Two Loans. The obligation of the Lenders to make any Tranche Two Loans on or prior to the 24 month anniversary of the Closing Date is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to the Agent and the Lenders:

4.2.1 Delivery of Tranche Two Borrowing Request. Prior to the applicable Tranche Two Funding Date, the Borrower shall have delivered to the Agent a Tranche Two Borrowing Request substantially in the form of Exhibit C requesting that all or a portion of the Tranche Two Loans, subject to Section 4.2.2, be funded on a date that is not less than 15 days from the date of such Tranche Two Borrowing Request, but which date, in any event, may not be after the 24 month anniversary of the Closing Date, which Tranche Two Borrowing Request shall be signed by the chief executive officer or chief financial officer of the Borrower, and which Tranche Two Borrowing Request, for the avoidance of doubt, shall attach copies of each Subject Purchase Order against which the requested funding of the Tranche Two Loans is to be made, each certified by the chief executive officer or chief financial officer of the Borrower as being in full force and effect without modification.

4.2.2 Tranche Two Conditions to Borrowing. (a) The aggregate amount of the Tranche Two Loans funded by the Lenders shall be no greater than the lesser of (X) the Unused Tranche Two Commitment at such time and (Y) the greater of (I) the aggregate amount of payment obligations that may become due to the Loan Parties under and evidenced by confirmed open purchase orders delivered to the Lenders at least 15 days prior to any funding (the "Subject Purchase Orders") and (II) solely with respect to the Subject Purchase Orders for which there is an associated voucher incentive, the cost of manufacturing the vehicles included in such Subject Purchase Orders; provided that, in all cases, the Subject Purchase Orders (i) are in form and substance reasonably acceptable to the Required Lenders (it being agreed that the amount of any open purchase order for purposes hereof shall exclude the amount of any associated voucher incentive) and (ii) include a margin of return reasonably acceptable to the Required Lenders (it being understood that the amount of the associated voucher incentive will be included in the Required Lenders' evaluation of the margin of return of any Subject Purchase Orders); (b) the amount of any funding of the Tranche Two Loans shall be in an aggregate minimum amount of $500,000 and in integral multiples of $250,000; and (c) the Borrower may not submit more than one Tranche Two Borrowing Request with respect to the funding of the Tranche Two Loans in any calendar month unless otherwise expressly agreed by the Lenders in their sole discretion. Notwithstanding the foregoing, at the Borrower's request, Tranche Two Loans shall be funded to the extent of any Unused Tranche Two Commitment in the amount of any fees and expenses to be paid by the Borrower to the Agent and the Lenders on any Tranche Two Funding Date.

4.2.3 Payment of Fees and Expenses. The Borrower shall have paid, on or prior to the Tranche Two Funding Date, (i) all documented out-of-pocket costs and expenses (including payment or reimbursement of all Costs, diligence costs and consulting costs (including actual, reasonable and documented fees and charges of any accountants, auditors, appraisers, consultants and other professionals)) incurred by the Agent and the Lenders as of such date and (ii) all documented and out-of-pocket costs and expenses incurred by the Agent and the Lenders in connection with the funding of the Tranche Two Loans which are required to be paid by the Borrower.

4.2.4 Officer's Certificate. A certificate, dated the Tranche Two Funding Date and signed by the chief executive officer or the chief financial officer of Parent, confirming compliance with the conditions set forth in Section 4.2.5, 4.2.6, and 4.2.7.

4.2.5 Representations and Warranties. Each representation and warranty by each Loan Party contained herein or in any other Loan Document to which such Loan Party is a party, shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the Tranche Two Funding Date (or as of a specific earlier date if such representation or warranty expressly relates to an earlier date).

4.2.6 No Default. No Default or Event of Default shall have occurred and be continuing on the date of delivery of any Tranche Two Borrowing Request and the date of any funding of the Tranche Two Loans (both before and immediately after giving effect thereto).

4.2.7 No Material Adverse Change. Since December 31, 2017, no event or occurrence shall have occurred that has resulted or could reasonably be expected to result in a Material Adverse Effect.

Section 5. Representations and Warranties. To induce the Agent and the Lenders to enter into this Agreement and to induce the Lenders to advance the Loans hereunder, the Borrower represents and warrants to the Agent and the Lenders that each of the following are, and after giving effect to the borrowing of each Loan, will be, true, correct and complete:

5.1 Organization. Each Loan Party and each of its Subsidiaries is a corporation validly existing and in good standing under the laws of its state of organization; and each Loan Party and each of its Subsidiaries has all power and authority and all governmental approvals required for the ownership and operation of its properties and the conduct of its business as now conducted and as proposed to be conducted and is qualified to do business, and is in good standing (as applicable), in every jurisdiction where, because of the nature of its activities or properties, such qualification is required, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect.

5.2 Authorization; No Conflict. Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, the Borrower is duly authorized to borrow monies hereunder, the granting of the security interests pursuant to the Collateral Documents is within the corporate purposes of the Borrower and each other Loan Party party thereto, and the Borrower and each other Loan Party is duly authorized to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by the Borrower of this Agreement and by the Borrower and each Loan Party of each Loan Document to which the Borrower and such Loan Party, as applicable, is a party, and the borrowings by the Borrower hereunder, do not and will not (a) require any material consent or approval of, or registration or filing with or any other action by, any Governmental Authority (other than (i) any consent or approval which has been obtained and is in full force and effect and (ii) recordings and filings in connection with the Liens granted to the Agent under the Collateral Documents), (b) conflict with (i) any material provision of Applicable Law, (ii) the charter, by-laws, limited liability company agreement, partnership agreement or other organizational documents of any Loan Party or (iii) in any material respect, any material agreement, indenture, instrument or other document, or any judgment, order or decree, which is binding upon any Loan Party or any of such Loan Party's respective properties (including, without limitation, any Material Contract) or (c) require, or result in, the creation or imposition of any Lien on any asset of the Borrower or any other Loan Party (other than Liens in favor of the Agent created pursuant to the Collateral Documents).

5.3 Validity; Binding Nature. Each of this Agreement and each other Loan Document to which the Borrower or any other Loan Party is a party is the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

5.4 Financial Condition. The unaudited financial statements of the Borrower and its Subsidiaries (presented on a consolidated basis) as at March 31, 2018, June 30, 2018 and September 30, 2018 (each filed with the SEC), and the audited consolidated financial statements of the Borrower and its Subsidiaries (presented on a consolidated basis) as at December 31, 2017, have been prepared in accordance with GAAP, subject to, in the case of the unaudited financial statements, the absence of footnotes and year-end adjustments, and present fairly, in all material respects, the consolidated financial condition of such Persons as at such dates and the results of their operations and cash flows for the periods then ended. As of the Closing Date, the Borrower and its Subsidiaries have no material liabilities other than as set forth on the foregoing financial statements and trade payables incurred in the ordinary course of business.

5.5 No Material Adverse Change. Since December 31, 2017, there has been no event or occurrence that has resulted or could reasonably be expected to result in a Material Adverse Effect.

5.6 Litigation. As of the Closing Date, other than as set forth on Schedule 5.6 of the Disclosure Letter, no litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to the Borrower's knowledge, threatened in writing, against any Loan Party or any of its Subsidiaries or any of their respective properties; and as of any date, other than the Closing Date, on which this representation is made or remade, other than as set forth on Schedule 5.6 of the Disclosure Letter, no litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to the Borrower's knowledge, threatened in writing, against any Loan Party or any of its Subsidiaries or any of their respective properties, which if adversely determined could reasonably be likely to yield liability, in the aggregate for all such matters, in excess of $250,000, or result in a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document, or directing that the transactions provided for herein not be consummated as herein provided. Neither any Loan Party nor any of its Subsidiaries is the subject of an audit or, to the knowledge of the Borrower, any review or investigation by any Governmental Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any requirement of Applicable Law.

5.7 Ownership of Properties; Liens; Real Property. There are no Liens on the Collateral other than Permitted Liens. Each Loan Party and each of its Subsidiaries owns good and, in the case of owned real property, marketable title to all of its properties and assets, real and personal, tangible and intangible, of any nature whatsoever (including Patents, Trademarks, trade names, service marks and Copyrights), free and clear of all Liens, charges and claims (including outstanding infringement claims with respect to Intellectual Property) other than Permitted Liens. The telematic data (other than the global position system location data with respect each truck) collected by the Loan Parties from vehicles manufactured, operated or sold by the Loan Parties may be used by the Loan Parties. Schedule 5.7 of the Disclosure Letter lists (a) all of the real property owned, leased, subleased or otherwise owned or occupied by any Loan Party as of the Closing Date and (b) all Liens on the Property and any Debt of any Person secured by such Liens.

5.8 Capitalization; Subsidiaries.

(a) Capital Stock. Schedule 5.8(a) of the Disclosure Letter sets forth, as of the Closing Date, the name and jurisdiction of incorporation or organization of, and the percentage of each class of Capital Stock owned by the Borrower or any other Subsidiary in (i) each Subsidiary and (ii) each joint venture in which the Borrower or any other Subsidiary owns any Capital Stock. All Capital Stock in each Subsidiary owned by the Borrower or any other Subsidiary is duly and validly issued and, in the case of each Subsidiary that is a corporation, is fully paid and non-assessable, and is owned by the Borrower, directly or indirectly through Wholly-Owned Subsidiaries. Each Loan Party is the record and beneficial owner of, and has good title to, the Capital Stock pledged by it to the Agent under the Collateral Documents, free of any and all Liens, rights or claims of other Persons, other than Liens created under the Collateral Documents and other Permitted Liens, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such pledged Capital Stock.

(b) No Consent of Third Parties Required. Except as set forth on Schedule 5.8(b) of the Disclosure Letter, no consent of any Person, including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary, is necessary for the creation, perfection and/or first priority status of the security interest of the Agent in any Capital Stock pledged to the Agent for its benefit and the benefit of the Lenders under the Collateral Documents or the exercise by the Agent of the voting or other rights provided for in the Collateral Documents or the exercise of rights and remedies in respect thereof.

5.9 Pension Plans. No Loan Parties sponsor or otherwise have any liability with respect to a Benefit Plan. Each "employee benefit plan" as defined in Section 3(3) of ERISA that (x) provides retirement benefits (y) is sponsored by the Borrower or any member of its Controlled Group and (iii) is intended to be tax qualified under section 401 of the Code has a determination letter or opinion letter from the IRS on which it is entitled to rely, and no assets of any such plan are invested in stock of the Borrower. Each employee benefit plan, program or arrangement sponsored, maintained, contributed to or required to be contributed to by the Borrower or any member of its Controlled Group is subject only to the Laws of the United States (or any state or other political subdivision thereof) and has complied, both in form and in operation, in all material respects with its terms and applicable Laws. Each employee benefit plan as defined in Section 3(3) of ERISA that provides medical insurance, dental insurance, vision insurance, life insurance or long-term disability benefits and that is sponsored by the Borrower or any member of its Controlled Group is fully insured by a third party insurance company.

5.10 Compliance with Law; Investment Company Act.

(a) Each Loan Party and each of its Subsidiaries possesses all, and is not in default under any, necessary authorizations, permits, licenses, certifications and approvals from all Governmental Authorities in order to conduct their respective businesses as presently conducted, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. All business and operations of each Loan Party and each of its Subsidiaries complies with all Applicable Laws, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(b) No Loan Party or any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940.

5.11 Margin Stock. No Loan Party or any of its Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. No portion of the Obligations is secured directly or indirectly by Margin Stock.

5.12 Taxes. Each Loan Party and each of its Subsidiaries has filed all federal and all material state, local and foreign income, sales, goods and services, harmonized sales and franchise and all other tax returns, reports and statements (collectively, the "Tax Returns") with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are or were required to be filed. All material Taxes reflected therein and all material Taxes otherwise due and payable have been paid prior to the date on which any liability may be added thereto for non-payment thereof, except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Loan Party, as applicable, in accordance with GAAP. No Loan Party has been a member of an affiliated, combined or unitary group other than the group of which a Loan Party is the common parent or has liability for Taxes of any other person by contract, as a successor or transferor or otherwise by operation of law.

5.13 Solvency. Both immediately before and after giving effect to (a) the Loans made on or prior to the date this representation and warranty is made or remade, (b) the disbursement of proceeds of such Loans and (c) the payment and accrual of all transaction costs in connection with the foregoing, with respect to the Loan Parties, on a consolidated basis, (i) the fair value of the assets of the Loan Parties is greater than the amount of the liabilities (including disputed, contingent and unliquidated liabilities) of the Loan Parties as such value is established and such liabilities evaluated, (ii) the present fair saleable value of the assets of the Loan Parties is not less than the amount that will be required to pay the probable liability on the debts of the Loan Parties as they become absolute and matured, (iii) the Loan Parties are able to realize upon their assets and pay their debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, (iv) none of the Loan Parties intends to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature and (v) none of the Loan Parties is engaged in business or a transaction, or is about to engage in business or a transaction, for which its property would constitute unreasonably small capital.

5.14 Environmental Matters. The on-going operations of each Loan Party and each of its Subsidiaries comply in all respects with all Environmental Laws, except for such non-compliance which could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party and each of its Subsidiaries have obtained, and maintain in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for their respective ordinary course operations, and each Loan Party and each of its Subsidiaries are in compliance with all terms and conditions thereof, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. No Loan Party or any of its Subsidiaries or any of their respective properties or operations is subject to any outstanding written order from or agreement with any federal, state or local Governmental Authority, nor subject to any judicial or administrative proceeding, nor subject to any indemnification agreement respecting any Environmental Law, Environmental Claim or Hazardous Substance, except in each case as could not reasonably be expected to result in a Material Adverse Effect.

5.15 Insurance. Each Loan Party and its properties are insured with financially sound and reputable insurance companies reasonably satisfactory to the Required Lenders and the Agent, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party operates. Each Loan Party maintains, if available, fully paid flood hazard insurance on all fee owned real property that is located in a special flood hazard area and that constitutes Collateral on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994. A true and complete listing of such insurance of the Loan Parties as of the Closing Date, including issuers and coverages, is set forth on Schedule 5.15 of the Disclosure Letter.

5.16 Information. All information heretofore or contemporaneously herewith furnished in writing by the Borrower or any other Loan Party to the Agent or the Lenders for purposes of or in connection with this Agreement and the transactions contemplated hereby is, and all written information hereafter furnished by or on behalf of the Borrower or any Loan Party to the Agent or the Lenders pursuant hereto or in connection herewith will, taken as a whole, not contain any material misstatement of fact, or omit to state any material fact necessary to make such information not misleading in light of the circumstances under which it was made (it being recognized by the Agent and the Lenders that any projections and forecasts provided by the Borrower are based on good faith estimates and assumptions believed by the Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results and such differences may be material).

5.17 Intellectual Property.

(a) Schedule 5.17(a) of the Disclosure Letter sets forth a true and complete list of all Patents (including pending patent applications), registered Trademarks, pending applications for registration of Trademarks, registered Copyrights and pending applications for registration of Copyrights owned by or exclusively licensed to any Loan Party or any of its Subsidiaries (collectively, the "Registered Intellectual Property"). A Loan Party or a Subsidiary thereof exclusively owns, free and clear of all Liens (but subject to the rights under the licenses set forth on Schedule 5.17(c) of the Disclosure Letter), all right, title and interest in and to, all Registered Intellectual Property that is indicated on Schedule 5.17(a) of the Disclosure Letter as owned by such Loan Party or Subsidiary. To the Borrower's knowledge, all of the Registered Intellectual Property is subsisting, valid and enforceable. To the Borrower's knowledge, there are no facts (including any material prior art not disclosed to the applicable granting authority in connection with any issued Patents included in the Registered Intellectual Property) that would invalidate or render unenforceable any issued Patents included in the Registered Intellectual Property.

(b) No Loan Party or Subsidiary has received any written notice that the use or exploitation by such Loan Party or Subsidiary of any Intellectual Property owned by or licensed to such Loan Party or Subsidiary, or the use, manufacture, sale or distribution of any Product, infringes or misappropriates the Intellectual Property of any third party and, to the Borrower's knowledge, there is no reasonable basis for any such claim. To the Borrower's knowledge, there is no reasonable basis for any claim that the making, having made, use, offer for sale, import or sale of any Product by the Borrower, the Subsidiaries or their agents (or use of any Product in accordance with its intended use) infringes or misappropriates the Intellectual Property of any third party. Except as listed on Schedule 5.17(b) of the Disclosure Letter, there are no written claims (including interferences, oppositions or cancellation actions, but excluding office actions received in the ordinary course of prosecution) against any Loan Party or any Subsidiary thereof that are presently pending or, to the knowledge of the Borrower, threatened, contesting the validity, ownership or enforceability of any of the Registered Intellectual Property and, to the knowledge of the Borrower, no third party is infringing or misappropriating any of the Registered Intellectual Property (excluding patent applications). The Registered Intellectual Property is not subject to any outstanding order, injunction, judgment, decree or arbitration award restricting the use thereof. In the last 12 months, no Loan Party or any Subsidiary thereof has taken any action (or failed to take any action) that has resulted in the loss, lapse, abandonment, invalidity or unenforceability of any of the Registered Intellectual Property or any other Intellectual Property owned by any Loan Party or Subsidiary thereof, other than in the ordinary course and subject to its reasonable business discretion.

(c) Except as set forth on Schedule 5.17(c) of the Disclosure Letter, (i) no Loan Party or any Subsidiary has granted any exclusive licenses under Registered Intellectual Property or any other material Intellectual Property owned by any Loan Party or any Subsidiary thereof to third parties; and (ii) no Loan Party or any Subsidiary thereof is party to any contract with any Person that limits or restricts the use of the Registered Intellectual Property or any other material Intellectual Property owned by any Loan Party or any Subsidiary thereof or that requires any payments for such use.

(d) No Loan Party or any of its Subsidiaries has filed any disclaimer or made or permitted any other voluntary reduction in the scope of any Patent included in the Registered Intellectual Property (other than in the ordinary course of prosecution). None of the Patents included in Registered Intellectual Property has been or is currently involved in any interference, re-examination, opposition, derivation or other post-grant proceedings and no such proceedings are, to the knowledge of the Borrower, threatened.

(e) Each Loan Party and each of its Subsidiaries owns, or is licensed or otherwise has the right to use, all Intellectual Property necessary to conduct its business as currently conducted. To the Borrower's knowledge, the conduct and operations of the businesses of each Loan Party and each of its Subsidiaries do not infringe upon, misappropriate, dilute or violate any Intellectual Property owned by any other Person. No Loan Party or any of its Subsidiaries has received any written notice or claim that (i) asserts any right, title or interest with respect to, or (ii) contests any right, title or interest of any Loan Party or any of its Subsidiaries in, any Intellectual Property, any anticipated Products and applications derived or expected to be derived therefrom, or the development and commercialization of any Products derived or expected to be derived therefrom. The Intellectual Property owned by and licensed to the Loan Parties and their Subsidiaries is sufficient, and conveys adequate rights, title and interests, for the Borrower, the other Loan Parties and their Subsidiaries to develop and commercialize their anticipated Products and Intellectual Property applications.

(f) Each Loan Party and each of its Subsidiaries (either itself or through licensees) has (i) taken all steps reasonably required to ensure that each registered Trademark owned by it is maintained in full force free from any claim of abandonment, and (ii) not otherwise done any act or omitted to do any act whereby such registered Trademark may become invalidated or impaired in any way.

(g) Each Loan Party and each of its Subsidiaries (either itself or through licensees) has not done any act, or omitted to do any act, whereby any of its Patents may become forfeited, abandoned or dedicated to the public.

(h) Each Loan Party and each of its Subsidiaries (either itself or through licensees) has not acted or omitted to act whereby any portion of its Copyrights may become invalidated or otherwise impaired. Such Loan Party or such Subsidiary has not (either itself or through licensees) done any act whereby any portion of its Copyrights may fall into the public domain as a result of any such act.

(i) Each Loan Party (either itself or through licensees) has used proper statutory notice in connection with the use of each of its Patents, Trademarks and Copyrights included in the Intellectual Property of such Loan Party.

(j) Each Loan Party and each of its Subsidiaries has taken commercially reasonable steps, including, without limitation, in any proceeding before the Patent and Trademark Office, the Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of its Intellectual Property, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the Patent and Trademark Office and the Copyright Office, the filing of applications for renewal or extension, the filing of affidavits of use and affidavits of incontestability, the filing of divisional, continuation, continuation-in-part, reissue and renewal applications or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(k) No Loan Party or any of its Subsidiaries (either itself or through licensees) (i) has abandoned any of its Intellectual Property or (ii) has abandoned any right to file an application for letters patent, trademark, or copyright, in each case except where such abandonment could not reasonably be expected to have a Material Adverse Effect.

(l) Each Loan Party and each of its Subsidiaries has done all things that are necessary and proper within such Loan Party's or such Subsidiary's power and control to keep each license of Intellectual Property held by such Loan Party or such Subsidiary as licensee or licensor in full force and effect, in each case except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

(m) Each Loan Party and each of its Subsidiaries has maintained all of its rights to its Internet Domain Names in full force and effect, except that each Loan Party and each of its Subsidiaries may elect not to renew any Internet Domain Name the failure of which to renew could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(n) The Patent Rights are owned solely by the Loan Parties and are free and clear of any and all Liens, rights or claims of other Persons, other than Liens created under the Collateral Documents and other Permitted Liens. To the Borrower's knowledge, (i) all Patent Rights are valid and (ii) no Person is infringing any such Patent Rights or has challenged or threatened to challenge the validity or enforceability of any such Patent Rights.

(o) There are no judgments or settlements against or owed by any Loan Party or any of its Subsidiaries or Affiliates and no pending litigation or, to any Loan Party's knowledge, claims that have been threatened in writing relating to the Patent Rights. The research, development, manufacture, use and commercialization after the Closing Date of the Products can be carried out without, to the Borrower's knowledge, infringing any valid and enforceable issued patents owned or controlled by any Person.

5.18 Labor Matters. No Loan Party or any of its Subsidiaries is subject to any labor or collective bargaining agreement. As of the Closing Date, the Loan Parties and their Subsidiaries have not suffered any strikes, lockouts or other material labor disputes within the last five years; and as of any date, other than the Closing Date, on which this representation is made or remade, the Loan Parties and their Subsidiaries have not suffered any strikes, lockouts or other material labor disputes since the last time the representations under this Section 5.18 were made, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Borrower, the other Loan Parties and any Subsidiary are not in violation of the Fair Labor Standards Act or any other Applicable Law, except where such violation could not reasonably be expected to have a Material Adverse Effect.

5.19 No Default. No Loan Party or any of its Subsidiaries is in default under or with respect to any contractual obligation which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect.

5.20 Foreign Assets Control Regulations and Anti-Money Laundering.

5.20.1 Sanctions. Each Loan Party and each of its Subsidiaries is and will remain in compliance in all material respects with all applicable U.S. and other applicable economic sanctions laws, executive orders and implementing regulations and measures, including those promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") and all applicable anti-money laundering and counterterrorism financing laws (including applicable provisions of the United States Bank Secrecy Act of 1970, as amended) and all regulations issued pursuant to any of the foregoing. Without limiting the foregoing, each Loan Party and each of its Subsidiaries represents and warrants that it will not engage in any dealing or transaction with any Person that is the target of U.S. economic sanctions, including any party in Iran, except to the extent such dealing or transaction is (i) authorized or not prohibited by U.S. law as to a U.S. Person and (ii) lawful under any other Applicable Law. No Loan Party and no Subsidiary (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (each, an "SDN"), (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot lawfully deal or otherwise engage in business transactions with such Person or (iii) is owned 50% or more, directly or indirectly, individually or in the aggregate, or controlled by (including without limitation by virtue of such person owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, a Person described in clauses (i) and (ii) such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law. Each Loan Party and each of its Subsidiaries is not currently and will not in the future engage in any transaction or dealing with any Person that is designated as an SDN or owned 50% or more, directly or indirectly, individually or in the aggregate, or controlled, by one or more SDNs.

5.20.2 PATRIOT Act. The Loan Parties and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (b) the PATRIOT Act. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977 or any anti-corruption and anti-bribery laws of any other jurisdiction.

5.21 Non-Competes. None of the Loan Parties nor any of their executive officers is subject to a non-compete agreement that prohibits or would materially interfere with the development, commercialization or marketing of any Product.

5.22 Material Contracts. Except for the agreements set forth on Schedule 5.22 of the Disclosure Letter (collectively, the "Material Contracts"), as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (iii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements regarding any Loan Party, its assets or operations or any investment therein to which any of its equity holders is a party, (v) patent licenses, trademark licenses, copyright licenses or other material Intellectual Property lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee (other than widely-available software subject to "shrink-wrap" or "click-through" software licenses), (vi) distribution, marketing or supply agreements to which any Loan Party is a party, (vii) customer agreements to which any Loan Party is a party (in each case with respect to any agreement of the type described in the preceding clauses (i), (iii), (iv), (v) and (vi)) requiring payment of more than $500,000 in any year), (viii) partnership agreements pursuant to which any Loan Party is a partner, limited liability company agreements pursuant to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party, (ix) real estate leases, (x) contract development or manufacturing agreements under which any Loan Party has received revenue or (xi) any other agreements or instruments to which any Loan Party is a party, in each case the breach, nonperformance or cancellation of which, would reasonably be expected to have a Material Adverse Effect. Schedule 5.22 of the Disclosure Letter sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.23 [Reserved.]

5.24 [Reserved.]

5.25 Existing Indebtedness; Investments, Guarantees and Certain Contracts. No Loan Party (a) has any outstanding Debt, except Debt under the Loan Documents and as set forth on Schedule 5.25 of the Disclosure Letter, or (b) owns or holds any Capital Stock of, any debt investments in, or has any outstanding advances to or any outstanding guarantees for the obligations of any other Person, except as set forth on Schedule 5.25 of the Disclosure Letter.

5.26 Affiliated Agreements. Except as set forth on Schedule 5.26 of the Disclosure Letter, (i) there are no existing or proposed agreements, arrangements, understandings or transactions between a Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand, and (ii) to each Loan Party's knowledge, none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership or voting interest in, any Affiliate of such Loan Party or any Person with which such Loan Party has a business relationship or which competes with such Loan Party.

5.27 Names; Locations of Offices, Records and Collateral; Deposit Accounts.

(a) As of the Closing Date, no Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) within the past five years other than as shown on Schedule 5.27(a) of the Disclosure Letter. Each Loan Party is the sole owner(s) of all of its names listed on Schedule 5.27(a) of the Disclosure Letter, and any and all business done and invoices issued in such names are such Loan Party's sales, business and invoices.

(b) [Reserved.]

(c) As of the Closing Date, each Loan Party maintains, and within the past five years has maintained, respective places of business and chief executive offices only at the locations set forth on Schedule 5.27(c) of the Disclosure Letter or, after the Closing Date, as additionally disclosed to the Agent and the Lenders in writing, and all Collateral is located and shall be located, and all books and records of each Loan Party relating to or evidencing the Collateral are located and shall be located, only in and at such locations (other than (i) deposit accounts and (ii) Collateral in the possession of the Agent, for the benefit of the Agent and the Lenders).

(d) Schedule 5.27(d) of the Disclosure Letter lists all of each Loan Party's deposit accounts as of the Closing Date.

5.28 Broker's or Finder's Commissions. Except as set forth on Schedule 5.28 of the Disclosure Letter, no broker's, finder's or placement fee or commission will be payable to any broker or agent engaged by any Loan Party or any of its officers, directors or agents with respect to the Loan or the transactions contemplated by this Agreement except for fees payable to the Agent and the Lenders. The amount of any such broker's, finder's or placement fee or commission is set forth on Schedule 5.28 of the Disclosure Letter, such amount shall be payable in full by a Loan Party on the Closing Date, and no such amounts shall be payable after the Closing Date. Each Loan Party agrees to indemnify the Agent and the Lenders and hold each harmless from and against any claim, demand or liability for broker's, finder's or placement fees or similar commissions, whether or not payable by such Loan Party, alleged to have been incurred in connection with such transactions.

Section 6. Affirmative Covenants. Until all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) are Paid in Full, the Borrower agrees that it will:

6.1 Information. Furnish to the Agent and the Lenders:

6.1.1 Annual Reports. As soon as available and in any event within 90 days following the end of each Fiscal Year, beginning with the Fiscal Year ending December 31, 2018, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and related consolidated statements of income, cash flows and stockholders' equity for such Fiscal Year, in comparative form with such financial statements as of the end of, and for, the preceding Fiscal Year, and notes thereto, all prepared in accordance with GAAP and accompanied by an opinion of Grant Thornton LLP or other independent public accountants of recognized national standing (which opinion shall not be qualified as to scope or contain any explanatory paragraph expressing substantial doubt about the ability of the Borrower and its Subsidiaries to continue as a going concern (other than solely with respect to , or resulting solely from (i) an upcoming maturity date of the Loans occurring within one year from the time such report is delivered or (ii) any potential inability to satisfy any financial covenant set forth herein on a future date or in a future period)), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP and (ii) a narrative report and management's discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for such Fiscal Year, as compared to amounts for the previous Fiscal Year.

6.1.2 Quarterly Reports. As soon as available and in any event within 45 days following the end of each of the first three Fiscal Quarters of each Fiscal Year, beginning with the Fiscal Quarter ending March 31, 2019, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter together with consolidated statements of income and cash flows for such Fiscal Quarter and for the then elapsed portion of the Fiscal Year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous Fiscal Year, and notes thereto, all prepared in accordance with GAAP and accompanied by a certificate of the chief financial officer of the Borrower stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Borrower and its Subsidiaries as of the date and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with audited financial statements referred to in Section 6.1.1, subject to normal year-end audit adjustments, and (ii) a narrative report and management's discussion and analysis, of the financial condition and results of operations for such Fiscal Quarter and the then elapsed portion of the Fiscal Year, as compared to the comparable periods in the previous Fiscal Year.

6.1.3 Monthly Reports. Commencing with respect to the first calendar month after the Closing Date, promptly when available and in any event within 30 days of the end of such calendar month and each subsequent calendar month (including any calendar month ending December 31), a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such calendar month, together with (i) consolidated statements of income and cash flows for such period prepared on a basis consistent with GAAP, together with a comparison with the budget for such period of the current Fiscal Year and (ii) the volume and average sales price for the vehicles sold during such month, all certified by the chief financial officer of the Borrower.

6.1.4 Compliance Certificate. Contemporaneously with the furnishing of the financial statements required pursuant to Sections 6.1.1, 6.1.2 and 6.1.3, a duly completed Compliance Certificate signed by the chief financial officer of the Borrower (i) to the effect that such officer has not become aware of any Event of Default or Default that has occurred and is continuing or, if there is any such Event of Default or Default, describing it and the steps, if any, being taken to cure it, and providing such other information as required thereby and (ii) certifying as to the compliance by the Loan Parties of the financial covenants set forth in Section 7.19.

6.1.5 Revenues. As soon as practicable, and in any event not later than 45 days following the end of each Fiscal Quarter (other than the Borrower's fourth Fiscal Quarter) and not later than 90 days following the end of the Borrower's fourth Fiscal Quarter, a historical breakdown of revenue and cost of goods sold by business segment for such Fiscal Quarter.

6.1.6 Board Minutes. As soon as practicable, and (a) in any event not later than one week after each meeting of the Board, copies of the minutes of such meeting (which may be in draft form) and (b) at the same time as they are provided to the Board or any committee thereof, copies of the board packets provided to the Board or any committee thereof in connection with each such meeting (excluding any material that is legally privileged where to disclose it to the Lenders would reasonably risk the loss of that privilege or which is subject to confidentiality obligations which would be contravened by its disclosure to the Lenders; provided, that any such exclusion shall apply only to such portion of the material which would be required to preserve such privilege or confidentiality and not to any other portion thereof and the Borrower shall promptly provide to the Lenders a general description, which shall be true and correct in all material respects, of any such excluded materials).

6.1.7 Notice of Default; Litigation; Benefit Plan Matters. Promptly upon becoming aware of any of the following, written notice describing the same and the steps being taken by the Borrower or the applicable Loan Party affected thereby with respect thereto:

(a) the occurrence of an Event of Default or a Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Borrower to the Lenders which has been instituted or, to the knowledge of the Borrower, is threatened in writing against any Loan Party or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect;

(c) the incurrence of any liability with respect to any Benefit Plan;

(d) any judgment, order or decree for the payment of money which has been rendered against any Loan Party or any of its Subsidiaries and which individually or in the aggregate with all such other judgments, orders or decrees totals $100,000 or more;

(e) any cancellation or material decrease in coverage in any insurance maintained by the Borrower or any other Loan Party;

(f) any other event (including (i) any violation of any Environmental Law or the assertion of any Environmental Claim, (ii) any violation or noncompliance with any Applicable Law or (iii) any breach or nonperformance of, or any default under, any contractual obligation of any Loan Party or any of its Subsidiaries), in all cases which could reasonably be expected to have a Material Adverse Effect;

(g) copies of all material communication as well as other material documents received by any Loan Party from any Governmental Authority (including, without limitation, the Securities and Exchange Commission); and

(h) to the extent that it would reasonably be expected to result in a Material Adverse Effect (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for any Loan Party, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) the occurrence of any civil or criminal proceedings relating to any Loan Party or any of its respective employees or (iii) any officer, employee or agent of any Loan Party is convicted of any crime.

6.1.8 Budgets. As soon as practicable, and in any event not later than 45 days following the end of each Fiscal Year, a budget of the Group for such Fiscal Year (including a monthly working capital and capital expenditure budget and a monthly projection of revenue, both for the Group as a whole and broken out by business unit) prepared in a manner reasonably satisfactory to the Required Lenders, accompanied by a certificate of the chief financial officer of the Borrower to the effect that (a) such budget was prepared by the Borrower in good faith, (b) the Borrower has a reasonable basis for the assumptions contained in such budget and (c) such budget has been prepared in accordance with such assumptions.

6.1.9 Reports to Governmental Authorities and Shareholders. (a) Within five Business Days after the filing with or delivery to any Governmental Authority, copies of all regular, periodic or special inspection reports relating to any Loan Party's manufacturing facilities, and (b) promptly following the Agent's or the Required Lenders' request, copies of (i) all other regular, periodic or special reports of each Loan Party filed with any Governmental Authority, (ii) all registration statements (or such equivalent documents of each Loan Party filed with any Governmental Authority) and (iii) all proxy statements or other communications made to the holders of any Loan Party's Capital Stock generally.

6.1.10 Updated Schedules to the Security Agreement. Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the schedules to the Security Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Security Agreement).

6.1.11 Other Information. Promptly from time to time, such other information concerning the Borrower or any Subsidiary as the Required Lenders or the Agent may reasonably request.

Notwithstanding anything contained in this Section 6.1 to the contrary, the Required Lenders (in their sole discretion) shall have the option at any time to elect not to require the Borrower to deliver any or all of the information required by this Section 6.1, which such election, if exercised by the Required Lenders, shall be provided in writing by the Required Lenders to the Borrower.

6.2 Books; Records; Inspections.

(a) Keep, and cause each Loan Party and each of its Subsidiaries to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP.

(b) Permit, and cause each other Loan Party to permit, at reasonable times during business hours and with reasonable prior notice, the Agent, the Required Lenders, or any representative of the foregoing to: (i) inspect the properties and operations of the Borrower or any such Loan Party; (ii) visit any or all of its offices, to discuss its financial matters with its directors or officers and with its independent auditors (and the Borrower hereby authorizes such independent auditors to discuss such financial matters with the Required Lenders or the Agent or any representative thereof); (iii) examine (and, at the expense of the Borrower, photocopy extracts from) any of its books or other records; and (iv)(A) inspect the Collateral and other tangible assets of the Borrower or any such Loan Party, (B) perform appraisals of the equipment of the Borrower or any such Loan Party and (C) inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral, for purposes of or otherwise in connection with conducting a review, audit or appraisal of such books and records. The Borrower will pay the Lenders the reasonable out-of-pocket costs and expenses of any audit or inspection of the Collateral promptly after receiving the invoice; provided that the Borrower shall not be required to reimburse the Lenders for the foregoing expenses relating to more than one such inspection or audit in any calendar year unless an Event of Default has occurred and is continuing, in which event the Borrower shall be required to reimburse the Lenders for any and all of the foregoing expenses. Notwithstanding anything contained in this Section 6.2(b) to the contrary, if an Event of Default shall have occurred and be continuing, then the Agent, the Required Lenders or any representative of any of the foregoing may take any of the actions specified in clauses (i) through (iv) of this Section 6.2(b) without prior notice to the Borrower, but shall endeavor in good faith to provide the Borrower subsequent notice.

6.3 Maintenance of Property; Insurance.

(a) Keep, and cause each other Loan Party and each of its Subsidiaries to keep, all property useful and necessary in the business of the Borrower, such other Loan Party or such Subsidiary in good working order and condition, ordinary wear and tear excepted, and maintain, and cause each other Loan Party to maintain, its Intellectual Property in accordance with the provisions of the Collateral Documents.

(b) Maintain, and cause each other Loan Party and each of its Subsidiaries to maintain, with responsible insurance companies, such insurance coverage as shall be required by Applicable Laws, and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by companies similarly situated; provided that in any event, unless no longer available at reasonable costs, such insurance shall insure against all risks and liabilities of the type insured against as of the Closing Date and shall have insured amounts no less than, and deductibles no higher than, those amounts provided for as of the Closing Date. Without limiting the foregoing, (i) maintain, if available, fully paid flood hazard insurance on all fee owned real property that is located in a special flood hazard area and that constitutes Collateral, on such terms and in such amounts as reasonably required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Agent or the Required Lenders, (ii) furnish to the Agent evidence of the renewal (and payment of renewal premiums therefor) of all insurance policies prior to the expiration or lapse thereof and (iii) furnish to the Agent prompt written notice of any redesignation of any such improved fee owned real property into or out of a special flood hazard area. Upon request of the Agent or the Required Lenders and to the extent not previously delivered to the Agent or the Lenders, the Borrower shall furnish to the Agent or the Lenders a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by the Borrower and each other Loan Party. The Borrower shall cause each issuer of an insurance policy to provide the Agent with an endorsement (i) showing the Agent as a lenders' loss payee with respect to each policy of property or casualty insurance and naming the Agent as an additional insured with respect to each policy of liability insurance, (ii) providing that 30 days' notice will be given to the Agent prior to any cancellation of such policy and (iii) reasonably acceptable in all other respects to the Agent and the Required Lenders.

(c) Unless the Borrower provides the Required Lenders or the Agent with evidence of the continuing insurance coverage required by this Agreement, the Required Lenders may purchase insurance (to the extent of such insurance coverage as shall be required by clause (b) above) at the Borrower's expense to protect the Agent's and the Lenders' interests in the Collateral. This insurance may, but need not, protect the Borrower's and each other Loan Party's interests. The coverage that the Required Lenders purchase may, but need not, pay any claim that is made against the Borrower or any other Loan Party in connection with the Collateral. If the Required Lenders purchase insurance for the Collateral, as set forth above, the Borrower will be responsible for the costs of that insurance until the effective date of the cancellation or expiration of the insurance. If determined by the Required Lenders in their sole discretion, the costs of such insurance may be added to the principal amount of either Loan owing hereunder as determined by the Required Lender in their sole discretion.

(d) To, and to cause each Loan Party and each of its Subsidiaries to: (i) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to its business; (ii) promptly advise the Agent and the Lenders in writing of any material infringement of which it is aware by a third party of its Intellectual Property; and (iii) not allow any Intellectual Property material to its business to be abandoned, forfeited or dedicated to the public without the Agent's prior written consent.

6.4 Compliance with Laws and Contractual Obligations; Payment of Taxes and Liabilities. (a) Comply, and cause each other Loan Party and each of its Subsidiaries to comply, with all Applicable Laws and all indentures, agreements and other instruments binding upon it or its property, except, in each case, when combined with all such other cases, where failure to comply could not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party and each of its Subsidiaries to ensure, that neither any Loan Party nor any of its Subsidiaries, nor any Person who owns a controlling interest in or otherwise controls a Loan Party or one of its Subsidiaries is or shall be (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, the United States Department of the Treasury and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, executive order or regulation or (ii) a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot lawfully deal or otherwise engage in business transactions with such Person; (c) without limiting clause (a) above, ensure that neither any Loan Party nor any of its Subsidiaries will engage in any dealing or transaction with any Person that is (i) the target of U.S. or any other applicable economic sanction laws, executive orders and implementing regulations or measures, including any party in Iran, except to the extent such dealing or transaction is (A) authorized or not prohibited by U.S. law as to a U.S. Person and (B) lawful under any other Applicable Law, or (ii) designated as an SDN or owned 50% or more, directly or indirectly, individually or in the aggregate, or controlled, by one or more SDNs; (d) without limiting clause (a) above, comply and cause each other Loan Party and each of its Subsidiaries to comply, with all applicable anti-money laundering and counterterrorism financing laws (including applicable provisions of the Bank Secrecy Act of 1970, as amended) and all regulations issued pursuant to any of the foregoing; and (e) timely prepare and file all Tax Returns required to be filed by Applicable Law and pay, and cause each other Loan Party and each of its Subsidiaries to pay, prior to delinquency, all Taxes in excess of $50,000 (in the aggregate for all such Persons) against them or any of their property, as well as claims of any kind which, if unpaid, could become a Lien on any of their property; provided that the foregoing shall not require the Borrower, any other Loan Party or any of their Subsidiaries to pay any such Tax or charge so long as (i) it shall promptly contest the validity thereof in good faith by appropriate proceedings, (ii) it shall set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) any related Lien shall have no effect on the priority of the Liens in favor of the Agent.

6.5 Maintenance of Existence. Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party and each of its Subsidiaries to maintain and preserve, (a) its existence and good standing (as applicable) in the jurisdiction of its organization and (b) except as could not reasonably be expected to have a Material Adverse Effect, its qualification to do business and good standing (as applicable) in each jurisdiction where the nature of its business makes such qualification necessary.

6.6 Governmental Approvals. Obtain and keep in full force and effect all Governmental Approvals (a) relating to each Product necessary for the Borrower and its Subsidiaries to conduct their business and (b) necessary for the performance by the Borrower and its Subsidiaries of their obligations under the Loan Documents.

6.7 Environmental Matters. If any release or disposal of Hazardous Substances shall occur or shall have occurred on or from any Real Estate of any Loan Party or any of its Subsidiaries, cause, or direct the applicable Loan Party or Subsidiary to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such Real Estate as is necessary to comply with all Environmental Laws except as could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, except as could not reasonably be expected to have a Material Adverse Effect, the Borrower shall, and shall cause each other Loan Party and Subsidiary to, comply with each Applicable Law and judicial or administrative order requiring the performance at any Real Estate of any Loan Party or any of its Subsidiaries of activities in response to the release or threatened release of a Hazardous Substance. If any violation of any Environmental Law shall occur or shall have occurred at any Real Estate or any other assets of any Loan Party or any of its Subsidiaries or otherwise in connection with their operations, the Borrower shall cause or direct the applicable Loan Party or Subsidiary to cause, the prompt correction of such violation, except in each case as could not reasonably be expected to have a Material Adverse Effect.

6.8 Further Assurances.

(a) Further Assurances. Promptly upon request by the Required Lenders or the Agent, take, and cause each other Loan Party and each of its Subsidiaries to take, such additional actions as the Required Lenders or the Agent may reasonably require from time to time in order (i) to subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests, whether now owned or hereafter acquired, covered or intended to be covered by any of the Collateral Documents, (ii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby and (iii) to assure, convey, grant, assign, transfer, preserve, protect and confirm to the Agent and the Lenders the rights granted or now or hereafter intended to be granted to the Agent and the Lenders under any Loan Document.

(b) Additional Subsidiaries. Without limiting the generality of the foregoing and except as otherwise approved in writing by the Required Lenders, cause, and cause each of the Loan Parties to cause, each of their Subsidiaries (including any such Subsidiary formed or acquired after the Closing Date, simultaneously with the formation or acquisition of such Subsidiary), to guaranty the Obligations and cause each such Subsidiary to grant to the Agent, for the benefit of the Agent and the Lenders, a first priority security interest in, all of such Subsidiary's property to secure such guaranty, in each case pursuant to the execution and delivery of a joinder to each applicable Collateral Document and such other documents as may be reasonably requested by the Required Lenders in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by the Security Agreement or any Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such Subsidiary (subject to the exceptions to the other Loan Parties under the Loan Documents) shall become Collateral for the Obligations, each in form and substance reasonably satisfactory to the Required Lenders, including, without limitation, (i) the execution and delivery of guaranties, security agreements, pledge agreements, Mortgages and such other Real Property Deliverables as may be required by the Required Lenders with respect to any Real Estate, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing (including any of the foregoing necessary to create or perfect a Lien under the laws of any jurisdiction in which any Loan Party is organized or formed or any Collateral is located) and (ii) such opinions of counsel as the Required Lenders may reasonably request. Furthermore and except as otherwise approved in writing by the Required Lenders, the Borrower shall, and shall cause each of its Subsidiaries (including, any such Subsidiary formed or acquired after the Closing Date) to, pledge all of the Capital Stock of each of its Subsidiaries to the Agent, for the benefit of the Agent and the Lenders, to secure the Obligations, including by the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession, in each case pursuant to documents in form and substance reasonably satisfactory to the Required Lenders. In connection with each pledge of Capital Stock that is certificated, as promptly as practicable, the Borrower and each other Loan Party shall simultaneously with the execution of the foregoing pledge documentation deliver, or cause to be delivered, to the Agent, irrevocable proxies and transfer/stock powers and/or assignments, as applicable, duly executed in blank, in each case pursuant to documents in form and substance reasonably satisfactory to the Required Lenders.

(c) Collateral Access Agreements. The Borrower and each other Loan Party shall be under an ongoing obligation to obtain a Collateral Access Agreement from the lessor of each leased property and bailee in possession of any Collateral with respect to each location where any Collateral is stored or located, which Collateral Access Agreement shall be in form and substance reasonably satisfactory to the Required Lenders and the Agent.

(d) Intellectual Property. Without limiting the requirements of the Collateral Documents, in the event that any Loan Party shall acquire, develop, or otherwise obtain, register or seek to register any Patent, Copyright, Trademark or other Intellectual Property, or obtain, register or seek to register any application for, or license in respect of, any of the foregoing, the Borrower shall notify the Agent, in the case of an application to register a Copyright, within five Business Days thereof, and in the case of any other application seeking to register or apply for Intellectual Property, on a monthly basis concurrently with the delivery of the reports required under Section 6.1.3, and shall promptly thereafter execute and deliver to the Agent, for its benefit and the benefit of the Lenders, such Intellectual Property security agreements, other Collateral Documents or other documents as the Required Lenders or the Agent may request in order to secure and perfect the security interest in respect of such Intellectual Property.

(e) Registered Intellectual Property. The Borrower shall take commercially reasonable steps to (i) prepare, execute, deliver and file any and all agreements, documents and instruments, that are necessary to preserve and maintain the Registered Intellectual Property, including payment of applicable maintenance fees or annuities, and (ii) prosecute any corrections, substitutions, reissues, reviews and reexaminations of Patents included in the Registered Intellectual Property.

(f) After Acquired Real Property. Upon the acquisition by it or any of its Subsidiaries after the date hereof of any fee interest in any real property (wherever located) (each such interest being a "New Facility") with a Current Value (as defined below) in excess of $500,000, immediately so notify the Agent in writing, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and either an appraisal or such Loan Party's good-faith estimate of the current value of such real property (for purposes hereof, the "Current Value"). The Required Lenders shall notify such Loan Party whether they intend to require a Mortgage (and any other Real Property Deliverables) with respect to such New Facility. Upon receipt of a notice requesting a Mortgage (and/or any other Real Property Deliverables), the Person that has acquired such New Facility shall within 30 days furnish the same to the Agent and the Required Lenders, in a form reasonably satisfactory to the Required Lenders. The Borrower shall pay all fees and expenses, including, without limitation, reasonable attorneys' fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 6.8(f).

6.9 Payments in Respect of Subject Purchase Orders. Instruct all parties to the Subject Purchase Orders to remit payments thereon directly to the Reserve Account, and that it shall promptly, and in any event no later than two Business Days after receipt by it or any of its Subsidiaries of such payments, prepay the Tranche Two Loans in an amount equal to the payments received from the Subject Purchase Orders.

6.10 [Reserved.]

6.11 Conference Calls. After delivery of the financial statements pursuant to Sections 6.1.1, 6.1.2 and 6.1.3, at the request of the Required Lenders or the Agent, cause the chief financial officer and the chief operating officer of the Borrower to participate in conference calls with the Lenders to discuss, among other things, the financial condition of the Loan Parties and any financial or earnings reports.

6.12 [Reserved.]

6.13 Board Matters.

6.13.1 Board Observer Right. The Required Lenders shall have the right (but not the obligation) to designate an observer (the "Board Observer") to attend all meetings of the Board or any committee thereof, in a non-voting capacity, by giving written notice to the chairman of the Board or the chief executive officer of the Borrower. The Borrower shall simultaneously give the Board Observer copies of all notices, consents, minutes and other materials, financial or otherwise, which the Borrower provides to the Board or any committee thereof in connection with meetings of the Board or any committee thereof to be held during such time (excluding any material that is legally privileged where to disclose it to the Board Observer would reasonably risk the loss of that privilege or which is subject to confidentiality obligations which would be contravened by its disclosure to the Board Observer; provided, that any such exclusion shall apply only to such portion of the material which would be required to preserve such privilege or confidentiality and not to any other portion thereof and the Borrower shall promptly provide to the Board Observer a general description, which shall be true and correct in all material respects, of any such excluded materials). The Required Lenders agree and shall cause any Board Observer to agree to hold in confidence all information so provided and not use or disclose any confidential information provided to or learned by it in connection with its rights under this Agreement other than for purposes reasonably related to its interest as a lender to the Borrower and its Subsidiaries.

6.13.2 Expenses. The Lenders shall be reimbursed for all reasonable and documented out-of-pocket expenses incurred in connection with its exercise of the rights provided under this Section 6.13.

6.14 Payment of Debt. Except as otherwise prescribed in the Loan Documents, each Loan Party shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of payment practices) all of its obligations and liabilities having an aggregate outstanding principal amount (for all such obligations and liabilities) exceeding $250,000, except when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied.

6.15 Post-Closing Obligations. Notwithstanding anything to the contrary herein or in the Loan Documents (it being understood that to the extent that the existence of any of the following post-closing obligations that is not overdue would otherwise cause any representation, warranty, covenant, default or event of default in this Agreement or any other Loan Document to be in breach, the Lenders hereby waive such breach for the period from the Closing Date until the first date on which such condition is required to be fulfilled (giving effect to any extensions thereof) pursuant to this Section 6.15),

(a) the Borrower shall deliver or cause to be delivered the following items to the Agent and the Lenders no later than the dates set forth below (or such later date agreed to by the Required Lenders in their sole discretion), and each such item shall be in form and substance reasonably satisfactory to the Required Lenders and the Agent:

(i) no later than two Business Days after the Closing Date, insurance certificates from one or more insurance companies reasonably satisfactory to the Required Lenders and the Agent, evidencing property and liability coverage required to be maintained pursuant to each Loan Document, with the Agent named as loss payee or additional insured, as applicable;

(ii) no later than 30 days after the Closing Date, insurance endorsements from one or more insurance companies reasonably satisfactory to the Required Lenders and the Agent, evidencing property and liability coverage required to be maintained pursuant to each Loan Document, with the Agent named as loss payee or additional insured, as applicable;

(iii) no later than 30 days after the Closing Date, Collateral Access Agreements in form and substance reasonably satisfactory to the Required Lenders and the Agent from each landlord, warehouseman and other bailee, as applicable, to any Loan Party;

(iv) no later than 30 days after the Closing Date, Control Agreements in form and substance reasonably satisfactory to the Required Lenders and the Agent for each deposit account and securities account maintained by any Loan Party (other than Excluded Accounts);

(v) no later than 30 days after the Closing Date, all Mortgages and the other Real Property Deliverables and other filings and documents required by law or the Loan Documents to provide the Agent with perfected first priority Liens (subject only to Permitted Liens) in the Collateral, each in form and substance reasonably satisfactory to the Required Lenders and the Agent; and

(b) no later than 30 days after the Closing Date, the Borrower shall have established the Reserve Account, funded no less than $900,000 into the Reserve Account, and delivered evidence of the foregoing in form and substance reasonably satisfactory to the Required Lenders and the Agent.

Section 7. Negative Covenants. Until the Obligations are Paid in Full, the Borrower agrees that it will:

7.1 Debt. Not, and not suffer or permit any Loan Party or any other Subsidiary, to, create, incur, assume or suffer to exist any Debt, except:

(a) Obligations under this Agreement and the other Loan Documents;

(b) Debt in respect of Capital Leases and purchase money Debt, in each case incurred in the ordinary course of business for the purpose of financing all or any part of the cost of acquiring, construction or improvement of fixed or capital assets; provided that (i) the aggregate principal amount of all such Debt at any time outstanding shall not exceed $250,000 and (ii) the principal amount of such Debt does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Debt (each measured at the time such acquisition, construction or improvement is made);

(c) Debt that may be deemed to exist pursuant to any guarantees, performance, surety, statutory, appeal or similar obligations (but not with respect to letters of credit) incurred in the ordinary course of business or in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Debt with respect to reimbursement-type obligations regarding workers' compensation claims;

(d) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided that such Debt is extinguished within five Business Days of notice to the Borrower or the relevant Subsidiary of its incurrence;

(e) unsecured Subordinated Debt provided by entities deemed to be strategic in nature, defined as a corporate entity operating in the broader energy or transportation industries; provided that such unsecured Subordinated Debt is subordinated to the Obligations on subordination terms acceptable to the Required Lenders pursuant to a Subordination Agreement and the Required Lenders provide prior written consent to the incurrence of such unsecured Subordinated Debt (which consent may be provided or withheld in the Required Lenders' sole discretion);

(f) Debt consisting of unpaid insurance premiums (not in excess of one year's premiums) owing to insurance companies and insurance brokers incurred in connection with the financing of insurance premiums in the ordinary course of business;

(g) (i) guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its Subsidiaries or any other Loan Party and (ii) to the extent constituting Debt, take-or-pay obligations contained in supply arrangements;

(h) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the ordinary course of business;

(i) Debt arising as a direct result of judgments, orders, awards or decrees against the Borrower, any other Loan Party or any of its Subsidiaries, in each case not constituting an Event of Default;

(j) Debt representing any Taxes not then required to be paid hereunder or any Taxes to the extent such Taxes are being contested in good faith by the Borrower, its Subsidiaries or any other Loan Party by appropriate proceedings and adequate reserves are being maintained by the applicable Person in accordance with GAAP in compliance with Section 6.4 with respect thereto;

(k) Debt of the Borrower or its Subsidiaries owing to the Borrower or its Subsidiaries, including any guarantees by the Borrower or any of its Subsidiaries of Debt of the Borrower or any of its Subsidiaries that is permitted hereunder; and

(l) unsecured Debt of the Borrower and its Subsidiaries in an aggregate amount not to exceed at any time $250,000.

7.2 Liens. Not, and not suffer or permit any Loan Party or any other Subsidiary to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a) Liens arising under the Loan Documents;

(b) Liens for Taxes or other governmental charges not at the time delinquent or thereafter payable without penalty, or being diligently contested in good faith by appropriate proceedings and for which it maintains adequate reserves in accordance with GAAP and the execution or other enforcement of which is effectively stayed, provided that such Lien shall have no effect on the priority of the Liens in favor of the Agent;

(c) (i) Liens of carriers, warehousemen, mechanics, customs and revenue authorities, customs brokers, landlords and materialmen and other similar Liens imposed by law, which are not at the time delinquent or thereafter payable without penalty, or which are being diligently contested in good faith by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto and (ii) Liens consisting of pledges or deposits incurred in connection with worker's compensation, unemployment compensation and other types of social security (which, for the avoidance of doubt, would not include Liens arising under ERISA) or in connection with surety bonds, bids, performance bonds and similar obligations for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP;

(d) Liens existing as of the Closing Date and described in Schedule 7.2 of the Disclosure Letter;

(e) Liens securing Debt permitted by Section 7.1(b); provided, however, that any such Lien (i) attaches only to the property being leased or financed and any accessions thereto and proceeds thereof and (ii) attaches to such property within 20 days of the acquisition thereof and attaches solely to the property so acquired and any accessions thereto and proceeds thereof;

(f) attachments, appeal bonds, judgments and other similar Liens in connection with judgments the existence of which do not constitute an Event of Default;

(g) easements, encroachments, rights of way, leases, subleases, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(h) any interest or title of a lessor or sublessor under any lease (other than a Capital Lease) or of a licensor or sublicensor under any license, in each case permitted by this Agreement;

(i) leases, licenses, subleases or sublicenses granted to third parties in the ordinary course of business which do not interfere in any material respect with, or materially detract from the value of, the business of the Borrower and its Subsidiaries, taken as a whole, and if such leases, licenses, subleases or sublicenses do not prohibit granting the Agent a Lien therein;

(j) Liens arising from precautionary UCC financing statements filed under any lease (other than a Capital Lease) permitted by this Agreement;

(k) bankers' liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses;

(l) the replacement, extension or renewal of any Lien permitted by clause (d) above upon or in the same property subject thereto arising out of the Refinancing of the Debt secured thereby;

(m) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(n) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Subsidiaries in the ordinary course of business permitted by this Agreement;

(o) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto:

(p) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises; provided that all such deposits of cash pursuant to this clause (p) shall not exceed $100,000 at any time;

(q) Liens disclosed as an exception to a Title Insurance Policy with respect to the Real Property insured by such policy; and

(r) other Liens of the Loan Parties securing Debt or other obligations in an aggregate amount not to exceed $100,000.

7.3 Restricted Payments. Not, and not suffer or permit any Loan Party or any other Subsidiary to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Capital Stock or Stock Equivalent, (ii) purchase, redeem or otherwise acquire for value any Capital Stock issued by it now or hereafter outstanding or (iii) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Debt that is subordinated by its terms to the payment of the Obligations, that is subordinated by the relative priority of the Liens securing such Debt or that is unsecured (the items described in clauses (i), (ii) and (iii) above are referred to as "Restricted Payments"), except:

(a) any Loan Party may purchase, redeem or acquire for value any Capital Stock or Stock Equivalents issued by any Loan Party that is a Subsidiary;

(b) each Loan Party may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of such Loan Party; and

(c) each Loan Party (other than the Borrower) and each Subsidiary of a Loan Party may declare and make dividend payments or other distributions to the other Loan Parties.

For the avoidance of doubt, Investments permitted by Section 7.10 shall not constitute Restricted Payments.

7.4 Mergers; Consolidations; Asset Sales.

(a) Not, and not suffer or permit any Loan Party or any other Subsidiary to enter into any Acquisition, or to be a party to any merger, consolidation or amalgamation or enter into any binding contractual arrangement with any Person in connection with any of the foregoing, except (i) sales and dispositions among Loan Parties, (ii) the repurchase of any battery cells that are the subject of a Disposition permitted under Section 7.4(b)(xii) and (iii) the sale or disposition of Surefly, Inc. or its related business and assets (but excluding any Intellectual Property or other assets used or useful in businesses other than Surefly, Inc.), provided, that (x) at the time of any such sale or disposition of Surefly, Inc. or its related business and assets, no Event of Default shall exist or shall result from such sale or disposition, (y) each such sale or disposition is in an arm's-length transaction and not less than 100% of the aggregate sales price from such sale or disposition shall be paid in cash (other than with respect to the sale or disposition of Surefly, Inc. or its related business and assets (but excluding any Intellectual Property or other assets used or useful in businesses other than Surefly, Inc., provided that non-exclusive licenses of Intellectual Property shall be permitted)), and (z) immediately after giving effect to such sale or disposition, the Loan Parties shall be in compliance on a pro forma basis with the covenants set forth in Section 7.19 recomputed for the period of four consecutive Fiscal Quarters most recently ended.

(b) Not, and not suffer or permit any Loan Party or any other Subsidiary to, sell, transfer, dispose of, convey, lease or license any of its assets (including Intellectual Property) or the Capital Stock of any Loan Party or any other Subsidiary, or sell or assign with or without recourse any receivables (any such transaction, a "Disposition"), except:

(i) the sale or disposition of Surefly, Inc. or any portion of its related business and assets (but excluding any Intellectual Property or other assets used or useful in businesses other than Surefly, Inc., provided that non-exclusive licenses of Intellectual Property shall be permitted), provided, that (x) at the time of any such sale or disposition of Surefly, Inc. or its related business and assets, no Event of Default shall exist or shall result from such sale or disposition, (y) each such sale or disposition is in an arm's-length transaction and not less than 75% of the aggregate sales price from such sale or disposition shall be paid in cash and (z) immediately after giving effect to such sale or disposition, the Loan Parties shall be in compliance on a pro forma basis with the covenants set forth in Section 7.19 recomputed for the period of four consecutive Fiscal Quarters most recently ended;

(ii) sales, transfers, destruction or other disposition of inventory or obsolete or worn-out assets in the ordinary course of business;

(iii) sales and dispositions of assets (excluding any Capital Stock owned by any Loan Party, Intellectual Property, regulatory authorizations or the Property) for at least fair market value so long as the net book value of all assets sold or otherwise disposed of does not exceed $150,000 in any Fiscal Year and $500,000 throughout the term of this Agreement;

(iv) leases, licenses, subleases and sublicenses entered into in the ordinary course of business;

(v) sales and exchanges of cash and Cash Equivalent Investments to the extent otherwise permitted hereunder;

(vi) Liens expressly permitted under Section 7.2 and transactions expressly permitted by Section 7.10;

(vii) dispositions in the ordinary course of business consisting of the abandonment of Intellectual Property which, in the reasonable good faith determination of the Loan Parties, is not material to the conduct of the business of the Loan Parties;

(viii) a cancellation of any intercompany Debt among the Loan Parties;

(ix) a disposition which constitutes an insured event or pursuant to a condemnation, "eminent domain" or similar proceeding;

(x) sales and dispositions among Loan Parties;

(xi) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged; and

(xii) sales of battery cells to Duke Energy Corporation or its subsidiaries in an aggregate amount for all such transactions not to exceed $1,700,000.

7.5 Modification of Organizational Documents. Not waive, amend or modify, and not suffer or permit any waiver, amendment or modification of, any term of the charter, limited liability company agreement, partnership agreement, articles of incorporation, by-laws or other organizational documents of the Borrower or any other Loan Party or any Subsidiary, in each case except for those amendments and modifications that do not adversely affect the interests of the Agent or the Lenders under the Loan Documents or in the Collateral. Notwithstanding the foregoing, each Loan Party may change its name, provided that such Loan Party (i) gives at least 10 days' prior written notice thereof to the Agent and (ii) concurrently with the effectiveness of such name change, delivers to the Agent for filing properly completed UCC financing statement amendments for the filing thereof by the Agent reflecting the new name and any other filings and documents required by law or the Loan Documents to provide the Agent with a continuing, perfected first priority Lien (subject only to Permitted Liens) in the Collateral of such Loan Party.

7.6 Use of Proceeds. Not use the proceeds of the Loan for any purposes other than as expressly provided in Section 2.1.2.

7.7 Transactions with Affiliates. Not, and not suffer or permit any Loan Party or any other Subsidiary to, enter into any transaction or arrangement with any Affiliate of any such Loan Party or of any such Subsidiary or with any employee, manager, officer or director of such Person on other than an arm's-length basis, other than (i) payments and other transactions expressly permitted pursuant to Section 7.3 or Section 7.10, (ii) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (iii) transactions among Loan Parties and (iv) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7 of the Disclosure Letter.

7.8 Inconsistent Agreements. Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached in any material respect by any borrowing by the Borrower hereunder or by the performance by any Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit any Loan Party from granting to the Agent and the Lenders a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any Loan Party to (i) pay dividends or make other distributions to the Borrower or any other Loan Party, or pay any Debt owed to any other Loan Party, (ii) make loans or advances to any other Loan Party or (iii) transfer any of its assets or properties to any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and leases, subleases, licenses and sublicenses, in each case, permitted by this Agreement, if such restrictions or conditions apply only to the property or assets securing such Debt or the assets or property leased, subleased, licensed or sublicensed, (B) customary provisions in leases and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, (D) those arising under any Loan Document, (E) customary provisions in contracts for the disposition of any assets, but only to the extent that the restrictions in such contract apply to the assets that are, or Subsidiary that is, to be disposed of and such disposition is permitted by this Agreement and (F) restrictions entered into in the ordinary course of business with respect to off-the-shelf software programs that limit the ability to grant a security interest in such software programs.

7.9 Business Activities. Not, and not suffer or permit any Loan Party to, engage in any line of business other than the businesses engaged in by each Loan Party on the Closing Date or reasonably similar or related businesses (or incidental or ancillary thereto).

7.10 Investments. Not, and not suffer or permit any Loan Party or any other Subsidiary to, make or permit to exist, any Investment in any other Person, except the following:

(a) loans or contributions by any Loan Party to the capital of any Wholly-Owned Subsidiary of such Loan Party, so long as the recipient of any such loan or contribution has become a Loan Party hereunder and, without limitation, guaranteed the Obligations and such guaranty is secured by a pledge of all of its Equity Interests and substantially all of its real and personal property, in each case in accordance with Section 6.8;

(b) cash and Cash Equivalent Investments;

(c) bank deposits in the ordinary course of business;

(d) Investments existing as of the Closing Date and listed on Schedule 7.10 of the Disclosure Letter;

(e) any purchase or other acquisition by any Loan Party of the assets or Equity Interests of any other Loan Party;

(f) transactions among Loan Parties permitted by Section 7.4;

(g) advances given to employees and directors in the ordinary course of business not to exceed $50,000 in the aggregate outstanding at any time;

(h) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;

(i) Investments consisting of the non-cash portion of the consideration received in respect of Dispositions permitted hereunder; and

(j) any other advances or loans, not to exceed $100,000 in the aggregate.

7.11 Fiscal Year. Not, and not suffer or permit any other Loan Party to, change its Fiscal Year without the prior written consent of the Required Lenders or, at the direction of the Required Lenders, the Agent.

7.12 Deposit Accounts and Securities Accounts. Not, and not suffer or permit any Loan Party to, maintain or establish any deposit account or securities account other than the deposit accounts and securities accounts set forth on Schedule 7.12 of the Disclosure Letter without prior written notice to the Agent and unless the Agent, the Borrower or such other applicable Loan Party and the bank or securities intermediary at which such deposit account or securities account, as applicable, is to be opened or maintained enter into a Control Agreement regarding such deposit account or securities account, as applicable, on terms reasonably satisfactory to the Required Lenders and the Agent.

7.13 Sale-Leasebacks. Not, and not suffer or permit any Loan Party or any other Subsidiary to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

7.14 Hazardous Substances. Not, and not suffer or permit any other Loan Party or any of its Subsidiaries to, cause or suffer to exist any release of any Hazardous Substances at, to or from any real property owned, leased, subleased or otherwise operated or occupied by any Loan Party or any of its Subsidiaries that would violate any Environmental Law, form the basis for any Environmental Claims or otherwise adversely affect the value or marketability of any real property (whether or not owned by any Loan Party), other than such violations, Environmental Claims and effects that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

7.15 [Reserved.]

7.16 Subsidiaries, Partnerships and Joint Ventures. Not, and not permit any other Loan Party to, establish or acquire any Subsidiary, other than the Subsidiaries existing on the Closing Date, or enter into any partnership or joint venture.

7.17 Reserve Account. Not suffer or permit the amount of cash in the Reserve Account to be less than $900,000 at any time; provided that the Borrower shall have three Business Days to deposit amounts into the Reserve Account to make up any deficiency.

7.18 Subordinated Debt. Not (a) make or permit any payment on any Subordinated Debt or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to the Obligations.

7.19 Financial Covenants.

7.19.1 Liquidity. Not suffer or permit the Liquidity of the Borrower and its Subsidiaries to be less than $4,000,000 at any time, on or after March 31, 2019.

7.19.2 Total Leverage Ratio. Not suffer or permit the Total Leverage Ratio as of the last day of any Fiscal Quarter, commencing with the Fiscal Quarter ending September 30, 2019, to be greater than the maximum ratio set forth in the table below opposite such date.

Date	Maximum Total Leverage Ratio
September 30, 2019	4.50:1.00
December 31, 2019	4.50:1.00
March 31, 2020	3.50:1.00
June 30, 2020	3.50:1.00
September 30, 2020	3.50:1.00
December 31, 2020	3.50:1.00
March 31, 2021	2.50:1.00
June 30, 2021	2.50:1.00
September 30, 2021	2.50:1.00

7.19.3 Debt Service Coverage Ratio. Note suffer or permit the Debt Service Coverage Ratio as of the last day of any Fiscal Quarter, commencing with the Fiscal Quarter ending September 30, 2019, to be greater than the maximum ratio set forth in the table below opposite such date.

Date	Debt Service Coverage Ratio
September 30, 2019	1.25:1.00
December 31, 2019	1.25:1.00
March 31, 2020	1.50:1.00
June 30, 2020	1.50:1.00
September 30, 2020	1.50:1.00
December 31, 2020	1.50:1.00
March 31, 2021	1.50:1.00
June 30, 2021	1.50:1.00
September 30, 2021	1.50:1.00

7.20 Equity Cure. In the event the Loan Parties fail to comply with the financial covenants set forth in Section 7.19.2 or Section 7.19.3 as of the last day of any Fiscal Quarter, any cash equity contribution (funded with proceeds from a sale of issuance of Qualified Stock of the Borrower) to the capital of the Borrower after the last day of such Fiscal Quarter and on or prior to the day that is 10 Business Days after the day on which financial statements are required to be delivered for that Fiscal Quarter will, at the irrevocable election of the Borrower, be included in the calculation of EBITDA solely for the purposes of determining compliance with such covenants in Section 7.19.2 or Section 7.19.3 at the end of such Fiscal Quarter (each, a "Cure Quarter") and any subsequent period that includes such Cure Quarter (any such equity contribution so included in the calculation of EBITDA, a "Specified Equity Contribution"); provided that (a) notice of the Borrower's intent to accept a Specified Equity Contribution shall be delivered by the Borrower to the Agent and the Lenders no later than the day on which financial statements are required to be delivered for the applicable Fiscal Quarter, (b) in each consecutive four Fiscal Quarter period there will be at least two Fiscal Quarters in which no Specified Equity Contribution is made, (c) the amount of any Specified Equity Contribution will be no greater than 100% of the amount required to cause the Loan Parties to be in compliance with such financial covenants (the "Cure Amount"), (d) there shall be no more than four Specified Equity Contributions made in the aggregate after the Closing Date, (e) the Borrower shall immediately apply the proceeds of a Specified Equity Contribution to prepay the Loans in accordance with Section 2.4.2(b) and (f) there shall be no reduction in Debt in connection with any Specified Equity Contribution (or the application of the proceeds thereof, including application of such proceeds for purposes of cash netting) for determining compliance with Section 7.19.2 or Section 7.19.3 for the period ending on the last day of the applicable Cure Quarter; provided that following any prepayment of the Loans pursuant Section 2.4.2(b) there shall be a reduction in Debt for determining compliance with Section 7.19.2 and Section 7.19.3 in future Fiscal Quarters, where such Cure Quarter is included in the applicable test period (but, for the avoidance of doubt, there shall be no de-leveraging credit for the period ending on the last day of the Cure Quarter in respect of which the Specified Equity Contribution is exercised). Upon the Agent's receipt of notice from the Borrower of its intent to make a Specified Equity Contribution pursuant to this Section 7.20 no later than the day on which financial statements are required to be delivered for the applicable Fiscal Quarter, then, until the day that is 10 Business Days after such date, (x) neither the Agent nor any Lender shall exercise the right to accelerate the Loans and neither the Agent nor any Lender shall exercise any right to foreclose on or take possession of the Collateral and (y) notwithstanding anything to the contrary herein, the Default Rate shall not be applicable, in each case, solely on the basis of an Event of Default having occurred and being continuing as a result of the Borrower's failure to be in compliance with the financial covenants set forth in Section 7.19.2 or Section 7.19.3 in respect of the period ending on the last day of such Fiscal Quarter. If, after giving effect to the foregoing pro forma adjustment (but not, for the avoidance of doubt, giving pro forma adjustment to any repayment of Debt in connection therewith), the Borrower is in compliance with the financial covenants set forth in Section 7.19.2 and Section 7.19.3, the Borrower shall be deemed to have satisfied the requirements of Section 7.19 as of the relevant date of determination with the same effect as though there had been no failure to comply on such date, and the applicable breach or default of Section 7.19 that had occurred shall be deemed cured for purposes of this Agreement.

7.21 Benefit Plan Matters. Not, and not permit any other Loan Party to, sponsor, maintain, contribute to, be required to contribute to or have any liability with respect to any Benefit Plan.

7.22 Truth of Statements. Not, and not permit any other Loan Party to, furnish to the Agent or any Lender any certificate or other document that would breach Section 5.16 hereof, assuming the representation in Section 5.16 is being remade at the time such certificate or other document is furnished to the Agent or any Lender.

Section 8. Events of Default; Remedies.

8.1 Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

8.1.1 Payment Default. (a) Any default shall occur in the payment when due of the principal of any Loan, or (b) any default shall occur in the payment of interest or any other Obligations not cured within three Business Days after such Obligations are due and payable (which three Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration in accordance with the terms of this Agreement).

8.1.2 Default Under Other Debt. Any default shall occur under the terms applicable to any Debt (other than the Obligations) of any Loan Party or any of its Subsidiaries having an aggregate outstanding principal amount (for all such Debt so affected) exceeding $250,000 and such default shall result in the acceleration of the maturity of such Debt or permit the holder or holders thereof, or any trustee or agent for such holder or holders, to cause such Debt to become due and payable (or require the Borrower, any other Loan Party or any of their Subsidiaries to purchase or redeem such Debt or post cash collateral in respect thereof) prior to its scheduled maturity.

8.1.3 Bankruptcy; Insolvency. (i) Any Loan Party or any of its Subsidiaries becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay, debts as they become due; (ii) any Loan Party or any of its Subsidiaries commences any case, proceeding or other action (x) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (y) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets; (iii) there shall be commenced against any Loan Party or any of its Subsidiaries any case, proceeding or other action of a nature referred to in clause (ii) above that (x) results in the entry of an order for relief or any such adjudication or appointment or (y) remains undismissed or undischarged for a period of 60 days; (iv) there shall be commenced against any Loan Party or any of its Subsidiaries any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; (v) any Loan Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (ii), (iii) or (iv) above; or (vi) any Loan Party or any of its Subsidiaries shall make a general assignment for the benefit of its creditors.

8.1.4 Non-Compliance with Loan Documents. (a) Failure by the Borrower to comply with or to perform any covenant set forth in Sections 6.1.1 through 6.1.8, 6.1.10, 6.5, 6.8(b), 6.8(f), 6.9 and 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8), and continuance of such failure described in this clause (b) for 30 days.

8.1.5 Representations; Warranties. Any representation or warranty made by or in respect of any Loan Party herein or any other Loan Document is false or misleading in any material respect (without duplication of any materiality qualifier contained therein), or in any certificate furnished by or on behalf of any Loan Party to the Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6 Judgments.

(a) One or more judgments, orders or decrees for the payment of money aggregating individually or in the aggregate in excess of $250,000 shall be rendered against any Loan Party or any of its Subsidiaries and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within 60 days after entry or filing of such judgments, or shall not have been discharged within 10 days after the expiration of such stay; provided, however, that any judgment which is covered by insurance shall not be included in calculating the $250,000 amount set forth above so long as the Borrower provides the Lenders and the Agent a written statement from such insurer (which written statement shall be reasonably satisfactory to the Required Lenders) to the effect that such judgment is covered by insurance and that the Borrower will receive the proceeds of such insurance within 60 days of the issuance of such judgment or if later, within 10 days after the expiration of any stay thereof; or

(b) one or more non-monetary judgments, orders or decrees shall be rendered against any one or more of the Loan Parties or any of their respective Subsidiaries which has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, and there shall be any period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

8.1.7 Attachment; Levy; Restraint on Business.

(a) Any portion of any Loan Party's assets having a fair market value in excess of $250,000 is attached, seized, levied on, or comes into possession of a trustee or receiver; or

(b) any court order enjoins, restrains or prevents any Loan Party from conducting a material part of its business.

8.1.8 Invalidity of Collateral Documents. Any Collateral Document shall cease to be in full force and effect; or any Loan Party shall contest in any manner the validity, binding nature or enforceability of any Collateral Document.

8.1.9 Lien Priority. Any Lien created under or by any Collateral Document shall at any time fail to constitute a valid and perfected Lien on the Collateral purported to be secured thereby, subject to no prior or equal Lien.

8.1.10 Invalidity of Subordination Provisions. Any subordination provision in any document or instrument governing Debt that is intended to be subordinated to the Obligations or any subordination provision in any subordination agreement (including, without limitation, the Subordination Agreement) that relates to any such Debt, or any subordination provision in any guaranty by any Loan Party of any such Debt, shall cease to be in full force and effect, or any Person (including the holder of any applicable Debt) shall contest in any manner the validity, binding nature or enforceability of any such provision.

8.1.11 Change of Control. (a) A Change of Control shall occur or (b) a "Change of Control" or other similar event shall occur, as defined in, or under, any indenture, agreement, instrument or other documentation evidencing or otherwise relating to any Debt in excess of $250,000.

8.1.12 Benefit Plan Liability. (a) The incurrence of any liability under a Benefit Plan or (b) the failure of any employee benefit plan as defined in Section 3(3) of ERISA that provides medical insurance, dental insurance, vision insurance, life insurance or long-term disability benefits and that is sponsored by the Borrower or any member of its Controlled Group to be fully insured by a third party insurance company, in an aggregate amount for clauses (a) and (b) in excess of $250,000.

8.1.13 Material Adverse Effect. Any event or development occurs which has had or could reasonably be expected to have a Material Adverse Effect.

8.2 Remedies. If any Event of Default described in Section 8.1.3 shall occur, the Obligations, including without limitation any applicable Prepayment Premium Amount, shall become immediately due and payable and all outstanding Commitments shall terminate, all without presentment, demand, protest, notice or further action of any kind; and, if any other Event of Default shall occur and be continuing, the Agent may, and upon the written request of the Required Lenders shall, declare all or any part of the Loans and other Obligations, including without limitation any applicable Prepayment Premium Amount, to be due and payable and/or all or any part of the Commitments then outstanding to be terminated, whereupon the Loans and other Obligations shall become immediately due and payable (in whole or in part, as applicable), and such Commitments shall immediately terminate (in whole or in part, as applicable), all without presentment, demand, protest, notice or action of any kind. Any cash collateral delivered hereunder shall be applied by the Agent (at the direction of the Required Lenders) to any remaining Obligations and any excess remaining after the Obligations shall have been Paid in Full shall be delivered to the Borrower or as a court of competent jurisdiction may elect. Upon the declaration of the Obligations to be, or the Obligations becoming, due and payable pursuant to this Section 8.2 all such Obligations shall bear interest at the Default Rate.

Section 9. The Agent.

9.1 Appointment; Authorization. Each Lender hereby irrevocably appoints, designates and authorizes the Agent as administrative and collateral agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. The provisions of this Section 9 are solely for the benefit of the Agent and the Lenders, and the Borrower 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 other Loan Documents (or any other similar term) with reference to the 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 Agreement or in any other Loan Document, the 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 Agreement or any other Loan Document or otherwise exist against the Agent.

9.2 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The 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 9 shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent. The 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 nonappealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.3 Exculpatory Provisions.

(a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders; provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any bankruptcy, insolvent, debtor relief or creditor rights law; and (iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders, or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The 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 Agent in writing by the Borrower or a Lender.

(c) The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) 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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent, (vi) or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. The Agent shall not be under any obligation to the Lenders to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance by Agent. The 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 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. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of the Lenders, the Agent may presume that such condition is satisfactory to the Lenders unless the Agent shall have received notice to the contrary from such Lenders prior to the making of such Loan. The 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.

9.5 Successor Agent. The Agent may resign as the Agent at any time upon 10 days' prior notice to the Lenders and the Borrower. If the Agent resigns under this Agreement, the Required Lenders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint a successor Agent on behalf of the Lenders after consulting with the Lenders. 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 Agent and the term "the Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as the Agent shall be terminated. After the Agent's resignation hereunder as the Agent, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Agent under this Agreement. If no successor agent has accepted appointment as the Agent by the date which is 30 days following a retiring Agent's notice of resignation, a retiring Agent's resignation shall nevertheless thereupon become effective and the Required Lenders shall perform all of the duties of the Agent hereunder until such time as the Required Lenders shall appoint a successor agent as provided for above.

9.6 Non-Reliance on the Agent. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any of its Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the 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 Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.7 Collateral Matters. Each Lender irrevocably authorizes the Agent, at the direction of the Required Lenders, to release any Lien granted to or held by the Agent under any Collateral Document (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 hereunder (it being agreed and understood that the Agent may conclusively rely without further inquiry on a certificate of an officer of the Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders. The Agent shall have the right, in accordance with the Collateral Documents and at the direction of the Required Lenders, to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Agent may, at the direction of the Required Lenders, 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.

9.8 Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Sections 10.3 or 10.4 of this Agreement to be paid by it to the Agent (or any sub-agent thereof) or any Related Party of the Agent (or any sub-agent thereof), the Lenders hereby agree, jointly and severally, to pay to the Agent (or any such sub-agent) or such Related Party of the Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

Section 10. Miscellaneous.

10.1 Waiver; Amendments.

(a) No delay on the part of the Agent or the Lenders in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. Subject to the provisions of Section 10.1(c) hereof, no amendment or waiver of, or supplement or other modification (which shall include any direction to the Agent pursuant) to, any Loan Document (other than the Agent Fee Letter, any Control Agreement, any Mortgage, or similar agreement or any landlord, bailee or mortgagee agreement) or any provision thereof, and no consent with respect to any departure by any Loan Party from any such Loan Documents, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by the Agent with the consent of the Required Lenders), and the Borrower and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, supplement (including any additional Loan Document) or consent shall, unless in writing and signed by all the Lenders directly and adversely affected thereby (or by the Agent with the consent of all the Lenders directly and adversely affected thereby), but not the Required Lenders, and the Borrower, do any of the following:

(i) increase or extend the Commitment of such Lender (or reinstate any Commitment terminated pursuant to Section 8.2 (it being understood that any amendment to or waiver of any condition precedent set forth in Section 4.1 or Section 4.2, any Default, any Event of Default, any mandatory prepayment of the Loans or any mandatory reduction of the Commitments shall not constitute an increase, extension or reinstatement of any Commitment of any Lender);

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest (other than default interest pursuant to Section 2.3.1(c)), fees or other amounts (other than principal) due to such Lenders hereunder or under any other Loan Document (for the avoidance of doubt, mandatory prepayments pursuant to Section 2.4 (other than scheduled installments under Section 2.4.1) may be postponed, delayed, reduced, waived or modified with the consent of the Required Lenders, and the waiver of any Default or Event of Default (other than pursuant to the failure to pay a scheduled installment under Section 2.4.1), or any mandatory reduction of any Commitments shall not constitute a postponement, delay, reduction or waiver of any scheduled installment of principal or any payment of interest, fees or other amounts);

(iii) reduce the principal of, or the rate of interest specified herein (except pursuant to Section 2.15(c)) (it being agreed that waiver of the default interest margin shall only require the consent of Required Lenders) or the amount of interest payable in cash specified herein on any Loan, or of any fees or other amounts payable hereunder or under any other Loan Document;

(iv) (A) change or have the effect of changing the priority or pro rata treatment of any payments (including voluntary and mandatory prepayments), Liens, proceeds of Collateral or reductions in Commitments (including as a result in whole or in part of allowing the issuance or incurrence, pursuant to this Agreement or otherwise, of new loans or other Debt having any priority over any of the Obligations in respect of payments, Liens, Collateral or proceeds of Collateral, in exchange for any Obligations or otherwise), or (B) advance the date fixed for, or increase, any scheduled installment of principal due to any of the Lenders under any Loan Document;

(v) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;

(vi) amend this Section 10.1 or, subject to the terms of this Agreement, the definition of Required Lenders or any provision expressly providing for consent or other action by all Lenders; or

(vii) discharge any Loan Party from its respective payment Obligations under the Loan Documents, or release all or substantially all of the Collateral, except as otherwise may be provided in this Agreement or the other Loan Documents;

it being agreed that (X) all the Lenders shall be deemed to be directly and adversely affected by an amendment, waiver or supplement described in the preceding clauses (iv)(B), (v), (vi) or (vii) and (Y) notwithstanding the preceding clause (X), only those Lenders that have not been provided a reasonable opportunity to receive the most-favorable treatment under or in connection with the applicable amendment, waiver or supplement described in the preceding clause (iv) (other than the right to receive customary administrative agency, arranging, underwriting and other similar fees) that is provided to any other Person, including the opportunity to participate on a pro rata basis on the same terms in any new loans or other Debt permitted to be issued as a result of such amendment, waiver or supplement, shall be deemed to be directly and adversely affected by such amendment, waiver or supplement. Notwithstanding anything to the contrary contained herein and for the avoidance of doubt, (i) in the Required Lenders' reasonable discretion, any written consent, amendment, or waiver contemplated by this Section 10.1 may include a consent, amendment or waiver made via electronic mail (which specifically states that it is a consent, amendment or waiver being made under this Section 10.1) with appropriate confirmations or agreements from the recipients or senders of such consent, amendment or waiver, as applicable, and (ii) any such amendment, consent, or waiver made via electronic mail in accordance with clause (i) of this sentence shall be deemed a "Loan Document" so long as identified and acknowledged and agreed to as such by the parties to such amendment, consent or waiver.

(b) No amendment, waiver or consent shall, unless in writing and signed by the Agent, in addition to the Required Lenders or all the Lenders directly affected thereby, as the case may be (or by the Agent with the consent of the Required Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights, obligations, indemnities or duties of the Agent under this Agreement or any other Loan Document. No provision of Section 9 or other provision of this Agreement affecting the Agent in its capacity as such shall be amended, modified or waived without the consent of the Agent.

(c) The Agent Fee Letter, any Control Agreement, any Mortgage, or similar agreement or any landlord, bailee or mortgagee agreement may be amended as provided therein and if not provided therein, by each of the parties thereto.

10.2 Notices. All notices hereunder shall be in writing (including facsimile transmission) and shall be sent to the applicable party at its address shown on Schedule 10.2 or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by facsimile or other electronic transmission shall be deemed to have been given when sent; notices sent to the Loan Parties by mail shall be deemed to have been given three Business Days after the date when sent by registered or certified mail, postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when delivered.

10.3 Costs; Expenses. The Borrower agrees to pay promptly (a) all reasonable out-of-pocket and documented costs and expenses of the Agent and the Lenders (including diligence costs, consulting fees and Costs) in connection with the transactions contemplated by this Agreement and the other Loan Documents, including the preparation, execution, delivery and administration (including perfection and protection of Collateral subsequent to the Closing Date) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any proposed or actual amendment, supplement or waiver to any Loan Document), (b) all out-of-pocket and documented costs and expenses (including costs of experts and Costs) incurred by the Agent and the Lenders in connection with the custody or preservation of, or the sale of, collection from, or other realization upon, any Collateral and (c) all out-of-pocket and documented costs and expenses (including Costs) incurred by the Agent and the Lenders in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. All Obligations provided for in this Section 10.3 shall survive repayment of the Loan, cancellation of the Notes and termination of this Agreement.

10.4 Indemnification by the Borrower. In consideration of the execution and delivery of this Agreement by the Agent and the Lenders and the agreement to extend the Commitments provided hereunder, the Borrower hereby agrees to indemnify, exonerate and hold the Agent, the Lenders and each of the officers, directors, employees, Affiliates, controlling persons, advisors and agents of the Agent and the Lenders (each, a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities (including, without limitation, strict liabilities), obligations, damages, penalties, judgments, fines, disbursements, expenses and costs, including Costs (collectively, the "Indemnified Liabilities"), incurred by the Lender Parties or asserted against any Lender Party by any Person (including in connection with any action, suit or proceeding brought by any Loan Party or any Lender Party) as a result of, or arising out of, or relating to: the execution, delivery, performance, administration or enforcement of this Agreement or any other Loan Document, the use of proceeds of the Loans, or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of any Loan Party, except to the extent any such Indemnified Liabilities result from the applicable Lender Party's own gross negligence or willful misconduct, in each case as determined by a court of competent jurisdiction in a final, non-appealable determination. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under Applicable Law. All Obligations provided for in this Section 10.4 shall survive repayment of the Loan, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

10.5 Marshaling; Payments Set Aside. Neither the Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that the Borrower or any other Loan Party makes a payment or payments to the Agent or any Lender, or the Agent or any Lender 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 Agent or such Lender 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 (a) 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 (b) each Lender agrees to pay to the Agent upon demand its share of the total amount so recovered from or repaid by the Agent to the extent paid to such Lender.

10.6 Nonliability of the Lenders. The relationship between the Borrower on the one hand and the Lenders on the other hand shall be solely that of borrower and lender. Neither the Agent nor any Lender shall have any fiduciary responsibility to the Borrower or any other Loan Party. Neither the Agent nor any Lender undertakes any responsibility to the Borrower or any other Loan Party to review or inform (including payment of all outstanding principal) the Borrower or any other Loan Party of any matter in connection with any phase of the Borrower's or any other Loan Party's business or operations. Execution of this Agreement by the Borrower constitutes a full, complete and irrevocable release of any and all claims which the Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. None of the Borrower, the Agent or any Lender shall have any liability with respect to, and the Borrower, the Agent and each Lender each hereby waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

10.7 Confidentiality. The Agent and the Lenders agree to maintain as confidential all information provided to them by or on behalf of any Loan Party in connection with the Loan Documents, except that the Agent and each Lender may disclose such information (a) to Persons employed or engaged by the Agent or such Lender or any of their Affiliates (including collateral managers of such Lender or Agent) in evaluating, approving, structuring or administering the Loan and the Commitments; (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 10.7 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or as reasonably believed by the Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of the Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which the Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of such Lender that requires access to information about such Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of the Agent or such Lender (or their Affiliates or Persons employed by them); or (h) to a Person that is an investor or prospective investor in such Lender or any of its Affiliates; provided, that, with respect to clauses (a), (b) and (h), the Agent or such Lender may disclose such information to the extent that such Person or assignee, as applicable, agrees to be bound by provisions substantially similar to the provisions of this Section 10.7.

10.8 Captions. Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.9 Nature of Remedies. All Obligations of the Loan Parties and rights of the Agent and the Lenders expressed herein or in any other Loan Document are cumulative to the extent permitted by Applicable Law and shall be in addition to and not in limitation of those provided by Applicable Law. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.10 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile or electronic transmission (including PDF) of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page.

10.11 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.12 Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by the Borrower of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of the Agent or the Lenders.

10.13 Successors; Assigns. This Agreement shall be binding upon the Borrower, each other Loan Party party hereto, the Lenders and the Agent and their respective successors and assigns, and shall inure to the benefit of the Borrower, each other Loan Party party hereto, the Lenders and the Agent and the successors and assigns of each Lender and the Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. The Borrower and each other Loan Party party hereto may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of the Agent and the Lenders. Each Lender may sell, transfer, or assign any or all of its rights and obligations hereunder, pursuant to assignment documentation reasonably acceptable to such Lender, the Agent and such assignee, to (a) any Eligible Assignee or (b) with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), any other Person acceptable to such Lender and the Agent; provided that the Borrower's consent under this clause (b) shall not be required if an Event of Default has occurred and is then continuing. Such assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such assignee pursuant to such assignment documentation, shall have the rights and obligations of a Lender hereunder. The Agent (acting solely for this purpose as the agent of the Borrower) shall maintain a register for the recordation of the names and addresses of each Lender and its assignees, and the amounts of principal and interest owing to any of them hereunder from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and each Lender and its assignees shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement and all references to each Lender in this Agreement shall include any such assignee of such Lender.

10.14 Governing Law. THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

10.15 Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent assignment and assumption documentation reasonably acceptable to the Agent, together with a processing and recordation fee of $3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee shall complete and deliver to the satisfaction of the Agent an administrative questionnaire in a form provided by the Agent.

10.16 Participations. Each Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to one or more Persons (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement. Each Lender shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"). No Lender shall have any obligation to disclose all or any portion of the Participant Register to the Borrower or any other Person (including the existence or identity of any Participant or any information relating to a Participant's interest in the Loans or other obligations under this Agreement) except (i) to the extent that such disclosure is necessary to establish that such Loans or other obligations are in registered form under Section 5f.103-1(c) of the applicable United States Treasury Regulations or (ii) with respect to any Person whose interest in the Loans or other obligations is treated as a participation by reason of the Agent not accepting and recording a proposed assignment in the Register. The entries in the Participant Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. A Participant shall not be entitled to receive any greater payment under Section 2 hereof than the initial Lender would have been entitled to receive with respect to the participation sold to such Participant.

10.17 Forum Selection; Consent to Jurisdiction; Service of Process. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE AGENT'S OPTION (AT THE DIRECTION OF THE REQUIRED LENDERS), IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH LOAN PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.18 Waiver of Jury Trial. EACH LOAN PARTY, THE AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

WORKHORSE GROUP INC.
as the Borrower

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

MARATHON STRUCTURED PRODUCT STRATEGIES FUND, LP
MARATHON BLUE GRASS CREDIT FUND, LP
MARATHON CENTRE STREET PARTNERSHIP, L.P.
TRS CREDIT FUND, LP
as a Lenders

By: /s/ Louis Hanover
Name: Louis Hanover
Title: CIO, Co-Managing Partner

WILMINGTON TRUST, NATIONAL ASSOCIATION
as the Agent

By: /s/ Jamie Roseberg
Name: Jamie Roseberg
Title: Banking Officer

SCHEDULE 1.1

Commitment Schedule

Tranche One Commitments

Lender	Tranche One Commitments
Marathon Structured Product Strategies Fund, LP	$ 2,857,142.86
Marathon Blue Grass Credit Fund, LP	$ 1,880,571.43
Marathon Centre Street Partnership, L.P.	$ 3,718,000.00
TRS Credit Fund, LP	$ 1,544,285.71
Total:	**$ 10,000,000**

Tranche Two Commitments

Lender	Tranche Two Commitments
Marathon Structured Product Strategies Fund, LP	$ 7,142,857.14
Marathon Blue Grass Credit Fund, LP	$ 4,701,428.57
Marathon Centre Street Partnership, L.P.	$ 9,295,000.00
TRS Credit Fund, LP	$ 3,860,714.29
Total:	**$ 25,000,000**

SCHEDULE 10.2

Addresses for Notices

LOAN PARTIES:

Workhorse Group Inc.

100 Commerce Drive
Loveland, Ohio 45140
Attention: Paul Gaitan, CFO
Telephone: 513-360-4704
Email: paul.gaitan@workhorse.com

With a copy to:
Fleming PLLC
30 Wall Street, 8th Floor
New York, New York 10005
Attn: Stephen M. Fleming
Email: smf@flemingpllc.com

Workhorse Technologies Inc.

100 Commerce Drive
Loveland, Ohio 45140
Attention: Paul Gaitan, CFO
Telephone: 513-360-4704
Email: paul.gaitan@workhorse.com

With a copy to:
Fleming PLLC
30 Wall Street, 8th Floor
New York, New York 10005
Attn: Stephen M. Fleming
Email: smf@flemingpllc.com

Workhorse Properties Inc.

100 Commerce Drive
Loveland, Ohio 45140
Attention: Paul Gaitan, CFO
Telephone: 513-360-4704
Email: paul.gaitan@workhorse.com

With a copy to:
Fleming PLLC
30 Wall Street, 8th Floor
New York, New York 10005
Attn: Stephen M. Fleming
Email: smf@flemingpllc.com

Workhorse Motor Works Inc

100 Commerce Drive
Loveland, Ohio 45140
Attention: Paul Gaitan, CFO
Telephone: 513-360-4704
Email: paul.gaitan@workhorse.com

With a copy to:
Fleming PLLC
30 Wall Street, 8th Floor
New York, New York 10005
Attn: Stephen M. Fleming
Email: smf@flemingpllc.com

Surefly, Inc.

100 Commerce Drive
Loveland, Ohio 45140
Attention: Paul Gaitan, CFO
Telephone: 513-360-4704
Email: paul.gaitan@workhorse.com

With a copy to:
Fleming PLLC
30 Wall Street, 8th Floor
New York, New York 10005
Attn: Stephen M. Fleming
Email: smf@flemingpllc.com

LENDERS:

Marathon Structured Product Strategies Fund, LP, as a Lender

One Bryant Park, 38th Floor
New York, NY 10036
Attention: Robert Comizio; Jordan Bryk
Telephone: 212-500-3148; 212-500-3152
Facsimile: 212-205-8739
Email: rcomizio@marathonfund.com; jbryk@marathonfund.com

Marathon Blue Grass Credit Fund, LP, as a Lender

One Bryant Park, 38th Floor
New York, NY 10036
Attention: Robert Comizio; Jordan Bryk
Telephone: 212-500-3148; 212-500-3152
Facsimile: 212-205-8739
Email: rcomizio@marathonfund.com; jbryk@marathonfund.com

Marathon Centre Street Partnership, L.P., as a Lender

One Bryant Park, 38th Floor
New York, NY 10036
Attention: Robert Comizio; Jordan Bryk
Telephone: 212-500-3148; 212-500-3152
Facsimile: 212-205-8739
Email: rcomizio@marathonfund.com; jbryk@marathonfund.com

TRS Credit Fund, LP, as a Lender

One Bryant Park, 38th Floor
New York, NY 10036
Attention: Robert Comizio; Jordan Bryk
Telephone: 212-500-3148; 212-500-3152
Facsimile: 212-205-8739
Email: rcomizio@marathonfund.com; jbryk@marathonfund.com

AGENT:

Wilmington Trust, National Association, as the Agent

50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Jamie Roseberg, Relationship Manager
Telephone: 612-217-5688
Facsimile: 612-217-5651
Email: jroseberg@wilmingtontrust.com

EXHIBIT A

Form of Note

FORM OF
[TRANCHE ONE][TRANCHE TWO] TERM NOTE

$[_____.00] New York, New York
[DATE]

FOR VALUE RECEIVED, the undersigned, [WORKHORSE GROUP INC.] (the " Borrower"), hereby unconditionally promises to pay to [ ] (the "Lender"), or its registered assigns at the address specified in the Credit Agreement (as hereinafter defined; each capitalized term used and not otherwise defined herein having the meaning assigned to it in the Credit Agreement) in lawful money of the United States and in immediately available funds, the unpaid amount of the Obligations relating to the [**Tranche One Loans**][**Tranche Two Loans**] outstanding under the Credit Agreement from time to time. Amounts evidenced hereby shall be paid in the amounts and on the dates specified in Section 2 of the Credit Agreement. [Any principal amount of this Note prepaid or repaid may not be re-borrowed.][1] The outstanding principal balance of this Note together with all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.

The holder of this Note is authorized (but not required) to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, the type and amount of the Obligations relating to the [**Tranche One Loans**][**Tranche Two Loans**] and the date, type and amount of each payment or prepayment in respect thereof. Each such endorsement shall constitute *prima facie* evidence of the accuracy of the information endorsed. The failure of such holder to make any such endorsement or any error in any such endorsement shall not affect the Obligations.

This Note (a) is one of the Notes referred to in the Credit Agreement dated as of [_____] [●], 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the Borrower, Wilmington Trust, National Association, as agent (the "Agent"), the financial institutions from time to time party thereto as lenders, and any other entities from time to time party thereto and (b) is subject to the provisions of the Credit Agreement. This Note is secured as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and any guarantees, the terms and conditions upon which the security interests and any guarantee were granted and the rights of the holder of this Note in respect thereof. Borrower acknowledges and agrees that Agent, as agent, may exercise all rights provided in the Loan Documents with respect to this Note.

[1] NTD: For Tranche One Loans only.

Upon the occurrence and during the continuance of any one or more of the Events of Default, all Obligations under the Credit Agreement as evidenced by this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether as maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE TERMS OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE LAWS OF ANY OTHER JURISDICTION THAT MIGHT BE APPLIED BECAUSE OF THE CONFLICTS OF LAWS PRINCIPLES OF THE STATE OF NEW YORK (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

WORKHORSE GROUP INC.

By: _____
Name:
Title:

EXHIBIT B

Form of Compliance Certificate

FORM OF COMPLIANCE CERTIFICATE
WORKHORSE GROUP INC.
COMPUTATION DATE: _____ __, 20__

This Compliance Certificate (this "Certificate") is delivered pursuant to Section 6.1.4 of the Credit Agreement, dated as of December 31, 2018 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Workhorse Group Inc. (the "Borrower"), the financial institutions from time to time party thereto as lenders (collectively, with their permitted successors and assignees, the "Lenders"), and Wilmington Trust, National Association, as Agent. Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Certificate have the meanings provided in the Credit Agreement.

This Certificate relates to the [calendar month][Fiscal Quarter][Fiscal Year] commencing on _____ __, 20__ and ending on _____ __, 20__ (such latter date being the "Computation Date").

The undersigned is duly authorized to execute and deliver this Certificate on behalf of the Borrower and its Subsidiaries. By executing this Certificate on behalf of the Borrower and its Subsidiaries (and not in his personal capacity), the undersigned hereby certifies to the Agent, for the benefit of the Lenders, that as of the Computation Date:

(a) [Attached hereto as Annex I are a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such calendar month, together with (i) consolidated statements of income and cash flows for such period prepared on a basis consistent with GAAP, together with a comparison with the budget for such period of the current Fiscal Year and (ii) the volume and average sales price for the vehicles sold during such month, all certified by the chief financial officer of the Borrower.][1]

[Attached hereto as Annex I area consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter, together with consolidated statements of income and cash flows for such Fiscal Quarter and for the then elapsed portion of the Fiscal Year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous Fiscal Year, and notes thereto, all prepared in accordance with GAAP and certified by the chief financial officer of the Borrower stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Borrower and its Subsidiaries as of the date and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with audited financial statements referred to in Section 6.1.1 of the Credit Agreement, subject to normal yearend audit adjustments, and (ii) a narrative report and management's discussion and analysis, of the financial condition and results of operations for such Fiscal Quarter and the then elapsed portion of the Fiscal Year, as compared to the comparable periods in the previous Fiscal Year.][2]

[1] INCLUDE FOR MONTHLY FINANCIAL DELIVERABLES.
[2] INCLUDE FOR QUARTERLY FINANCIAL DELIVERABLES.

[Attached hereto as Annex I are (i) the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and related consolidated statements of income, cash flows and stockholders' equity for such Fiscal Year, in comparative form with such financial statements as of the end of, and for, the preceding Fiscal Year, and notes thereto, all prepared in accordance with GAAP and accompanied by an opinion of Grant Thornton LLP or other independent public accountants of recognized national standing (which opinion shall not be qualified as to scope or contain any explanatory paragraph expressing substantial doubt about the ability of the Borrower and its Subsidiaries to continue as a going concern (other than solely with respect to , or resulting solely from (i) an upcoming maturity date of the Loans occurring within one year from the time such report is delivered or (ii) any potential inability to satisfy any financial covenant set forth in the Credit Agreement on a future date or in a future period)), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP and (ii) a narrative report and management's discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for such Fiscal Year, as compared to amounts for the previous Fiscal Year.][3]

(b) The financial statements delivered with this Certificate in accordance with Section 6.1.[1][2][3] of the Credit Agreement fairly present in all material respects the financial condition of the Borrower and its Subsidiaries (subject to the absence of footnotes and to normal year-end audit adjustments in the case of unaudited financial statements).

(c) As of the Computation Date, the Loan Parties are in compliance in all respects with the financial covenants set forth in Section 7.19 of the Credit Agreement. Set forth on Attachment 1 hereto are calculations showing compliance with Section 7.19.1 of the Credit Agreement [and Section 7.19.2 and Section 7.19.3 of the Credit Agreement][4] as of the Computation Date.

(d) No Event of Default or Default has occurred and is continuing [except as set forth on Attachment 2 hereto, which includes a description of the nature and period of existence of such Event of Default or Default and what action the applicable Loan Parties have taken, are taking, or propose to take with respect thereto].

[3] INCLUDE FOR ANNUAL FINANCIAL DELIVERABLES.
[4] INCLUDE FOR QUARTERLY AND ANNUAL FINANCIAL DELIVERABLES.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Certificate to be executed and delivered, and the certification and warranties contained herein to be made by its chief financial officer, as of the date first above written.

WORKHORSE GROUP INC.

By: _____
Name:
Title: Chief Financial Officer

Attachment 1

Schedule to Compliance Certificate: Dated as of [ ]

1. Liquidity

The amount of Qualified Cash of the Borrower and its Subsidiaries:	$
The amount required by Section 7.19.1 of the Credit Agreement:	$ 4,000,000[5]

Compliance: **[Yes] [No]**

2. Total Leverage Ratio[6]

The Total Leverage Ratio for the fiscal quarter ended [ ]7:	$

Calculation of the Total Leverage Ratio:
[ ]

The maximum Total Leverage Ratio permitted by Section 7.19.2 of the Credit Agreement is the ratio set forth in the table below opposite such date:

Date	Maximum Total Leverage Ratio
September 30, 2019	4.50:1.00
December 31, 2019	4.50:1.00
March 31, 2020	3.50:1.00
June 30, 2020	3.50:1.00
September 30, 2020	3.50:1.00
December 31, 2020	3.50:1.00
March 31, 2021	2.50:1.00
June 30, 2021	2.50:1.00
September 30, 2021	2.50:1.00

5 Applies starting on and after March 31, 2019.
6 Applies starting with the Fiscal Quarter ended September 30, 2019.
7 To be the fiscal quarter most recently ended.

Compliance: **[Yes] [No]**

3. Debt Service Coverage Ratio[8]

The Debt Service Coverage Ratio for the fiscal quarter ended [ ][9]:	$

Calculation of the Debt Service Coverage Ratio:
[ ]

The maximum Debt Service Coverage Ratio permitted by Section 7.19.3 of the Credit Agreement is the ratio set forth in the table below opposite such date:

Date	Maximum Total Leverage Ratio
September 30, 2019	1.25:1.00
December 31, 2019	1.25:1.00
March 31, 2020	1.50:1.00
June 30, 2020	1.50:1.00
September 30, 2020	1.50:1.00
December 31, 2020	1.50:1.00
March 31, 2021	1.50:1.00
June 30, 2021	1.50:1.00
September 30, 2021	1.50:1.00

Compliance: **[Yes] [No]**

[8] Applies starting with the Fiscal Quarter ended September 30, 2019.

[9] To be the fiscal quarter most recently ended.

EXHIBIT C

Form of Tranche Two Borrowing Request
[ ], 20[ ]

Wilmington Trust, National Association
50 South Sixth Street, Ste. 1290
Minneapolis, MN 55402
Attention of: Jamie Roseberg, Relationship Manager

Re: Tranche Two Borrowing Request

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of December 31, 2018 (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among Workhorse Group Inc., in its capacity, as borrower (the "**Borrower**"), Wilmington Trust, National Association, as administrative agent and collateral agent (the "**Agent**") for the financial institutions from time to time party thereto as lenders (collectively, with their permitted successors and assignees, the "**Lenders**"), and the Lenders from time to time party thereto, pursuant to which the Lenders have agreed to extend term loans to the Borrower on the terms and subject to the conditions set forth in the Credit Agreement. Capitalized terms used but not defined herein have the meanings assigned to them in the Credit Agreement.

The Borrower hereby requests Tranche Two Loans in the aggregate principal amount of $[ ] be disbursed on [ ][1], 20[ ] to the Reserve Account. This serves as an irrevocable Borrowing Request pursuant to and in accordance with Section 4.2.1 of the Credit Agreement.

The undersigned hereby certifies, represents and warrants that (i) the applicable conditions set forth in Section 4.2 of the Credit Agreement have been satisfied as of the date hereof or will be satisfied on the date of the proposed Tranche Two Funding specified in the paragraph above, (ii) attached hereto in **Exhibit A** are copies of the Subject Purchase Orders, each of which is in full force and effect without modification as of the date hereof, against which the Tranche Two Loans requested hereby are requested to be made, and (iii) set forth in **Exhibit B** attached hereto are calculations setting forth the anticipated production costs and anticipated margin of return, in each case, associated with the Subject Purchase Orders attached hereto in **Exhibit A**.

The officer signing below is the chief executive officer or chief financial officer of the Borrower and is authorized to request the Tranche Two Loans contemplated hereby and issue this Borrowing Request on behalf of the Borrower.

[*Signature Pages Follow*]

[1] To be not less than 15 days after the date hereof.

Sincerely,

WORKHORSE GROUP INC.

By: _____
Title: [Chief Executive Officer/Chief Financial Officer]
Name:

Exhibit 10.2

Execution Version

SECURITY AGREEMENT

THIS **SECURITY AGREEMENT** (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") dated as of December 31, 2018 among Workhorse Group Inc., a Nevada corporation, Workhorse Technologies Inc., an Ohio corporation, Workhorse Properties Inc., an Ohio corporation, Workhorse Motor Works Inc, an Indiana corporation, and Surefly, Inc., a Delaware corporation (each a "**Grantor**" and, collectively, the "**Grantors**") and Wilmington Trust, National Association, in its capacity as agent for the benefit of the Lenders (together with its successors and assigns in such capacity, the "**Secured Party**").

W I T N E S S E T H:

WHEREAS, Workhorse Group Inc. will enter into a Credit Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") with the Agent and the financial institutions from time to time party thereto as lenders (collectively, with their permitted successors and assignees, the "**Lenders**") pursuant to which the Lender will extend to Workhorse Group Inc. a credit facility in an aggregate amount of $35,000,000;

AND WHEREAS, each Grantor will derive substantial benefit and advantage from the financial accommodations to Workhorse Group Inc. set forth in the Credit Agreement;

AND WHEREAS, it is a condition precedent to the effectiveness of the Credit Agreement that the Grantors shall have executed and delivered this Agreement to the Agent for its benefit and the benefit of the Lenders.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Capitalized terms used herein without definition and defined in the Credit Agreement are used herein as defined therein. In addition, as used herein:

"**Accounts**" means any "account", as such term is defined in the UCC.

"**Chattel Paper**" means any "chattel paper", as such term is defined in the UCC.

"**Collateral**" shall have the meaning ascribed thereto in Section 3 hereof.

"**Commercial Tort Claims**" means "commercial tort claims", as such term is defined in the UCC.

"**Contracts**" means all contracts, undertakings, or other agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which a Grantor may now or hereafter have any right, title or interest, including, without limitation, with respect to an Account, any agreement relating to the terms of payment or the terms of performance thereof.

"**Control Agreement**" has the meaning set forth in Section 4.5 hereof.

"**Copyrights**" means any copyrights and rights, title and interests (and all related IP Ancillary Rights) in copyrights, works protectable by copyrights, mask works, database and design rights, copyright registrations and copyright applications, including, without limitation, the copyright registrations and copyright applications listed on Schedule III attached hereto (if any), and all renewals of any of the foregoing.

"**Deposit Accounts**" means all "deposit accounts", as such term is defined in the UCC, now or hereafter held in the name of a Grantor.

"**Documents**" means any "documents", as such term is defined in the UCC, and shall include, without limitation, all documents of title (as defined in the UCC), bills of lading or other receipts evidencing or representing Inventory or Equipment.

"**Equipment**" means any "equipment", as such term is defined in the UCC and, in any event, shall include, Motor Vehicles.

"**General Intangibles**" means any "general intangibles", as such term is defined in the UCC, and, in any event, shall include, without limitation, payment intangibles, contract rights, rights to payment, rights arising under common law, statutes, or regulations, choses or things in action, goodwill (including the goodwill associated with any Trademark), Patents, Trademarks, Copyrights, URLs and domain names, industrial designs and other Intellectual Property or rights therein or applications therefor, whether under license or otherwise, programs, programming materials, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the UCC.

"**Goods**" means any "goods", as such term is defined in the UCC, including, without limitation, fixtures and embedded Software to the extent included in "goods" as defined in the UCC.

"**Instruments**" means any "instrument," as such term is defined in the UCC, and shall include, without limitation, promissory notes, drafts, bills of exchange and trade acceptances.

"**Intellectual Property**" means all rights, title and interests in intellectual property arising under any Applicable Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets, industrial designs, integrated circuit topographies, confidential proprietary information and rights under Intellectual Property Licenses.

"**Intellectual Property Licenses**" means rights under or interests in any agreement, whether written or oral, including all contractual obligations (and all related IP Ancillary Rights), granting any right, title and interest in any Intellectual Property, including software license agreements, whether a Grantor is a licensee or licensor under any such license agreement, and including the license agreements listed on Schedule IV attached hereto.

"**Inventory**" means any "inventory", as such term is defined in the UCC.

"**Investment Property**" means any "investment property", as such term is defined in the UCC.

"**Letter-of-Credit Right**" means any "letter-of-credit right", as such term is defined in the UCC.

"**Motor Vehicles**" shall mean motor vehicles, tractors, trailers and other like property, whether or not the title thereto is governed by a certificate of title or ownership.

"**Patents**" means any patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, all patentable inventions and those patents and patent applications listed on Schedule V attached hereto (if any), and the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing, all rights corresponding thereto throughout the world, and all proceeds, income, licenses, royalties, damages, proceeds of suit and payments now or hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing, and without duplication, all IP Ancillary Rights in respect of any of the foregoing.

"**Proceeds**" means "proceeds", as such term is defined in the UCC and, in any event, includes, without limitation, (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (c) any and all other amounts from time to time paid or payable under, in respect of or in connection with any of the Collateral.

"**Representative**" means any Person acting as agent, representative or trustee on behalf of the Secured Party from time to time.

"**Security Documents**" means this Agreement, the Control Agreements, the Mortgage, and any and all other Collateral Documents.

"**Software**" means all "software", as such term is defined in the UCC, now owned or hereafter acquired by a Grantor, other than software embedded in any category of Goods, including, without limitation, all computer programs and all supporting information provided in connection with a transaction related to any program.

"Supporting Obligation" means any "supporting obligation", as such term is defined in the UCC.

"**Trademarks**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in any trademarks, trade names, internet domain names, URLs, all websites, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, all goodwill associated therewith, all registrations and recordings thereof and all applications in connection therewith, including, without limitation, the trademarks, trademark applications, internet domain names and URLs listed in Schedule VI attached hereto (if any) and renewals thereof, and all related IP Ancillary Rights with respect to any of the foregoing.

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that to the extent that the Uniform Commercial Code is used to define any term herein and such term is defined differently in different Articles of the Uniform Commercial Code, the definition of such term contained in Article 9 shall govern.

Section 2. Representations, Warranties and Covenants of Grantors . Each Grantor represents and warrants to, and covenants with, the Secured Party as follows:

(a) Such Grantor has or will have rights in and the power to transfer the Collateral in which it purports to grant a security interest pursuant to Section 3 hereof (subject, with respect to after acquired Collateral, to such Grantor acquiring the same) and no Lien other than Permitted Liens exists or will exist upon such Collateral at any time.

(b) This Agreement is effective to create in favor of the Secured Party a valid security interest in and Lien upon all of such Grantor's right, title and interest in and to the Collateral, and upon (i) the filing of appropriate UCC financing statements in the jurisdictions listed on Schedule I attached hereto, (ii) each Deposit Account being subject to a Control Agreement (as hereinafter defined) among the applicable Grantor, depository institution and the Secured Party on behalf of the Lenders, (iii) filings in the United States Patent and Trademark Office or United States Copyright Office with respect to Collateral that is Patents, Trademarks or Copyrights, as the case may be, (iv) the filing of the Mortgages in the jurisdictions listed on Schedule I hereto, (v) the delivery to the Secured Party of the Pledged Collateral together with assignments in blank, (vi) the security interest created hereby being noted on each certificate of title evidencing the ownership of any Motor Vehicle in accordance with Section 4.1(d) hereof, (vii) delivery to the Secured Party or its Representative of Instruments duly endorsed by such Grantor or accompanied by appropriate instruments of transfer duly executed by such Grantor with respect to Instruments not constituting Chattel Paper and (viii) the consent of the issuer and any confirmer of any letter of credit to an assignment to the Secured Party of the proceeds of any drawing thereunder, such security interest will be a duly perfected first priority security interest (subject only to Permitted Liens) in all of the Collateral.

(c) All of the Equipment, Inventory and Goods with a value in excess of $100,000 individually or in the aggregate owned by such Grantor is located at the places as specified on Schedule I attached hereto other than locations where such Equipment, Inventory and Goods is temporarily located for maintenance or repair and locations in transit. Except as disclosed on Schedule I, none of the Collateral is in the possession of any bailee, warehousemen, processor or consignee. Schedule I discloses such Grantor's name as of the date hereof as it appears in official filings in the state or province, as applicable, of its incorporation, formation or organization, the type of entity of such Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by such Grantor's state of incorporation, formation or organization (or a statement that no such number has been issued), such Grantor's state or province, as applicable, of incorporation, formation or organization and the chief place of business, chief executive office and the office where such Grantor keeps its books and records and the states in which such Grantor conducts its business. Such Grantor has only one state or province, as applicable, of incorporation, formation or organization. Such Grantor does not do business and has not done business during the past five years under any trade name or fictitious business name except as disclosed on Schedule II attached hereto.

(d) To such Grantor's knowledge, no Copyrights, Patents, Intellectual Property Licenses or Trademarks listed on Schedules III, IV, V and VI, respectively, if any, have been adjudged invalid or unenforceable or have been canceled, in whole or in part, or are not presently subsisting. To such Grantor's knowledge, each of such Copyrights, Patents, Intellectual Property Licenses and Trademarks (if any) is valid and enforceable. To such Grantor's knowledge and as of the date hereof, such Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of such Copyrights, Patents, Intellectual Property Licenses and Trademarks, identified on Schedules III, IV, V and VI, as applicable, as being owned by such Grantor, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by such Grantor not to sue third persons, other than Permitted Liens. Such Grantor has adopted, used and is currently using, or has a current bona fide intention to use, all of such Trademarks and Copyrights. As of the date hereof, such Grantor has not received written notice of any suits or actions commenced or threatened with reference to the Copyrights, Patents or Trademarks owned by it.

(e) Without duplication of any information required to be delivered by such Grantor to the Secured Party under and in accordance with the terms of the Credit Agreement, each Grantor agrees to deliver to the Secured Party (x) an updated Schedule I, II, VII and/or VIII within 10 Business Days of any change thereto and (y) an updated Schedule III, IV, V and/or VI in the case of any change thereto on the date the Borrower's quarterly Compliance Certificate is due pursuant to Section 6.1.4 of the Credit Agreement.

(f) All depositary and other accounts including, without limitation, Deposit Accounts, securities accounts, brokerage accounts and other similar accounts, maintained by each Grantor (other than Excluded Accounts) are described on Schedule VII hereto, which description includes for each such account the name of the Grantor maintaining such account, the name and address of the financial institution at which such account is maintained and the account number of such account. No Grantor shall open any new Deposit Accounts, securities accounts, brokerage accounts or other accounts unless such Grantor shall have given the Secured Party prior written notice of its intention to open any such new accounts. Each Grantor shall deliver to the Secured Party a revised version of Schedule VII showing any changes thereto promptly following, but in any event within 10 Business Days of, any such change. Each Grantor hereby authorizes the financial institutions at which such Grantor maintains an account to provide Secured Party with such information with respect to such account as the Secured Party from time to time reasonably may request, and each Grantor hereby consents to such information being provided to the Secured Party. In addition, all of such Grantor's depositary, security, brokerage and other accounts including, without limitation, Deposit Accounts (other than Excluded Accounts) shall be subject to the provisions of Section 4.5 hereof.

(g) Such Grantor does not own any Commercial Tort Claims having a value in excess of $100,000 individually or in the aggregate except for those disclosed on Schedule VIII hereto (if any).

(h) Such Grantor does not have any interest in real property except as disclosed on Schedule IX (if any). Each Grantor shall deliver to the Secured Party a revised version of Schedule IX showing any changes thereto within 20 days of any such change. Except as otherwise agreed to by the Required Lenders, all such interests in real property with respect to such real property are subject to a Mortgage in favor of the Secured Party.

(i) Each Grantor shall duly and properly record each interest in real property held by such Grantor that is required to be subject to a Mortgage, except with respect to easements, rights of way, access agreements, surface damage agreements, surface use agreements or similar agreements that such Grantor, in good faith, using prudent customs and practices in the industry in which it operates, does not believe are of material value or material to the operation of such Grantor's business or, with respect to state and federal rights of way, are not capable of being recorded as a matter of state and federal law.

(j) All Equipment (including, without limitation, Motor Vehicles) owned by such Grantor and subject to a certificate of title or ownership statute is described on Schedule X hereto.

Section 3. Collateral.

(a) As collateral security for the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the Obligations, each Grantor hereby pledges and grants to the Secured Party, for the benefit of the Lenders, a Lien on and security interest in all of such Grantor's right, title and interest in the following properties and assets of such Grantor, whether now owned by such Grantor or hereafter acquired and whether now existing or hereafter coming into existence and wherever located (all being collectively referred to herein as "**Collateral**"):

i) all Instruments, together with all payments thereon or thereunder, and Letter-of-Credit Rights;

ii) all Accounts and Supporting Obligations;

iii) all Inventory;

iv) all General Intangibles (including Software);

v) all Equipment;

vi) all Documents;

vii) all Contracts;

viii) all Goods;

ix) all Investment Property, including without limitation all equity interests now owned or hereafter acquired by such Grantor;

x) all Deposit Accounts, including, without limitation, the Reserve Account and the balance from time to time in all bank accounts maintained by such Grantor;

xi) all Commercial Tort Claims specified on Schedule VIII;

xii) all Trademarks, Patents and Copyrights;

xiii) all Chattel Paper, all amounts payable thereunder, all rights and remedies of such Grantor thereunder including but limited to the right to amend, grant waivers and declare defaults, any and all accounts evidenced thereby, any guarantee thereof, and all collections and monies due or to become due or received by any Person in payment of any of the foregoing;

xiv) all books and records pertaining to the Collateral; and

xv) all other tangible and intangible property of such Grantor, including, without limitation, all interests in real property, Proceeds, tort claims, products, accessions, rents, profits, income, benefits, substitutions, additions and replacements of and to any of the property of such Grantor described in the preceding clauses of this Section 3 (including, without limitation, any proceeds of insurance thereon, insurance claims and all rights, claims and benefits against any Person relating thereto), other rights to payments not otherwise included in the foregoing, and all books, correspondence, files, records, invoices and other papers, including without limitation all tapes, cards, computer runs, computer programs, computer files and other papers, documents and records in the possession or under the control of such Grantor, any computer bureau or service company from time to time acting for such Grantor.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in, and the term "Collateral" shall be deemed to exclude, all of the following property: (A) any intent-to-use trademark applications filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, to the extent that, and solely during the period in which, the grant of a security interest therein would otherwise invalidate such Grantor's right, title or interest therein, (B) any property owned by a Grantor that is subject to a purchase money Lien or a Capital Lease permitted hereunder or under the Credit Agreement if the contractual obligation pursuant to which such Lien is granted (or the document providing for such Capital Lease) prohibits the creation of a Lien thereon or expressly requires the consent of any person other than a Loan Party, unless such consent has been obtained or such prohibitions otherwise cease to exist, in which case such Collateral shall automatically become subject to the security interest granted hereunder, (C) any General Intangibles or other rights, in each case arising under any contracts, instruments, licenses or other documents as to which the grant of a security interest would violate or invalidate any such contract, instrument, license or other document or give any other party to such contract, instrument, license or other document the right to terminate its obligations thereunder, (D) any asset, the granting of a security interest in which would be void or illegal under any applicable governmental law, rule or regulation, or pursuant thereto would result in, or permit the termination of, such asset, provided, that the property described in clauses (C) and (D) above shall only be excluded from the term "Collateral" to the extent the conditions stated therein are not rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC or any other Applicable Law and (E) the Excluded Accounts.

(b) The security interest grant under this Section does not constitute and is not intended to result in a creation or an assumption by the Secured Party of any obligation of any Grantor or any other Person in connection with any or all of the Collateral or under any agreement or instrument relating thereto. Anything herein to the contrary notwithstanding, (i) the exercise by the Secured Party of any of its rights in the Collateral shall not release any Grantor from any of its duties or obligations in respect of the Collateral other than any duties and obligations arising with respect to Collateral after such Grantor has been dispossessed of such Collateral by the Secured Party (or its assignee), which, by their nature, may not be satisfied without possession of such Collateral and (ii) neither the Secured Party nor any Lender shall have any obligations or liability in respect of the Collateral by reason of this Agreement, nor shall the Secured Party or any Lender be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 4. Covenants; Remedies. In furtherance of the grant of the pledge and security interest pursuant to Section 3 hereof, each Grantor hereby agrees with the Secured Party as follows:

4.1 Delivery and Other Perfection; Maintenance, etc.

(a) Delivery of Instruments, Documents, Etc. Each Grantor shall deliver and pledge to the Secured Party or its Representative any and all Instruments, negotiable Documents and Chattel Paper evidencing amounts greater than $100,000 individually or in the aggregate and certificated securities accompanied by stock/membership interest powers executed in blank, which stock/membership interest powers may be filled in and completed at any time upon the occurrence and during the continuance of any Event of Default duly endorsed and/or accompanied by such instruments of assignment and transfer executed by such Grantor in such form and substance as the Secured Party or its Representative may request; provided, that so long as no Event of Default shall have occurred and be continuing, each Grantor may retain for collection in the ordinary course of business any Instruments, negotiable Documents and Chattel Paper received by such Grantor in the ordinary course of business, and the Secured Party or its Representative shall, promptly upon request of a Grantor, make appropriate arrangements for making any other Instruments, negotiable Documents and Chattel Paper pledged by such Grantor available to such Grantor for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent deemed appropriate by the Secured Party or its Representative, against a trust receipt or like document). If a Grantor retains possession of any Chattel Paper, negotiable Documents or Instruments evidencing amounts greater than $50,000 individually or in the aggregate pursuant to the terms hereof, such Chattel Paper, negotiable Documents and Instruments shall be marked with the following legend: “This writing and the obligations evidenced or secured hereby are subject to the security interest of Wilmington Trust, National Association, in its capacity as agent for one or more creditors, as Secured Party.”

(b) Other Documents and Actions. Each Grantor shall give, execute, deliver, file and/or record any financing statement, registration, notice, instrument, document, agreement, Mortgage or other papers that may be necessary (as determined in the reasonable judgment of the Secured Party or its Representative (at the direction of the Required Lenders) or the Required Lenders) to create, preserve, perfect or validate the security interest granted pursuant hereto (or any security interest or mortgage contemplated or required hereunder, including with respect to Section 2(h) of this Agreement) or to enable the Secured Party or its Representative to exercise and enforce the rights of the Secured Party hereunder with respect to such pledge and security interest; provided that notices to account debtors in respect of any Accounts or Instruments shall be subject to the provisions of clause (e) below. Notwithstanding the foregoing each Grantor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements (and other similar filings or registrations under any Applicable Laws and regulations pertaining to the creation, attachment, or perfection of security interests) and amendments thereto that (a) indicate the Collateral (i) as all assets of such Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Grantor agrees to furnish any such information to the Secured Party promptly upon request.

(c) Books and Records. Each Grantor shall maintain at its own cost and expense, in accordance with sound business practices, complete and accurate, in all material respects, books and records of the Collateral, including, without limitation, a record of all payments received and all credits granted with respect to the Collateral and all other dealings with the Collateral. Upon the occurrence and during the continuation of any Event of Default, each Grantor shall deliver and turn over any such books and records (or true and correct copies thereof) to the Secured Party or its Representative at any time on demand. Each Grantor shall permit any Representative of the Secured Party to inspect such books and records in accordance with Section 6.2 of the Credit Agreement.

(d) Motor Vehicles. Each Grantor shall, promptly upon acquiring same, cause the Secured Party to be listed as the lienholder on each certificate of title or ownership covering any items of Equipment, including Motor Vehicles, having a value in excess of $300,000 individually or in the aggregate for all such items of Equipment of the Grantor, or otherwise comply with the certificate of title or ownership laws of the relevant jurisdiction issuing such certificate of title or ownership in order to properly evidence and perfect the Secured Party's security interest in the assets represented by such certificate of title or ownership.

(e) Notice to Account Debtors; Verification. (i) Upon the occurrence and during the continuance of any Event of Default, upon request of the Secured Party or its Representative, each Grantor shall promptly notify (and each Grantor hereby authorizes the Secured Party and its Representative so to notify) each account debtor in respect of any Accounts or Instruments or other Persons obligated on the Collateral that such Collateral has been assigned to the Secured Party hereunder, and that any payments due or to become due in respect of such Collateral are to be made directly to the Secured Party, and (ii) the Secured Party and its Representative shall have the right at any time or times to make direct verification with the account debtors or other Persons obligated on the Collateral of any and all of the Accounts or other such Collateral.

(f) Intellectual Property. Each Grantor represents and warrants that the Copyrights, Patents, Intellectual Property Licenses and Trademarks listed on Schedules III, IV, V and VI, respectively (if any), constitute all of the registered Copyrights and all of the Patents, Intellectual Property Licenses and Trademarks owned by such Grantor as of the date hereof. If such Grantor shall (i) obtain rights to any new patentable inventions, any registered Copyrights or any Patents, Intellectual Property Licenses or Trademarks, or (ii) become entitled to the benefit of any registered Copyrights or any Patents, Intellectual Property Licenses or Trademarks or any improvement on any Patent, the provisions of this Agreement above shall automatically apply thereto and such Grantor shall give to the Secured Party notice thereof in accordance with Section 6.8(d) of the Credit Agreement. Each Grantor hereby authorizes the Secured Party to modify this Agreement by amending Schedules III, IV, V and VI, as applicable, to include any such registered Copyrights or any such Patents, Intellectual Property Licenses and Trademarks. Each Grantor shall (i) prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or hereafter to the extent material to the operations of the business of such Grantor, (ii) preserve and maintain all rights in the Copyrights, Patents, Intellectual Property Licenses and Trademarks, to the extent material to the operations of the business of such Grantor and (iii) ensure that the Copyrights, Patents, Intellectual Property Licenses and Trademarks are and remain enforceable, to the extent material to the operations of the business of such Grantor. Any expenses incurred in connection with such Grantor's obligations under this Section 4.1(f) shall be borne by such Grantor. Except for any such items that a Grantor reasonably believes in good faith (using prudent industry customs and practices) are no longer necessary for the on-going operations of its business, no Grantor shall abandon any material right to file a patent, trademark or service mark application, or abandon any pending patent, trademark or service mark application or any other Copyright, Patent, Intellectual Property License or Trademark without the prior written consent of the Secured Party (at the direction of the Required Lenders), which consent shall not be unreasonably withheld.

(g) Further Identification of Collateral. Each Grantor will, when and as often as requested by the Secured Party or its Representative (but, absent the occurrence and continuance of an Event of Default, in no event more frequently than quarterly), furnish to the Secured Party or such Representative, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Secured Party or its Representative may reasonably request, all in reasonable detail.

(h) Investment Property. Each Grantor will take any and all actions required or requested by the Secured Party, from time to time, to cause the Secured Party to obtain exclusive control of any Investment Property owned by such Grantor. For purposes of this Section 4.1(h), the Secured Party shall have exclusive control of Investment Property if (i) such Investment Property consists of certificated securities and a Grantor delivers such certificated securities to the Secured Party (with assignments in blank or appropriate endorsements if such certificated securities are in registered form); (ii) such Investment Property consists of uncertificated securities and the issuer thereof agrees, pursuant to documentation in form and substance reasonably satisfactory to the Secured Party and the Required Lenders, that it will comply with instructions originated by the Secured Party without further consent by such Grantor, and (iii) such Investment Property consists of security entitlements and either (x) the Secured Party becomes the entitlement holder thereof or (y) the appropriate securities intermediary agrees, pursuant to the documentation in form and substance satisfactory to the Secured Party and the Required Lenders, that it will comply with entitlement orders originated by the Secured Party without further consent by any Grantor.

(i) Commercial Tort Claims. Each Grantor shall promptly notify the Secured Party of any Commercial Tort Claims acquired by it that concerns claims in excess of $100,000 individually or in the aggregate and unless otherwise consented to by the Secured Party or the Required Lenders, such Grantor shall enter into a supplement to this Agreement granting to the Secured Party a Lien on and security interest in such Commercial Tort Claim.

4.2 Preservation of Rights. Whether or not an Event of Default has occurred or is continuing, the Secured Party and its Representative shall have the right, at the direction of the Required Lenders, to take any steps the Secured Party or its Representative (at the direction of the Required Lenders) reasonably deems necessary or appropriate to preserve any Collateral or any rights against third parties to any of the Collateral upon the Grantors' failure to do so, including obtaining insurance for the Collateral at any time when such Grantor has failed to do so, and Grantors shall promptly pay, or reimburse the Secured Party and the Lenders for, all reasonable and customary out-of-pocket expenses incurred in connection therewith.

4.3 Name Change; Location; Bailees.

(a) No Grantor shall form or acquire any subsidiary other than in accordance with the express terms of the Credit Agreement.

(b) Each Grantor shall provide the Secured Party at least 10 Business Days prior written notice of (i) any reincorporation or reorganization of itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof, and/or (ii) any change of its name, identity or corporate structure. Each Grantor will notify the Secured Party promptly, in writing (but in any event at least 10 Business Days) prior to any such change in the proposed use by such Grantor of any tradename or fictitious business name other than any such name set forth on Schedule II attached hereto.

(c) Except for the sale of Inventory in the ordinary course of business, other sales of assets expressly permitted by the terms of the Credit Agreement and except for Collateral temporarily located for maintenance or repair (so long as the applicable Grantor shall promptly provide the Secured Party with written notice of such temporary location), each Grantor will keep Collateral with a value in excess of $100,000 individually or in the aggregate at the locations specified in Schedule I. Each Grantor will give the Secured Party 10 Business Days prior written notice before any change in such Grantor's chief place of business or of any new location for any of the Collateral with a value in excess of $50,000 individually or in the aggregate at all such locations.

4.4 Other Liens. Grantors will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove, any Lien on the Collateral except Permitted Liens, and will defend the right, title and interest of the Secured Party in and to the Collateral and in and to all Proceeds thereof against the claims and demands of all Persons whatsoever.

(a) If any Collateral is at any time in the possession or control of any warehousemen, bailee, consignee or processor, such Grantor shall promptly notify the Secured Party of such fact and, upon the request of the Secured Party or its Representative, notify such warehousemen, bailee, consignee or processor of the Lien and security interest created hereby and shall instruct such Person to hold all such Collateral for the Secured Party's account subject to the Secured Party's instructions.

(b) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement naming a Grantor, as debtor, and the Secured Party, as secured party, without the prior written consent of the Secured Party and agrees that it will not do so without the prior written consent of the Secured Party, subject to such Grantor's rights under Section 9-509(d)(2) to the UCC.

4.5 Bank Accounts and Securities Accounts. On or prior to the date hereof, the Secured Party and each Grantor, as applicable, shall enter into an account control agreement or securities account control agreement, as applicable (each a "**Control Agreement**"), in a form reasonably acceptable to the Secured Party and the Required Lenders, with each financial institution with which such Grantor maintains from time to time any Deposit Accounts (general or special), securities accounts, brokerage accounts or other similar accounts (other than Excluded Accounts), which financial institutions are set forth on Schedule IX attached hereto. Pursuant to this Agreement, each such Grantor grants and shall grant to the Secured Party a continuing lien upon, and security interest in, all such accounts and all funds at any time paid, deposited, credited or held in such accounts (whether for collection, provisionally or otherwise) or otherwise in the possession of such financial institutions. Following the Closing Date, no Grantor shall establish any Deposit Account, securities account, brokerage account or other similar account (other than Excluded Accounts) with any financial institution unless prior or concurrently thereto the Secured Party and such Grantor shall have entered into a Control Agreement with such financial institution which purports to cover such account. Each Grantor shall deposit and keep on deposit all of its funds in a Deposit Account (other than funds in Excluded Accounts) which is subject to a Control Agreement.

4.6 Events of Default, Etc. During the period during which an Event of Default shall have occurred and be continuing:

(a) each Grantor shall, at the request of the Secured Party or its Representative or the Required Lenders, assemble the Collateral and make it available to the Secured Party or its Representative or the Required Lenders at a place or places designated by the Secured Party or its Representative which are reasonably convenient to the Secured Party or its Representative, as applicable, the Required Lenders and such Grantor;

(b) the Secured Party or its Representative (each at the direction of the Required Lenders) or the Required Lenders may make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, any of the Collateral;

(c) the Secured Party shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not said UCC is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral in accordance with this Agreement and the other Loan Documents as if the Secured Party were the sole and absolute owner thereof (and each Grantor agrees to take all such action as may be appropriate to give effect to such right);

(d) the Secured Party or its Representative shall have the right, at the direction of the Required Lenders, in the name of the Secured Party or in the name of a Grantor or otherwise, to demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so;

(e) the Secured Party or its Representative shall have the right, at the direction of the Required Lenders, to take immediate possession and occupancy of any premises owned, used or leased by a Grantor and exercise all other rights and remedies which may be available to the Secured Party;

(f) the Secured Party shall have the right, at the direction of the Required Lenders, upon reasonable notice (such reasonable notice to be determined by the Secured Party in its sole and absolute discretion, which shall not be less than 10 days), with respect to the Collateral or any part thereof (whether or not the same shall then be or shall thereafter come into the possession, custody or control of the Secured Party or its Representative), to sell, lease, license, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Secured Party (at the direction of the Required Lenders) deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), and the Secured Party or any Lender or anyone else may be the purchaser, lessee, licensee, assignee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of Grantors, any such demand, notice and right or equity being hereby expressly waived and released. The Secured Party (at the direction of the Required Lenders) or the Required Lenders may, to the fullest extent permitted by Applicable Law, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned;

(g) the Secured Party may, and at the direction of the Required Lenders shall, proceed to perform any and all of the obligations of any Grantor contained in any Contract and exercise any and all rights of a Grantor therein contained as such Grantor itself could;

(h) the Secured Party shall have the right to use any Grantor's rights under any Intellectual Property Licenses in connection with the enforcement of the Secured Party's rights hereunder; and

(i) the rights, remedies and powers conferred by this Section 4.6 are in addition to, and not in substitution for, any other rights, remedies or powers that the Secured Party may have under any Loan Document, at law, in equity or by or under the UCC or any other statute or agreement. The Secured Party may proceed by way of any action, suit or other proceeding at law or in equity and no right, remedy or power of the Secured Party will be exclusive of or dependent on any other. The Secured Party may exercise any of its rights, remedies or powers separately or in combination and at any time.

The proceeds of each collection, sale or other disposition under this Section 4.6 shall be applied in accordance with Section 4.9 hereof.

4.7 Deficiency. If the proceeds of sale, collection or other realization of or upon the Collateral are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, the Grantors shall remain jointly and severally liable for any deficiency.

4.8 Private Sale. Each Grantor recognizes that the Secured Party may be unable to effect a public sale of any or all of the Collateral consisting of securities by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "**Act**"), and applicable state securities laws, but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and each Grantor agrees that it is not commercially unreasonable for the Secured Party to engage in any such private sales or dispositions under such circumstances. The Secured Party shall be under no obligation to delay a sale of any of the Collateral to permit a Grantor to register such Collateral for public sale under the Act, or under applicable state securities laws, even if any Grantors would agree to do so. The Secured Party shall not incur any liability as a result of the sale of any such Collateral, or any part thereof, at any private sale provided for in this Agreement and each Grantor hereby waives any claims against the Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Secured Party accepts the first offer received and does not offer the Collateral to more than one offeree.

Each Grantor further agrees to do or cause to be done all such other acts and things as may be necessary to make such sale or sales of any portion or all of any such Collateral valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Grantor's expense. Each Grantor further agrees that a breach of any of the covenants contained in this Section 4.8 will cause irreparable injury to the Secured Party and the Lenders, that the Secured Party and the Lenders have no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 4.8 shall be specifically enforceable against the Grantors, and each Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

4.9 Application of Proceeds. The proceeds of any collection, sale or other realization of all or any part of the Collateral following the occurrence and during the continuance of an Event of Default, and any other cash at the time held by the Secured Party under this Agreement, shall be applied to the Obligations in such order as the Secured Party or the Required Lenders shall elect.

4.10 Attorney-in-Fact. Each Grantor hereby irrevocably constitutes and appoints the Secured Party, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, from time to time upon the occurrence and during the continuance of an Event of Default in the discretion of the Secured Party, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary to perfect or protect any security interest granted hereunder, to maintain the perfection or priority of any security interest granted hereunder, and, without limiting the generality of the foregoing, hereby gives the Secured Party the power and right, on behalf of such Grantor, without notice to or assent by such Grantor (to the extent permitted by Applicable Law), to do the following:

(a) upon the occurrence and during the continuation of an Event of Default, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary to accomplish the purposes of this Agreement;

(b) upon the occurrence and during the continuation of an Event of Default, to ask, demand, collect, receive and give acquittance and receipts for any and all moneys due and to become due under any Collateral and, in the name of such Grantor or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other Instruments for the payment of moneys due under any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Secured Party (at the direction of the Required Lenders) for the purpose of collecting any and all such moneys due under any Collateral whenever payable and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Secured Party (at the direction of the Required Lenders) for the purpose of collecting any and all such moneys due under any Collateral whenever payable;

(c) to pay or discharge charges or liens levied or placed on or threatened against the Collateral, to effect any insurance called for by the terms of this Agreement or the Credit Agreement and to pay all or any part of the premiums therefor;

(d) upon the occurrence and during the continuation of an Event of Default, to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due, and to become due thereunder, directly to the Secured Party or as the Secured Party shall direct (at the direction of the Required Lenders), and to receive payment of and receipt for any and all moneys, claims and other amounts due, and to become due at any time, in respect of or arising out of any Collateral;

(e) upon the occurrence and during the continuation of an Event of Default, to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against Grantors, assignments, verifications and notices in connection with accounts and other Documents constituting or relating to the Collateral;

(f) upon the occurrence and during the continuation of an Event of Default, to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral;

(g) upon the occurrence and during the continuation of an Event of Default, to defend any suit, action or proceeding brought against a Grantor with respect to any Collateral;

(h) upon the occurrence and during the continuation of an Event of Default, to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Secured Party may deem appropriate (at the direction of the Required Lenders);

(i) to the extent that a Grantor's authorization given in Section 4.1(b) of this Agreement is not sufficient to file such financing statements with respect to this Agreement, with or without such Grantor's signature, or to file a photocopy of this Agreement in substitution for a financing statement, as the Secured Party may deem appropriate (at the direction of the Required Lenders);

(j) upon the occurrence and during the continuation of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Secured Party were the absolute owner thereof for all purposes; and

(k) to do, at the Secured Party's option (at the direction of the Required Lenders) and at such Grantor's expense, at any time, or from time to time, all acts and things which the Secured Party reasonably deems necessary to protect or preserve or, upon the occurrence and during the continuation of an Event of Default, realize upon the Collateral and the Secured Party's lien therein, in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Each Grantor hereby ratifies, to the extent permitted by law, all that such attorneys lawfully do or cause to be done by virtue hereof provided the same is performed in a commercially reasonable manner. The power of attorney granted hereunder is a power coupled with an interest and shall be irrevocable until the Obligations are Paid in Full and this Agreement is terminated in accordance with Section 4.12 hereof.

Each Grantor also authorizes the Secured Party, at any time from and after the occurrence and during the continuation of any Event of Default, (x) to communicate in its own name with any party to any Contract with regard to the assignment of the right, title and interest of such Grantor in and under the Contracts hereunder and other matters relating thereto and (y) to execute, in connection with any sale of Collateral provided for in Section 4.6 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

4.11 Perfection. Prior to or concurrently with the execution and delivery of this Agreement, each Grantor shall:

(a) file such financing statements, assignments for security and other documents in such offices as may be necessary or as the Secured Party, its Representative or the Required Lenders may request to perfect the security interests granted by Section 3 of this Agreement;

(b) at the Secured Party's or the Required Lenders' request, deliver to the Secured Party or its Representative the originals of all Instruments required to be so delivered hereunder together with, in the case of Instruments constituting promissory notes, allonges attached thereto showing such promissory notes to be payable to the order of a blank payee;

(c) deliver to the Secured Party or its Representative an Account Control Agreement for each Deposit Account owned by such Grantor, acceptable in all respects to the Secured Party and the Required Lenders, duly executed by the applicable Grantor and the financial institution at which such Grantor maintains such Deposit Account; and

(d) deliver to the Secured Party or its Representative the originals of all Motor Vehicle titles with respect to Motor Vehicles having a value in excess of $300,000 in the aggregate, duly endorsed indicating the Secured Party's interest therein as a lienholder, together with such other documents as may be required consistent with Section 4.1(d) hereof to perfect the security interest granted by Section 3 in all such Motor Vehicles (if any).

4.12 Termination; Partial Release of Collateral. This Agreement and the Liens and security interests granted hereunder shall continue in effect until the Obligations are Paid in Full. When the Obligations are Paid in Full, the security interest granted hereby shall automatically terminate and all rights to the Collateral shall revert to the applicable Grantor, and the Secured Party will promptly following such termination deliver possession of all Collateral to the Grantors and execute and deliver to the Grantors such documents as are necessary to evidence such termination, including UCC termination statements and such other documentation as shall be reasonably requested by the Grantors to effect the termination and release of the Liens and security interests in favor of the Secured Party affecting the Collateral. Upon any sale of property, permitted by the Credit Agreement, to a party who is not a Grantor or a Subsidiary of a Grantor, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person. The Secured Party shall, at Grantors' expense, execute and deliver or otherwise authorize the filing of such documents as Grantors shall reasonably request, in form and substance reasonably satisfactory to the Secured Party, including financing statement amendments to evidence such release.

4.13 Further Assurances. At any time and from time to time, upon the written request of the Secured Party, its Representative or the Required Lenders, and at the sole expense of the Grantors, the Grantors shall promptly and duly execute and deliver any and all such further instruments, documents and agreements and take such further actions as the Secured Party, its Representative or the Required Lenders may reasonably require in order for the Secured Party to obtain the full benefits of this Agreement and of the rights and powers herein granted in favor of the Secured Party, including, without limitation, using the Grantors' commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the assignment to the Secured Party of any Collateral held by the Grantors or in which a Grantor has any rights not heretofore assigned, the filing of any financing or continuation statements under the UCC with respect to the liens and security interests granted hereby, transferring Collateral to the Secured Party's possession (if a security interest in such Collateral can be perfected by possession), placing the interest of the Secured Party as lienholder on the certificate of title of any Motor Vehicle, obtaining waivers of liens from landlords and mortgagees and delivering to the Secured Party all such Control Agreements as the Secured Party, its Representative or the Required Lenders shall require duly executed by the applicable Grantor and the financial institution at which such Grantor maintains a Deposit Account covered by such Control Agreement. Each Grantor also hereby authorizes the Secured Party and its Representative to file any such financing or continuation statement without the signature of such Grantor to the extent permitted by Applicable Law.

4.14 Limitation on Duty of Secured Party. The powers conferred on the Secured Party under this Agreement are solely to protect the Secured Party's interest on behalf of itself and the Lenders in the Collateral and shall not impose any duty upon it to exercise any such powers. Without in any way limiting the exculpation and indemnification provisions of the Credit Agreement, the Secured Party shall be accountable only for amounts that it actually receives and retains for its own account as a result of the exercise of such powers and neither the Secured Party nor its Representative nor any of their respective officers, directors, employees or agents shall be responsible to Grantors for any act or failure to act, except for gross negligence or willful misconduct. Without limiting the foregoing, the Secured Party and any Representative shall each be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its respective possession if such Collateral is accorded treatment substantially similar to that which the relevant Secured Party or any Representative, in its individual capacity, accords its own property consisting of the type of Collateral involved, it being understood and agreed that neither the Secured Party nor any Representative shall have any responsibility for taking any necessary steps (other than steps taken in accordance with the standard of care set forth above) to preserve rights against any Person with respect to any Collateral.

Without limiting the generality of the foregoing, neither the Secured Party nor any Representative shall have any obligation or liability under any Contract or license by reason of or arising out of this Agreement or the granting to the Secured Party of a security interest therein or assignment thereof or the receipt by the Secured Party or any Representative of any payment relating to any Contract or license pursuant hereto, nor shall the Secured Party or any Representative be required or obligated in any manner to perform or fulfill any of the obligations of the Grantors under or pursuant to any Contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or license, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

Section 5. Miscellaneous.

5.1 No Waiver. No failure on the part of the Secured Party or any of its Representatives to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Secured Party or any of its Representatives of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law.

5.2 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

5.3 Notices. All notices, approvals, requests, demands and other communications hereunder shall be delivered or made in the manner set forth in, and shall be effective in accordance with the terms of, the Credit Agreement; provided, that, to the extent any such communication (i) is being made or sent to a Grantor such communication shall be effective as to such Grantor if made or sent to the Borrower or in accordance with the foregoing or (ii) is being made or sent to the Agent, such communication shall be made to the Agent at the address set forth below the Agent's signature hereto. The Grantors and the Agent may change their respective notice addresses by written notice given to the other parties hereto 10 days following the effectiveness of such change.

5.4 Amendments, Etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by each Grantor and the Secured Party. Any such amendment or waiver shall be binding upon the Secured Party and each Grantor and their respective successors and assigns.

5.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto; provided, that no Grantor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the Secured Party and the Required Lenders. The Secured Party, in its capacity as the Agent, may assign its rights and obligations hereunder (a) without the consent of the Grantors, to any Eligible Assignee or (b) with the Grantors' consent (not to be unreasonably withheld, conditioned or delayed), any other Person acceptable to the Required Lenders and the Secured Party; provided that the Grantors' consent under this clause (b) shall not be required if an Event of Default has occurred and is then continuing, and in each event such assignee shall be deemed to be the Secured Party hereunder with respect to such assigned rights.

5.6 Counterparts; Headings. This Agreement may be authenticated in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may authenticate this Agreement by signing any such counterpart. This Agreement may be authenticated by manual signature or facsimile, .pdf or similar electronic signature, all of which shall be equally valid. The headings in this Agreement are for convenience of reference only and shall not alter or otherwise affect the meaning hereof.

5.7 Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Secured Party and its Representative in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

5.8 SUBMISSION TO JURISDICTION; WAIVER OF VENUE; SERVICE OF PROCESS. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE AGENT'S OPTION (AT THE DIRECTION OF THE REQUIRED LENDERS), IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH LOAN PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

5.9 WAIVER OF RIGHT TO TRIAL BY JURY . EACH GRANTOR AND THE SECURED PARTY HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH GRANTOR AND THE SECURED PARTY HEREBY AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION 5.9 AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

5.10 Joint and Several. The obligations, covenants and agreements of the Grantors hereunder shall be the joint and several obligations, covenants and agreements of each Grantor, whether or not specifically stated herein without preferences or distinction among them.

5.11 Agent.

(a) The Lenders have, pursuant to Section 9 of the Credit Agreement, designated and appointed the Agent as the administrative agent and collateral agent of the Lenders under this Agreement and the other Loan Documents.

(b) For the avoidance of doubt, all of the powers, rights, remedies and privileges granted or provided to the Secured Party under this Agreement are for the benefit of and may be exercised and utilized by the Lenders directly, at the option of the Required Lenders. The Agent shall act (or omit to act) at the direction of the Required Lenders under any provision of this Agreement requiring the Secured Party to take action or to omit from taking action (other than ordinary administration) or to exercise discretion.

(c) Nothing in this Section 5.11 shall be deemed to limit or otherwise affect the rights of the Secured Party or the Lenders to exercise any remedy provided in this Agreement or any other Loan Document.

(d) If pursuant to any Loan Document, the Secured Party is given the discretion to allocate proceeds received by the Secured Party pursuant to the exercise of remedies under the Loan Documents or at law or in equity (including without limitation with respect to any secured creditor remedies exercised against the Collateral and any other collateral security provided for under any Loan Documents), the Secured Party (at the direction of the Required Lenders) or the Required Lenders shall apply such proceeds to the then outstanding Obligations in such order as the Secured Party (at the direction of the Required Lenders) or the Required Lenders shall elect.

5.12 No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

5.13 ENTIRE AGREEMENT; AMENDMENT . THIS AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, SUPERSEDES ALL OTHER PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN THE SECURED PARTY, THE GRANTORS, THEIR AFFILIATES AND PERSONS ACTING ON THEIR BEHALF WITH RESPECT TO THE MATTERS DISCUSSED HEREIN, AND THIS AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS AND THE OTHER INSTRUMENTS REFERENCED HEREIN AND THEREIN, CONTAINS THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE MATTERS COVERED HEREIN AND THEREIN AND, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR THEREIN, NEITHER THE SECURED PARTY NOR ANY GRANTOR MAKES ANY REPRESENTATION, WARRANTY, COVENANT OR UNDERTAKING WITH RESPECT TO SUCH MATTERS. AS OF THE DATE OF THIS AGREEMENT, THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THE MATTERS DISCUSSED HEREIN. NO PROVISION OF THIS AGREEMENT MAY BE AMENDED, MODIFIED OR SUPPLEMENTED OTHER THAN BY AN INSTRUMENT IN WRITING SIGNED BY THE GRANTORS AND THE SECURED PARTY.

[Signature Pages Follow]

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

GRANTORS:

WORKHORSE GROUP INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE TECHNOLOGIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE PROPERTIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE MOTOR WORKS INC

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

SUREFLY, INC.

By: /s/ Duane A. Hughes
Name: Duane A. Hughes
Title: CEO

[Signature Page to Security Agreement]

SECURED PARTY:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as the Agent

By: /s/ Jamie Roseberg
Name: Jamie Roseberg
Title: Banking Officer

Notice Address:
50 South Sixth Street, Ste. 1290
Minneapolis, MN 55402

[Signature Page to Security Agreement]

Schedule I

A. Organizational Information

Exact Legal Name	Jurisdiction of Formation and Registration	Country / State / Provincial Entity Registration / ID No.	Federal employer identification number	Date of Formation	Chief executive offices	Principal mailing addresses
Workhorse Group Inc.	Nevada	E0780542007-8	26-1394771	November 13, 2007	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Technologies Inc.	Ohio	1679236	20-8529895	February 20, 2007	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Properties Inc.	Ohio	3943690	32-0553760	September 23, 2016	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Motor Works Inc	Indiana	2013011400560	38-3900022	January 11, 2013	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Surefly, Inc.	Delaware	6675215	35-2615741	December 22, 2017	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140

B. Location of Equipment, Inventory and Goods

Grantor Name	Location of Equipment, Inventory and Goods
Workhorse Group Inc., Workhorse Properties Inc., Workhorse Technologies Inc., and Workhorse Motor Works Inc	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Group Inc.	119 Northeast Drive, Loveland, Ohio 45140
Workhorse Motor Works Inc	940 S. State Road 32, Union City, Indiana 47390
Surefly, Inc.	4760 Airport Road, Cincinnati, Ohio 45226

C. Collateral in Possession of Bailee, Warehousemen, Processor or Consignee.

Name	Complete Street and Mailing Address, including County and Zip Code	Company/Subsidiary
None.		

Schedule II

List of Trade Names/Fictitious Names Used in the Past Five Years

Former names of Loan Parties listed below:

Workhorse Group Inc., a Nevada company (f/k/a AMP Holding Inc.)
Workhorse Technologies Inc., an Ohio company (f/k/a AMP Electric Vehicles Inc.)
Workhorse Motor Works Inc, an Indiana company (f/k/a AMP Trucks Inc.)

Schedule III

List of Copyrights

None.

Schedule IV

List of License Agreements

None.

Schedule V

List of Patents and Patent Applications

Code/Matter No.	Country	Serial Number	Application Date	Patent Number	Issue/ Grant Date	Expiration Date	Title	Assignee
AMPI	Canada	2523653	10/17/2005	2523653	12/22/2009	10/17/2025	VEHICLE CHASSIS ASSEMBLY	Workhorse Motor Works Inc
AMPI	United States	11/252,220	10/17/2005	7,717,464	05/18/2010	09/06/2026	Vehicle Chassis Assembly	Workhorse Group Inc.
AMPI	United States	11/252,219	10/17/2005	7,559,578	07/14/2009	09/06/2026	Vehicle Chassis Assembly	Workhorse Group Inc.
AMPI	United States	29/243,074	11/18/2005	D561,078	02/05/2008	02/05/2022	Vehicle Header	Workhorse Group Inc.
AMPI	United States	29/243,129	11/18/2005	D561,079	02/05/2008	02/05/2022	Vehicle Header	Workhorse Group Inc.
AMPI 10US	United States	13/283,663	10/28/2011	8,541,915	09/24/2013	12/16/2031	DRIVE MODULE AND MANIFOLD FOR ELECTRIC MOTOR DRIVE ASSEMBLY	Workhorse Technologies Inc.
AMPI 23U	United States	14/606,497	01/27/2015	9,481,256	11/01/2016	05/03/2035	ONBOARD GENERATOR DRIVE SYSTEM FOR ELECTRIC VEHICLES	Workhorse Technologies Inc.
AMPI 24A	United States	15/915,144	03/08/2018				PACKAGE DELIVERY BY MEANS OF AN AUTOMATED MULTI-COPTER UAS/UAV DISPATCHED FROM A CONVENTIONAL DELIVERY VEHICLE	Workhorse Group Inc.
AMPI 24U	United States	14/989,870	01/07/2016	9,915,956	03/13/2018	06/24/2036	PACKAGE DELIVERY BY MEANS OF AN AUTOMATED MULTI-COPTER UAS/UAV DISPATCHED FROM A CONVENTIONAL DELIVERY VEHICLE	Workhorse Group Inc.
AMPI 26U	United States	15/994,185	05/31/2018				AUXILIARY POWER SYSTEM FOR ROTORCRAFT WITH FOLDING PROPELLER ARMS AND CRUMPLE ZONE LOADING GEAR	Surefly, Inc.
AMPI 26WO	Patent Cooperation Treaty	US2018/035353	05/31/2018				AUXILIARY POWER SYSTEM FOR ROTORCRAFT WITH FOLDING PROPELLER ARMS AND CRUMPLE ZONE LOADING GEAR	Surefly, Inc.
AMPI 31	United States	62/733,870	09/20/2018				AUTONOMOUS TRACTOR SYSTEM	Workhorse Group Inc.

Schedule VI

List of Trademarks

Code/Matter No.	Mark Name	Country	Current Owner	Application Number	Application Date	Registration Number	Registration Date	Classes	Goods
	NOTHING OUTWORKS A WORKHORSE	Canada	Workhorse Group Inc.	1,053,053	03/30/2000	601,870	02/11/2004	N/A	Chassis, bodies and parts thereof for delivery trucks, recreational land vehicles, buses and other specialty motorized vehicles, namely, auto transport trucks, concrete mixer trucks, dump trucks, garbage hauler trucks, oil-field trucks, stake and platform trucks, tank trucks, wrecker and tow trucks and scissors trucks, but specifically excluding utility cars for turf maintenance for use at golf courses, country clubs, municipalities, building complexes and large scale industrial complexes
AMPI 01	WORKHORSE CUSTOM CHASSIS	Canada	Workhorse Group Inc.	1,053,052	03/30/2000	601,775	02/10/2004	N/A	Chassis, bodies and parts thereof for delivery trucks, recreational land vehicles, buses and other specialty motorized vehicles, namely, auto transport trucks, concrete mixer trucks, dump trucks, garbage hauler trucks, oil-field trucks, stake and platform trucks, tank trucks, wrecker and tow trucks and scissors trucks, but specifically excluding utility cars for turf maintenance for use at golf courses, country clubs, municipalities, building complexes and large scale industrial complexes
AMPI 01	Workhorse UFO and Logo	Canada	Workhorse Group Inc.	1,328,215	12/14/2006	757,840	01/26/2010	N/A	Chassis and bodies for recreational vehicles
AMPI 01	WORKHORSE	Canada	Workhorse Group Inc.	1,468,395	02/04/2010	783,257	11/23/2010	N/A	Chassis, bodies, and parts thereof, for recreational land vehicles, buses and trucks
AMPI 01	WORKHORSE	Mexico	Workhorse Group Inc.	1068329	02/18/2010	1200569	02/10/2011		
AMPI 01	WORKHORSE CUSTOM CHASSIS	Mexico	Workhorse Group Inc.	419462	04/05/2000	685022	01/31/2001		
AMPI 01	NOTHING OUTWORKS A WORKHORSE	Mexico	Workhorse Group Inc.	419463	04/05/2000	685023	01/31/2001		
AMPI 01	WORKHORSE CUSTOM CHASSIS	United States	Workhorse Motor Works Inc	75/816,152	10/05/1999	2,413,878	12/19/2000	12	Chassis, bodies, and parts thereof, for recreational land vehicles, buses
AMPI 15IS	AMP	Iceland	Workhorse Group Inc.	1295/2011	05/05/2011	557/2011	05/31/2011	12	Electric drives for vehicles; Electric vehicles, namely, land vehicles
AMPI 25	WORKHORSE	United	Workhorse	78/571,788	02/21/2005	3,214,777	03/06/2007	12	Chassis, bodies, and

		States	Motor Works Inc						parts thereof, for recreational land vehicles, buses and trucks
AMPI 27	SUREFLY	United States	Workhorse Group Inc.	87/431,425	05/01/2017	5,476,952	05/22/2018	12	Aircraft
AMPI 28	Horsefly	United States	Workhorse Group Inc.	87/770,725	01/25/2018			12	Package Delivery System Utilizing Drones
AMPI 28CA	HORSEFLY	Canada	Workhorse Group Inc.	1909131	07/12/2018			12	Package delivery systems consisting primarily of civilian drones
AMPI 28CN	HORSEFLY	China P.R.	Workhorse Group Inc.	32402121	07/23/2018			12	Package delivery systems consisting primarily of civilian drones
AMPI 28EM	HORSEFLY	European Union Trademark	Workhorse Group Inc.	017930054	07/13/2018			12, 39	Package delivery systems consisting primarily of civilian drones; drones; Vehicle leasing services; leasing of land vehicles (delivery trucks); leasing of drones
AMPI 28MX	HORSEFLY	Mexico	Workhorse Group Inc.	2075312	07/16/2018			12	Package delivery systems consisting primarily of civilian drones

Schedule VII

Depositary Accounts

For each Grantor, list all depositary and other accounts including, without limitation, Deposit Accounts, securities accounts, brokerage accounts and other similar accounts, maintained by each Grantor (other than Excluded Accounts), which description includes for each such account the name of the Grantor maintaining such account, the name and address of the financial institution at which such account is maintained and the account number of such account.

Bank	Currency	Account No.	Branch	Company / Subsidiary
PNC Bank, National Association	USD	40-0712-9788	500 First Avenue Mailstop P7-PFSC-3-B Pittsburgh, PA 15219 Attention: TM Legal Liaison Team	Workhorse Technologies Inc.
PNC Bank, National Association	USD	42-4047-6014	500 First Avenue Mailstop P7-PFSC-3-B Pittsburgh, PA 15219 Attention: TM Legal Liaison Team	Workhorse Technologies Inc.
PNC Bank, National Association	USD	41-0284-5707	500 First Avenue Mailstop P7-PFSC-3-B Pittsburgh, PA 15219 Attention: TM Legal Liaison Team	Workhorse Technologies Inc.

Schedule VIII

List of Commercial Tort Claims

None.

Schedule IX

List of Interests in Real Property

Complete Street and Mailing Address, including County and Zip Code	Company/Subsidiary
100 Commerce Drive, Loveland, Ohio 45140	Workhorse Properties Inc.
940 S. State Road 32, Union City, Indiana 47390	Workhorse Motor Works Inc
119 Northeast Drive, Loveland, Ohio 45140	Workhorse Group Inc.
4760 Airport Road, Cincinnati, Ohio 45226	Workhorse Technologies Inc.

Schedule X

List of Titled Equipment

Year	Make	Model	Vehicle ID#
2011	Chevrolet Silverado	C3500	1GC5CZCG2BZ132623
2010	Gator Trailer		4Z1HD2029AS014857
2010	Mercedes Benz	ML450 Hybrid	4JGBB9FB4AA516434
2010	Mercedes Benz	ML450	4JGBB9FBXAA518267
2010	Mercedes Benz	ML450	4JGBB9FB8AA518140
2012	Mercedes Benz	ML350	4JGDA5HBXCA008358
2010	Mercedes Benz	ML450	4JGBB9FB5AA526633
2007	Saturn Sky		1G8MB35B87Y106581
2012	Mule Egen		5B4MDG199D3447867
1999	Workhorse P30		5B4HP32R8X3308074
2010	Mercedes Benz	ML450	4JGBB9FBXAA527079
2014	BMW	I3 REX	WBY1Z4C53EV275024
2014	BMW	I3 REX	WBY1Z4C51EVX62903
2017	Chevrolet Silverado	1500	1GCVKNEH0HZ139161
2018	Chevrolet Silverado	3500	1GC4KYCY1JF110811
2015	Workhorse W-88	Alpha	452521
2015	Workhorse W-88	Alpha	452522
2015	Workhorse W-88	Alpha	452523
2015	Workhorse W-88	Alpha	452524
2015	Workhorse W-88	Alpha	452525

Exhibit 10.3

Execution Version

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT is made as of December 31, 2018 (the "**Agreement**"), among Workhorse Group Inc., a Nevada corporation, Workhorse Technologies Inc., an Ohio corporation, Workhorse Properties Inc., an Ohio corporation, Workhorse Motor Works Inc., an Indiana corporation, and Surefly, Inc., a Delaware corporation (each a "**Pledgor**" and, collectively, the "**Pledgors**") and Wilmington Trust National Association, in its capacity as agent (the "**Agent**") for the Lenders (as defined below) (in such capacity, together with its successors and assigns, the "**Pledgee**").

WHEREAS:

A. Pursuant to that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented and/or otherwise modified from time to time, the "**Credit Agreement**"), by and among Workhorse Group Inc., a Nevada corporation (the "**Borrower**"), the financial institutions from time to time party thereto (collectively, with their permitted successors and assignees, the "**Lenders**") and Pledgee, the Lenders have agreed to provide certain financial accommodations to the Borrower;

B. Each Pledgor legally and beneficially owns the interests specified on Exhibit A hereto and the corporations, limited liability companies and other entities set forth on Exhibit A and each other corporation or other entity, the stock or other equity interests and securities of which are owned or acquired by such Pledgor and described on a supplement to Exhibit A from time to time delivered by any Pledgor, and otherwise satisfactory to the Agent and the Required Lenders, are referred to herein collectively as the "**Pledged Entities**", and each a "**Pledged Entity**"; provided that the Pledgor represents and warrants that, as of the date hereof, the Pledged Entities specified on Exhibit A are the only Pledged Entities.

C. Pursuant to a Security Agreement dated as of the date hereof by and among the Pledgors and the Pledgee (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "**Security Agreement**"), each of the Pledgors has granted the Pledgee, for its benefit and the benefit of the Lenders, a first priority security interest in, lien upon and pledge of all of such Pledgor's rights in such Pledgor's Collateral (as defined in the Security Agreement and the other Collateral Documents).

D. To induce the Lenders to enter into the Credit Agreement and to make the financial accommodations available to the Borrower under the Credit Agreement, and in order to secure the payment and performance by the Borrower of the Obligations, each Pledgor has agreed to pledge to the Pledgee, for its benefit and the benefit of the Lenders, all of the capital stock and other equity interests and securities (the "**Pledged Equity**") of the Pledged Entities now or hereafter owned or acquired by such Pledgor to secure the Obligations.

NOW, THEREFORE, in consideration of the premises and in order to induce the Lenders to provide certain financial accommodations under the Credit Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor hereby agrees with the Pledgee as follows:

1. Defined Terms. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given them in the Credit Agreement.

2. Pledge.

(a) Each Pledgor hereby pledges, assigns, hypothecates, transfers, delivers and grants to the Pledgee, for its benefit and the benefit of the Lenders, a first priority lien on and perfected security interest in (i) all of the Pledged Equity and other equity interests of the Pledged Entities now owned or hereafter acquired by such Pledgor (collectively, the "**Pledged Interests**"), (ii) any other shares of Pledged Equity hereafter pledged or referred to be pledged to Pledgee pursuant to this Agreement; (iii) all "investment property" as such term is defined in §9-102(a)(49) of the UCC (as defined below) with respect thereto; (iv) any "security entitlement" as such term is defined in § 8-102(a)(17) of the UCC with respect thereto; (v) all books and records relating to the foregoing; and (vi) all Accessions and Proceeds (as each is defined in the UCC) of the foregoing, including, without limitation, all distributions (cash, stock or otherwise), dividends, stock dividends, securities, cash, instruments, rights to subscribe, purchase or sell, and other property, rights and interest that such Pledgor is at any time entitled to receive or is otherwise distributed in respect of, or in exchange for, any or all of the Pledged Collateral (as defined below), and without affecting the obligations of any Pledgor under any provision of the Security Agreement, in the event of any consolidation or merger in which any Pledgor is not the surviving corporation, all shares of each class of the Pledged Equity of the successor entity formed by or resulting from such consolidation or merger (the collateral described in clauses (i) through (vi) of this Section 2 being collectively referred to as the "**Pledged Collateral**"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations. All of the Pledged Interests now owned by any Pledgor which are presently represented by certificates are listed on Exhibit A hereto, which certificates, with undated assignments separate from certificates or stock/membership interest powers duly executed in blank by such Pledgor and irrevocable proxies, are being delivered to the Pledgee simultaneously herewith. Upon the creation or acquisition of any new Pledged Interests, each Pledgor shall execute a supplement to Exhibit A (a "**Pledge Supplement**") and deliver such Pledge Supplement to the Pledgee and the Lenders. Any Pledged Collateral described in a Pledge Supplement delivered by any Pledgor shall thereafter be deemed to be listed on Exhibit A hereto. The Pledgee shall maintain possession and custody of the certificates representing the Pledged Interests and any additional Pledged Collateral.

(b) Each Pledged Interest consisting of either (i) a membership interest in a Person that is a limited liability company or (ii) a partnership interest in a Person that is a partnership (if any), in the case of clauses (i) and (ii), (x) is not and will not be evidenced by a certificate and (y) is not and will not be deemed a "security" governed by Article 8 of the UCC.

3. Representations and Warranties of Pledgors. Each Pledgor represents and warrants to the Pledgee, and covenants to the Pledgee, that:

(a) Exhibit A sets forth (i) the authorized capital stock and other equity interests of each Pledged Entity, (ii) the number of shares of capital stock and other equity interests of each Pledged Entity that are issued and outstanding as of the date hereof and (iii) the percentage of the issued and outstanding shares of capital stock and other equity interests of each Pledged Entity held by such Pledgor. Such Pledgor is the record and beneficial owner of, and has good and marketable title to, the Pledged Interests of such Pledgor, and such shares are and will remain free and clear of all pledges, liens, security interests and other encumbrances and restrictions whatsoever, except the liens and security interests in favor of the Pledgee created by this Agreement (other than Liens in favor of Arosa Opportunistic Fund LP, which shall be released on the Closing Date) and Permitted Liens;

(b) Except as set forth on Exhibit A, there are no outstanding options, warrants or other similar agreements with respect to the Pledged Interests or any of the other Pledged Collateral;

(c) This Agreement is the legal, valid and binding obligation of each Pledgor, enforceable against such Pledgor in accordance with its terms except to the extent that such enforceability is subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance and moratorium laws and other laws of general application affecting enforcement of creditors' rights generally, or the availability of equitable remedies, which are subject to the discretion of the court before which an action may be brought;

(d) The Pledged Interests have been duly and validly authorized and issued, are fully paid and non-assessable, and the Pledged Interests listed on Exhibit A constitute all of the issued and outstanding capital stock or other equity interests of the Pledged Entities;

(e) No material consent, approval or authorization of or designation or filing with any governmental or regulatory authority on the part of any Pledgor is required in connection with the pledge and security interest granted under this Agreement (other than (i) any consent or approval which has been obtained and is in full force and effect and (ii) recordings and filings in connection with the Liens granted to the Agent under the Collateral Documents);

(f) The execution, delivery and performance of this Agreement will not violate (i) any material provision of any Applicable Law, (ii) in any material respect any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, which are applicable to any Pledgor, (iii) the articles or certificate of incorporation, certificate of formation, bylaws or any other similar organizational documents of any Pledgor or any Pledged Entity or of any securities issued by any Pledgor or any Pledged Entity, (iv) in any material respect any mortgage, indenture, lease, contract, or other agreement, instrument or undertaking to which any Pledgor or any Pledged Entity is a party or which is binding upon any Pledgor or any Pledged Entity or upon any of the assets of any Pledgor or any Pledged Entity, and will not result in the creation or imposition of any lien, charge or encumbrance on or security interest in any of the assets of any Pledgor or any Pledged Entity, except as otherwise contemplated by this Agreement;

(g) The pledge, assignment and delivery of the Pledged Interests and the other Pledged Collateral pursuant to this Agreement creates a valid lien on and perfected security interest in such Pledged Interests and Pledged Collateral and the proceeds thereof in favor of the Pledgee, subject to no prior pledge, lien, mortgage, hypothecation, security interest, charge, option or encumbrance, other than Permitted Liens, or to any agreement purporting to grant to any third party a security interest in the property or assets of Pledgor which would include the Pledged Interests or any other Pledged Collateral (other than Liens in favor of Arosa Opportunistic Fund LP, which shall be released simultaneously with the funding of the Loans on the Closing Date). Until this Agreement is terminated pursuant to Section 11 hereof, each Pledgor covenants and agrees that it will defend, for the benefit of the Pledgee, the Pledgee's right, title and security interest in and to the Pledged Interests, the other Pledged Collateral and the proceeds thereof against the claims and demands of all other persons or entities; and

(h) No Pledgor nor any Pledged Entity (i) will become a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079(2001)), (ii) will engage in any dealings or transactions prohibited by Section 2 of such executive order, or (iii) will otherwise become a person on the list of Specially Designated Nationals and Blocked Persons or a target of limitations or prohibitions under any other Office of Foreign Asset Control regulation or executive order.

4. Dividends, Distributions, Etc. If, prior to the Payment in Full of the Obligations, any Pledgor shall receive any certificate (including, without limitation, any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital, or issued in connection with any reorganization, merger or consolidation), or any options or rights, whether as an addition to, in substitution for, or in exchange for any of the Pledged Interests or otherwise, such Pledgor agrees, in each case, to accept the same as the Pledgee's agent and to hold the same in trust for the Pledgee, and to deliver the same promptly (but in any event within five (5) Business Days of receipt) to Pledgee in the exact form received, with the endorsement of such Pledgor when necessary and/or with appropriate undated assignments separate from certificates or stock powers duly executed in blank, to be held by the Pledgee subject to the terms hereof, as additional Pledged Collateral. The applicable Pledgor shall promptly deliver to the Pledgee (i) a Pledge Supplement with respect to such additional certificates, and (ii) any financing statements or amendments to financing statements as requested by the Pledgee. Each Pledgor hereby authorizes the Pledgee to attach each such Pledge Supplement to this Agreement. Except as provided in Section 5(b) below, all sums of money and property so paid or distributed in respect of the Pledged Interests which are received by any Pledgor shall, until paid or delivered to the Pledgee, be held by each Pledgor in trust as additional Pledged Collateral.

5. Voting Rights: Dividends: Certificates.

(a) So long as no Event of Default has occurred and is continuing, each Pledgor shall be entitled (subject to the other provisions hereof, including, without limitation, Section 8 below) to exercise its voting and other consensual rights with respect to the Pledged Interests and otherwise exercise the incidents of ownership thereof in any manner not inconsistent with this Agreement, the Credit Agreement and/or any of the other Loan Documents. Each Pledgor hereby grants to the Pledgee or its nominee, an irrevocable proxy to exercise all voting, corporate and limited liability company rights relating to the Pledged Interests in any instance, which proxy shall be effective, at the discretion of the Pledgee (as determined, and to be exercised, at the direction of the Required Lenders), upon the occurrence and during the continuance of an Event of Default so long as the Pledgee has notified the relevant Pledgor or Pledgors of its intent to exercise its voting power under this clause prior to the exercise thereof. Upon the request of the Pledgee at any time, each Pledgor agrees to deliver to the Pledgee such further evidence of such irrevocable proxy or such further irrevocable proxies to vote the Pledged Interests as the Pledgee may reasonably request.

(b) So long as no Event of Default shall have occurred and be continuing, each Pledgor shall be entitled to receive cash dividends or other distributions made in respect of the Pledged Interests, to the extent permitted to be made pursuant to the terms of the Credit Agreement. Upon the occurrence and during the continuance of an Event of Default, in the event that any Pledgor, as record and beneficial owner of the Pledged Interests, shall have received or shall have become entitled to receive, any cash dividends or other distributions in the ordinary course, such Pledgor shall deliver to the Pledgee, and the Pledgee shall be entitled to receive and retain, for the benefit of the Pledgee and the Lenders, all such cash or other distributions as additional security for the Obligations.

(c) Subject to any sale or other disposition by the Pledgee of the Pledged Interests, any other Pledged Collateral or other property pursuant to this Agreement, upon the Payment in Full and the termination of this Agreement pursuant to Section 11 hereof, the liens and security interests hereby granted shall automatically terminate and all rights to the Pledged Interests, the other Pledged Collateral and any other property then held as part of the Pledged Collateral in accordance with the provisions of this Agreement shall revert to the applicable Pledgor and the Pledgee, promptly following such termination, will deliver possession of the Pledged Interests, the other Pledged Collateral and any other property then held as part of the Pledged Collateral to the applicable Pledgor or to such other persons or entities as shall be legally entitled thereto.

(d) Each Pledgor shall cause all Pledged Interests (other than the Pledged Interests consisting of limited liability company or partnership interests) to be certificated at all times while this Agreement is in effect.

6. Rights of Pledgee. Pledgee shall not be liable for failure to collect or realize upon the Obligations or any collateral security or guaranty therefor, or any part thereof, or for any delay in so doing, nor shall Pledgee be under any obligation to take any action whatsoever with regard thereto. Any or all of the Pledged Interests held by Pledgee hereunder may, if an Event of Default has occurred and is continuing and so long as the Pledgee has notified the relevant Pledgor or Pledgors of its intent to exercise its power of registration under this sentence prior to the exercise thereof, be registered in the name of Pledgee or its nominee, and Pledgee or its nominee may thereafter without notice exercise (at the direction of the Required Lenders) all voting and corporate rights at any meeting with respect to any Pledged Entity and exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Interests as if it were the absolute owner thereof, including, without limitation, the right to vote in favor of, and to exchange at its discretion (at the direction of the Required Lenders) any and all of the Pledged Interests upon the merger, consolidation, reorganization, recapitalization or other readjustment with respect to any Pledged Entity or upon the exercise by any Pledged Entity, any Pledgor or Pledgee of any right, privilege or option pertaining to any of the Pledged Interests, and in connection therewith, to deposit and deliver any and all of the Pledged Interests with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Pledgee may reasonably determine, all without liability except to account for property actually received by Pledgee, but Pledgee shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing.

7. Remedies. Upon the occurrence and during the continuance of an Event of Default, the Pledgee may (and, at the direction of the Required Lenders, shall) exercise in respect of the Pledged Collateral, in addition to other rights and remedies provided for herein or otherwise available to it to the fullest extent permitted by the Applicable Law, all the rights and remedies of a secured party under the Uniform Commercial Code ("**UCC**") of the jurisdiction applicable to the affected Pledged Collateral from time to time. Without limiting the foregoing, the Pledgee may (and, at the direction of the Required Lenders, shall), without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon any Pledgor or any other person or entity (all and each of which demands, advertisements and/or notices are hereby expressly waived), upon the occurrence and during the continuance of an Event of Default forthwith collect, receive, appropriate and realize upon the Pledged Collateral, or any part thereof, and/or may forthwith date and otherwise fill in the blanks on any assignments separate from certificates or stock power or otherwise sell, assign, give an option or options to purchase, contract to sell or otherwise dispose of and deliver said Pledged Collateral, or any part thereof, in one or more portions at one or more public or private sales or dispositions, at any exchange or broker's board or at any of the Pledgee's offices or elsewhere upon such terms and conditions as the Pledgee may deem advisable and at such prices as it may deem best, for any combination of cash and/or securities or other property or on credit or for future delivery without assumption of any credit risk, with the right of the Pledgee or any Lender (or the designee of any of them) upon any such sale, public or private, to purchase the whole or any part of said Pledged Collateral so sold, free of any right or equity of redemption of any Pledgor, which right or equity is hereby expressly waived or released. The Pledgee (at the direction of the Required Lenders) shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization, sale or disposition, after deducting all costs and expenses of every kind incurred therein or incidental to the safekeeping of any and all of the Pledged Collateral or in any way relating to the rights of the Pledgee hereunder, including reasonable attorneys' fees and legal expenses, to the payment, in whole or in part, of the Obligations, in such order as the Pledgee (at the direction of the Required Lenders) may elect. The Pledgor shall remain liable for any deficiency remaining unpaid after such application. Only after so paying over such net proceeds and after the payment by the Pledgee (at the direction of the Required Lenders) of any other amount required by any provision of law, including, without limitation, Section 9-608 of the UCC, need the Pledgee (at the direction of the Required Lenders) account for the surplus, if any, to any Pledgor. Each Pledgor agrees that the Pledgee need not give more than ten (10) days' notice of the time and place of any public sale or of the time after which a private sale or other intended disposition is to take place and that such notice is reasonable notification of such matters. No notification need be given to any Pledgor if it has signed after default a statement renouncing or modifying any right to notification of sale or other intended disposition. Notwithstanding any provision in any operating agreement or shareholder agreement of any issuer of the Pledged Collateral or any other Applicable Law to the contrary, the undersigned constituting all of the members and/or shareholders of each issuer hereby acknowledge that such member and/or shareholder, as applicable, may pledge to the Pledgee all of such member's and/or shareholder's right, title and interest in such issuer, and upon foreclosure the successful bidder (which may include the Pledgee or any Lender) will be deemed admitted as a member and/or shareholder, as applicable, of such issuer, and will automatically succeed to all of such pledged right, title and interest, including without limitation such members' and/or shareholder's limited liability company and equity interests, right to vote and participate in the management and business affairs of the issuer, right to a share of the profits and losses of the issuer and right to receive distributions from the issuer.

8. No Disposition, Etc. Until the irrevocable Payment in Full of the Obligations, each Pledgor agrees that it will not sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Pledged Interests or any other Pledged Collateral, nor will any Pledgor create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance with respect to any of the Pledged Interests or any other Pledged Collateral, or any interest therein, or any proceeds thereof, except for the lien and security interest of the Pledgee provided for by this Agreement, the Security Agreement, the other Collateral Documents and Permitted Liens.

9. Sale of Pledged Interests.

(a) Each Pledgor recognizes that the Pledgee may be unable to effect a public sale or disposition (including, without limitation, any disposition in connection with a merger of a Pledged Entity) of any or all the Pledged Interests by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state securities laws, but may be compelled to resort to one or more private sales or dispositions thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges and agrees that any such private sale or disposition may result in prices and other terms (including the terms of any securities or other property received in connection therewith) less favorable to the seller than if such sale or disposition were a public sale or disposition and each Pledgor agrees that it is not commercially unreasonable for the Pledgee to engage in any such private sales or dispositions under such circumstances. The Pledgee shall be under no obligation to delay a sale or disposition of any of the Pledged Interests in order to permit any Pledgor or any Pledged Entity to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if such Pledgor or such Pledged Entity would agree to do so.

(b) Each Pledgor further agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make such sales or dispositions of the Pledged Interests valid and binding and in compliance with any and all Applicable Laws having jurisdiction over any such sales or dispositions, all at such Pledgor's expense; provided that no Pledgor shall have any obligation to register the Pledged Interests as securities under the Securities Act of 1933, as amended, or the applicable state securities laws solely by virtue of this Section 9(b). Each Pledgor further agrees that a breach of any of the covenants contained in Sections 4, 5(a), 5(b), 8, 9 and 23 will cause irreparable injury to the Pledgee and the Lenders and that the Pledgee and the Lenders have no adequate remedy at law in respect of such breach and, as a consequence, agrees, without limiting the right of the Pledgee or the Lenders to seek and obtain specific performance of other obligations of such Pledgor contained in this Agreement, that each and every covenant referenced above shall be specifically enforceable against such Pledgor, and such Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

(c) Each Pledgor further agrees not to exercise any and all rights of subrogation it may have against a Pledged Entity upon the sale or disposition of all or any portion of the Pledged Collateral by the Pledgee pursuant to the terms of this Agreement until the termination of this Agreement in accordance with Section 11 below.

10. No Waiver; Cumulative Remedies. The Pledgee shall not by any act, delay, omission or otherwise be deemed to have waived any of its remedies hereunder, and no waiver by the Pledgee shall be valid unless in writing and signed by the Pledgee, and then only to the extent therein set forth. A waiver by the Pledgee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Pledgee would otherwise have on any further occasion. No course of dealing between any Pledgor and the Pledgee and no failure to exercise, nor any delay in exercising on the part of the Pledgee or the Lenders of, any right, power or privilege hereunder or under the other Loan Documents shall impair such right or remedy or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law or in the Credit Agreement.

11. Termination. This Agreement and the Liens and security interests granted hereunder shall automatically terminate upon the Payment in Full of the Obligations and the Pledgee, at the Pledgors' sole cost and expense, shall promptly following such termination return any Pledged Interests or other Pledged Collateral then held by the Pledgee in accordance with the provisions of this Agreement to the appropriate Pledgor.

12. Possession of Collateral. Beyond the exercise of reasonable care to assure the safe custody of the Pledged Interests in the physical possession of the Pledgee pursuant hereto, neither the Pledgee, nor any nominee of the Pledgee, shall have any duty or liability to collect any sums due in respect thereof or to protect, preserve or exercise any rights pertaining thereto (including any duty to ascertain or take action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to the Pledged Collateral and any duty to take any necessary steps to preserve rights against any parties with respect to the Pledged Collateral), and shall be relieved of all responsibility for the Pledged Collateral upon surrendering such Pledged Collateral to any Pledgor. Each Pledgor assumes the responsibility for being and keeping itself informed of the financial condition of each Pledged Entity and of all other circumstances bearing upon the risk of non-payment of the Obligations, and the Pledgee shall have no duty to advise any Pledgor of information known to the Pledgee regarding such condition or any such circumstance. The Pledgee shall have no duty to inquire into the powers of a Pledged Entity or its officers, directors, managers, members, partners or agents thereof acting or purporting to act on its behalf.

13. Pledgee Appointed Attorney-In-Fact. Each Pledgor hereby irrevocably appoints the Pledgee as such Pledgor's attorney-in-fact, with full authority in the place and stead of such Pledgor and in the name of such Pledgor or otherwise, from time to time in the Pledgee's discretion, to take any action and to execute any instrument that the Pledgee deems reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, endorse and collect all instruments made payable to such Pledgor representing any dividend, interest payment or other distribution in respect of the Pledged Collateral or any part thereof and to give full discharge for the same, when and to the extent permitted by this Agreement; provided that the power of attorney granted hereunder shall only be exercised by the Pledgee after the occurrence and during the continuance of an Event of Default.

14. Governing Law; Jurisdiction; Service of Process; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE AGENT'S OPTION (AT THE DIRECTION OF THE REQUIRED LENDERS), IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH LOAN PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PLEDGORS, THE AGENT AND THE LENDERS EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

15. Counterparts. This Agreement may be executed in two or more identical counterparts, all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile, .pdf or similar electronically transmitted signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original signature.

16. Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

17. Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

18. ENTIRE AGREEMENT; AMENDMENTS. THIS AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, SUPERSEDES ALL OTHER PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN ANY PLEDGOR, THE PLEDGEE, THEIR AFFILIATES AND PERSONS ACTING ON THEIR BEHALF WITH RESPECT TO THE MATTERS DISCUSSED HEREIN, AND THIS AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS AND THE OTHER INSTRUMENTS REFERENCED HEREIN AND THEREIN, CONTAINS THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE MATTERS COVERED HEREIN AND THEREIN AND, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR THEREIN, NEITHER THE PLEDGEE NOR ANY PLEDGOR MAKES ANY REPRESENTATION, WARRANTY, COVENANT OR UNDERTAKING WITH RESPECT TO SUCH MATTERS. AS OF THE DATE OF THIS AGREEMENT, THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THE MATTERS DISCUSSED HEREIN. EXCEPT AS SET FORTH IN SECTION 2(A) HEREOF, NO PROVISION OF THIS AGREEMENT MAY BE AMENDED, MODIFIED OR SUPPLEMENTED OTHER THAN BY AN INSTRUMENT IN WRITING SIGNED BY THE PLEDGORS AND THE PLEDGEE.

19. Notices. All notices, approvals, requests, demands and other communications hereunder shall be delivered or made in the manner set forth in, and shall be effective in accordance with the terms of, the Security Agreement.

20. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No Pledgor shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the Pledgee. The Pledgee may assign its rights hereunder (a) without the consent of the Pledgors to any Eligible Assignee or (b) with the Pledgors' consent (not to be unreasonably withheld, conditioned or delayed) to any other Person acceptable to the Required Lenders and the Pledgee; provided that the Pledgors' consent under this clause (b) shall not be required if an Event of Default has occurred and is then continuing, and in each event such assignee shall be deemed to be the Pledgee hereunder with respect to such assigned rights.

21. No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.

22. Survival. All representations, warranties, covenants and agreements of each Pledgor and the Pledgee shall survive the execution and delivery of this Agreement.

23. Further Assurances. Each Pledgor agrees that it will, at any time and from time to time upon the reasonable written request of the Pledgee, execute and deliver all assignments separate from certificates or stock powers, financing statements and such further documents and do such further acts and things as the Pledgee may reasonably request consistent with the provisions hereof in order to carry out the intent and accomplish the purpose of this Agreement and the consummation of the transactions contemplated hereby.

24. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

25. Pledgee Authorized. Each Pledgor hereby authorizes the Pledgee to file one or more financing or continuation statements and amendments thereto (or similar documents required by any laws of any applicable jurisdiction) relating to all or any part of the Pledged Interests or other Pledged Collateral without the signature of such Pledgor.

26. Pledgor Acknowledgement. Each Pledgor acknowledges receipt of an executed copy of this Agreement. Each Pledgor waives the right to receive any amount that it may now or hereafter be entitled to receive (whether by way of damages, fine, penalty, or otherwise) by reason of the failure of the Pledgee to deliver to any Pledgor a copy of any financing statement or any statement issued by any registry that confirms registration of a financing statement relating to this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to be duly executed and delivered on the date first above written.

PLEDGORS:

WORKHORSE GROUP INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE TECHNOLOGIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE PROPERTIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE MOTOR WORKS INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

SUREFLY, INC.

By: /s/ Duane A. Hughes
Name: Duane A. Hughes
Title: CEO

PLEDGEE:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Agent

By: /s/ Jamie Roseberg
Name: Jamie Roseberg
Title: Banking Officer

[Signature Page to Pledge Agreement]

ACKNOWLEDGEMENT

Notwithstanding anything to the contrary contained in any operating agreement, shareholder agreement, organizational document or business corporation or limited liability company law of the state of formation of any Pledged Entity, each of the undersigned hereby (i) acknowledges receipt of a copy of the foregoing Pledge Agreement, (ii) agrees promptly to note on its books and records the grant of the security interest in the stock or other equity interests of the undersigned as provided in such Pledge Agreement, (iii) acknowledges that any member and/or shareholder of any Pledged Entity may pledge, grant a security interest in, or hypothecate all or a portion of such member's and/or shareholder's right, title and interest in such Pledged Entity and upon foreclosure the successful bidder (which may include the Agent, any Lender or any such party's designee) will be deemed admitted as a member and/or shareholder, as applicable, of such Pledged Entity and will automatically succeed to all of such pledged right, title and interest, including, without limitation, such member's and/or shareholder's equity interests, right to vote and participate in the management and business affairs of the Pledged Entity, right to a share of the profits and losses of the Pledged Entity and right to receive distributions from the Pledged Entity; (iv) waives any restrictions on the Pledgee's ability and/or right to sell any equity interests in such Pledged Entity in accordance with the Pledge Agreement, (v) consents to the transactions contemplated by the foregoing Pledge Agreement; (vi) waives any and all obligations of the members and/or shareholders of any Pledged Entity to notify such Pledged Entity's other members and/or shareholders of any of the actions set forth in the foregoing clause "(iii)" (each, a "Transfer"), (vii) waives any and all rights of first refusal in connection with any Transfer and (viii) acknowledges that no stock or membership interest certificate shall require that any restrictive legend be included thereon, including without limitation, any legend restricting the sale, pledge, hypothecation or other transfer of the equity interests evidenced by such certificate.

Dated: December 31, 2018

[Signature page follows.]

PLEDGED ENTITIES:

WORKHORSE GROUP INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE TECHNOLOGIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE PROPERTIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE MOTOR WORKS INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

SUREFLY, INC.

By: /s/ Duane A. Hughes
Name: Duane A. Hughes
Title: CEO

Exhibit A

SUBJECT SECURITIES

Pledged Entity	Pledgor	Percentage of Ownership	Shares	Certificate Number(s)
Workhorse Technologies Inc.	Workhorse Group Inc.	100%	1,000	WT-001
Workhorse Motor Works Inc	Workhorse Group Inc.	100%	200	WMW-001
Workhorse Properties Inc.	Workhorse Group Inc.	100%	1,000	WP-001
Surefly, Inc.	Workhorse Technologies Inc.	100%	1,000	C-001

Exhibit 10.4

Execution Version

GUARANTEE

This GUARANTEE, dated as of December 31, 2018 (as amended, supplemented or otherwise modified from time to time, this "Guarantee"), is made by Workhorse Technologies Inc., an Ohio corporation, Workhorse Properties Inc., an Ohio corporation, Workhorse Motor Works Inc, an Indiana corporation, and Surefly, Inc., a Delaware corporation (together with any additional Persons named pursuant to Section 5.5, each a "Guarantor" and collectively the "Guarantors"), in favor of the Secured Parties (as defined below).

W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, dated as of December 31, 2018 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Workhorse Group Inc. (the "Borrower"), the financial institutions from time to time party thereto as lenders (collectively, with their permitted successors and assignees, the "Lenders") and Wilmington Trust, National Association, in its capacity as agent (the "Agent"), the Lenders have extended Commitments to make Loans to the Borrower; and

WHEREAS, as a condition precedent to the making of the Loans under the Credit Agreement, the Guarantors are required to execute and deliver this Guarantee to the Agent for the benefit of the Secured Parties on the date hereof;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to make the Loans to the Borrower, each Guarantor hereby agrees, for the benefit of the Secured Parties, as follows.

ARTICLE I
DEFINITIONS

SECTION 1.1. Certain Terms. The following terms (whether or not underscored) when used in this Guarantee, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Agent" is defined in the first recital.

"Borrower" is defined in the first recital.

"Credit Agreement" is defined in the first recital.

"Guarantor" is defined in the preamble.

"Guarantee" is defined in the preamble.

"Lenders" is defined in the first recital.

"Obligor" is defined in Section 2.1(a).

"Secured Parties" means, collectively, the Agent, the Lenders and any permitted holder of the Obligations, and " Secured Party" means any one of them.

SECTION 1.2. Credit Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Guarantee, including its preamble and recitals, have the meanings provided in the Credit Agreement.

ARTICLE II
GUARANTEE PROVISIONS

SECTION 2.1. Guarantee. Each Guarantor jointly and severally, absolutely, unconditionally and irrevocably:

(a) guarantees the full and punctual payment when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, and performance of all Obligations of the Borrower and any other Loan Party (each, an "Obligor") now or hereafter existing, whether for principal, interest (including interest accruing at the then applicable Default Rate as provided in Section 2.3.1 of the Credit Agreement, whether or not a claim for post-filing or post-petition interest is allowed under Applicable Law following the institution of a proceeding under bankruptcy, insolvency or similar laws), fees, expenses or otherwise (including all such amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. §362(a), and the operation of Sections 502(b) and 506(b) of the United States Bankruptcy Code, 11 U.S.C. §502(b) and §506(b)); and

(b) indemnifies and holds harmless each Secured Party for any and all costs and expenses (including the reasonable fees and out-of-pocket expenses of counsel to such Secured Party) incurred by such Secured Party in enforcing any rights under this Guarantee, except to the extent such amounts arise or are incurred as a consequence of such Secured Party's own gross negligence or willful misconduct;

provided, that each Guarantor shall only be liable under this Guarantee for the maximum amount of such liability that can be hereby incurred without rendering this Guarantee, as it relates to such Guarantor, voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount. This Guarantee constitutes a guarantee of payment when due and not of collection, and each Guarantor specifically agrees that it shall not be necessary or required that the Secured Parties exercise any right, assert any claim or demand or enforce any remedy whatsoever against such Guarantor or any other Person before or as a condition to the obligations of such Guarantor becoming due hereunder.

SECTION 2.2. Reinstatement, Etc. Each Guarantor agrees that this Guarantee shall continue to be effective or be reinstated (including after the Loans are Paid in Full), as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be restored by any Secured Party, including upon the occurrence and during the continuance of any Event of Default set forth in Section 8.1.3 of the Credit Agreement or otherwise, all as though such payment had not been made.

SECTION 2.3. Guarantee Absolute, Etc. This Guarantee shall in all respects be a continuing, absolute, unconditional and irrevocable guarantee of payment, and shall remain in full force and effect until (unless reinstated pursuant to Section 2.2 above) the Loans are Paid in Full. Each Guarantor guarantees that the Obligations shall be paid strictly in accordance with the terms of each Loan Document under which they arise, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. The liability of each Guarantor under this Guarantee shall be absolute, unconditional and irrevocable irrespective of:

(a) any lack of validity, legality or enforceability of any Loan Document;

(b) the failure of any Secured Party (i) to assert any claim or demand or to enforce any right or remedy against such Guarantor or any other Person (including any other guarantor) under the provisions of any Loan Document or otherwise, or (ii) to exercise any right or remedy against any other guarantor (including such Guarantor and any other Guarantor) of, or collateral securing, any Obligations;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Obligations, or any other extension, compromise or renewal of any Obligation, or any amendment to, rescission, waiver, or other modification of, or any consent to or departure from, any of the terms of any Loan Document;

(d) any reduction, limitation, impairment or termination of any Obligations for any reason (other than Payment in Full of the Loans), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and each Guarantor hereby waives any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligations or otherwise;

(e) any addition, exchange or release of any collateral or of any Person that is (or will become) a guarantor of the Obligations, or any surrender or non-perfection of any collateral, or any amendment to, or waiver or release of, or addition to, or consent to or departure from, any other guarantee held by the Secured Parties securing any of the Obligations; or

(f) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, any Obligor, any surety or any guarantor (including any Guarantor).

SECTION 2.4. Setoff. Each Guarantor hereby irrevocably authorizes each Secured Party, without the requirement that any notice be given to such Guarantor (such notice being expressly waived by such Guarantor), upon the occurrence and during the continuance of any Event of Default, to appropriate and apply to the payment of the Obligations owing to it (whether or not then due), and (as security for such Obligations) each Guarantor hereby grants to each Secured Party a continuing security interest in, any and all balances, credits, deposits, accounts or moneys of such Guarantor then or thereafter maintained with or on behalf of such Secured Party. Each Secured Party agrees to notify such Guarantor after any such set-off and application made by such Secured Party provided, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Secured Parties under this Section are in addition to other rights and remedies (including other rights of setoff under Applicable Law or otherwise) which the Secured Parties may have.

SECTION 2.5. Waiver, Etc. Each Guarantor waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations and this Guarantee and any requirement that the Secured Parties protect, secure, perfect or insure any Lien, or any property subject thereto, or exhaust any right or take any action against any Obligor or any other Person (including any Guarantor) or entity or any collateral securing the Obligations, as the case may be.

SECTION 2.6. Postponement of Subrogation, Etc. Each Guarantor agrees that it will not exercise any rights which it may acquire by way of rights of subrogation under any Loan Document to which it is a party, nor shall such Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Obligor or Guarantor, in respect of any payment made under any Loan Document or otherwise, until after the Loans are Paid in Full. Any amount paid to such Guarantor on account of any such subrogation rights prior to such Payment in Full shall be held in trust for the benefit of the Secured Parties and shall immediately be paid and turned over to the Agent, for the benefit of the Secured Parties, in the exact form received by such Guarantor (duly endorsed in favor of the Lenders, if required), to be credited and applied against the Obligations, whether matured or unmatured, in accordance with Section 2.7; provided, that if such Guarantor has made payment to the Agent of all or any part of the Obligations and the Loans are Paid in Full, then, at such Guarantor's request, the Agent will, at the expense of such Guarantor, execute and deliver to such Guarantor appropriate documents (without recourse and without representation or warranty) necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Obligations resulting from such payment. In furtherance of the foregoing, at all times prior to such Payment in Full, such Guarantor shall refrain from taking any action or commencing any proceeding against the Borrower or any other Obligor or Guarantor (or their successors or assigns, whether in connection with a bankruptcy proceeding or otherwise) to recover any amounts in respect of payments made under this Guarantee to the Lenders.

SECTION 2.7. Payments; Application. Each Guarantor agrees that all obligations of such Guarantor hereunder shall be paid solely in U.S. Dollars to the Secured Parties in immediately available funds, without set-off, counterclaim or other defense and in accordance with Sections 2.4, 2.5, 2.6, 2.7 and 3.1 of the Credit Agreement, free and clear of and without deduction for any non-Excluded Taxes, such Guarantor hereby agreeing to comply with and be bound by the provisions of Sections 2.4, 2.5, 2.6, 2.7 and 3.1 of the Credit Agreement in respect of all payments and application of such payments made by it hereunder and the provisions of which Sections are hereby incorporated into and made a part of this Guarantee by this reference as if set forth herein; provided, that references to the "Borrower" in such Sections shall be deemed to be references to such Guarantor, and references to "this Agreement" in such Sections shall be deemed to be references to this Guarantee.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

In order to induce the Secured Parties to enter into the Credit Agreement and for the Lenders to make the Loans thereunder, each Guarantor represents and warrants to the Agent, for the benefit of the Secured Parties, as set forth below.

SECTION 3.1. Credit Agreement Representations and Warranties . The representations and warranties contained in Section 5 of the Credit Agreement, insofar as the representations and warranties contained therein are applicable to such Guarantor and its properties, are true and correct in all material respects as of the Closing Date, each such representation and warranty set forth in such Section (insofar as applicable as aforesaid) and all other terms of the Credit Agreement to which reference is made therein, together with all related definitions and ancillary provisions, being hereby incorporated into this Guarantee by this reference as though specifically set forth in this Article.

SECTION 3.2. Financial Condition, Etc. Each Guarantor has knowledge of the Borrower's and each other Guarantor's financial condition and affairs and has adequate means to obtain from each such Person on an ongoing basis information relating thereto and to each such Person's ability to pay and perform the Obligations, and agrees to assume the responsibility for keeping, and to keep, so informed for so long as this Guarantee is in effect. Each Guarantor acknowledges and agrees that no Secured Party shall have any obligation to investigate the financial condition or affairs of the Borrower or any other Guarantor for the benefit of such Guarantor nor to advise such Guarantor of any fact respecting, or any change in, the financial condition or affairs of each such Person that might become known to any Secured Party at any time, whether or not such Secured Party knows or believes or has reason to know or believe that any such fact or change is unknown to such Guarantor, or might (or does) materially increase the risk of such Guarantor as guarantor, or might (or would) affect the willingness of such Guarantor to continue as a guarantor of the Obligations.

SECTION 3.3. Best Interests. It is in the best interests of each Guarantor to execute this Guarantee inasmuch as each Guarantor will, as a result of being an Affiliate of the Borrower, derive substantial direct and indirect benefits from the Loans made to the Borrower by the Lenders pursuant to the Credit Agreement, and each Guarantor agrees that the Lenders are relying on this representation in agreeing to make the Loans to the Borrower.

ARTICLE IV
COVENANTS, ETC.

SECTION 4.1. Covenants. Each Guarantor covenants and agrees that, at all times prior to Payment in Full of the Loans, it will perform, comply with and be bound by all of the agreements, covenants and obligations contained in the Credit Agreement (including Sections 6 and 7 of the Credit Agreement) which are applicable to such Guarantor or its properties, each such agreement, covenant and obligation contained in the Credit Agreement and all other terms of the Credit Agreement to which reference is made in this Article, together with all related definitions and ancillary provisions, being hereby incorporated into this Guarantee by this reference as though specifically set forth in this Article.

ARTICLE V
MISCELLANEOUS PROVISIONS

SECTION 5.1. Loan Document. This Guarantee is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Section 10 thereof. Notwithstanding anything contained herein to the contrary, to the extent that any provision in this Guarantee conflicts with any provision in the Credit Agreement, the terms of the Credit Agreement shall control.

SECTION 5.2. Binding on Successors, Transferees and Assigns; Assignment . This Guarantee shall remain in full force and effect until the Loans are Paid in Full, shall be binding upon each Guarantor and its successors, transferees and assigns and shall inure to the benefit of and be enforceable by the Agent and the other Secured Parties; provided, that such Guarantor may not (unless otherwise permitted under the terms of the Credit Agreement) assign any of its obligations hereunder without the prior written consent of the Lenders. Without limiting the generality of the foregoing, each Lender may assign or otherwise transfer (in whole or in part) the Commitments, Notes or Loans held by it to any other Person to the extent permitted by the Credit Agreement, and such other Person shall thereupon become vested with all rights and benefits in respect thereof granted to such Lender under each Loan Document (including this Guarantee) or otherwise.

SECTION 5.3. Amendments, Etc. No amendment to or waiver of any provision of this Guarantee, nor consent to any departure by any Guarantor from its obligations under this Guarantee, shall in any event be effective unless the same shall be in writing and signed by the Secured Parties and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 5.4. Notices. All notices and other communications provided for hereunder shall be given or made as set forth in Section 10.2 of the Credit Agreement.

SECTION 5.5. Release of Guarantors. Subject to Section 2.2 of this Guarantee, upon (a) the Disposition of a Guarantor to a Person that is not an Obligor in accordance with the terms of the Credit Agreement and this Guarantee or (b) the Payment in Full of the Loans, the guarantees made herein shall automatically terminate with respect to (i) such Guarantor (in the case of clause (a)) or (ii) all Guarantors (in the case of clause (b)).

SECTION 5.6. Additional Guarantors. Upon the execution and delivery by any other Person of a supplement in the form of Annex I hereto, such Person shall become a "Guarantor" hereunder with the same force and effect as if it were originally a party to this Guarantee and named as a "Guarantor" hereunder. The execution and delivery of such supplement shall not require the consent of any other Guarantor hereunder, and the rights and obligations of each Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor as a party to this Guarantee.

SECTION 5.7. No Waiver; Remedies. In addition to, and not in limitation of, Section 2.3 and Section 2.5, no failure on the part of any Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 5.8. Further Assurances. Each Guarantor agrees, upon the written request of the Agent, to execute and deliver to the Secured Parties, from time to time, any additional instruments or documents deemed to be reasonably necessary by the Agent or the Required Lenders to cause this Guarantee to be, become or remain valid and effective in accordance with its terms.

SECTION 5.9. Section Captions. Section captions used in this Guarantee are for convenience of reference only and shall not affect the construction of this Guarantee.

SECTION 5.10. Severability. Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Guarantee or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 5.11. Governing Law, Entire Agreement, Etc. THIS GUARANTEE AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS GUARANTEE OR ANY OTHER LOAN DOCUMENT CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). This Guarantee, along with the other Loan Documents, constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect hereto.

SECTION 5.12. Forum Selection; Consent to Jurisdiction; Service of Process. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS GUARANTEE OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE AGENT'S OPTION (AT THE DIRECTION OF THE REQUIRED LENDERS), IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH LOAN PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

SECTION 5.13. Counterparts. This Guarantee may be executed by the parties hereto in several counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. This Guarantee shall become effective when counterparts hereof executed on behalf of each Guarantor shall have been received by the Agent. Delivery of an executed counterpart of a signature page to this Guarantee by email (e.g., "pdf" or "tiff") or telecopy shall be effective as delivery of a manually executed counterpart of this Guarantee.

SECTION 5.14. Waiver of Jury Trial. THE SECURED PARTIES BY ACCEPTANCE OF THIS GUARANTEE AND EACH GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTEE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE SECURED PARTIES OR ANY GUARANTOR IN CONNECTION HEREWITH. EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDERS AND THE AGENT TO ENTER INTO THE LOAN DOCUMENTS.

[Signature Page Follows]

IN WITNESS WHEREOF, each Guarantor has caused this Guarantee to be duly executed and delivered as of the date first above written.

GUARANTORS:

WORKHORSE TECHNOLOGIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE PROPERTIES INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

WORKHORSE MOTOR WORKS INC

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

SUREFLY, INC.

By: /s/ Duane A. Hughes
Name: Duane A. Hughes
Title: CEO

[Signature Page to Guarantee]

ANNEX I
to Guarantee

SUPPLEMENT TO

GUARANTEE

This SUPPLEMENT, dated as of _____ ___, _____ (this "Supplement"), is to the Guarantee, dated as of December 31, 2018 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Guarantee"), by the Guarantors (such term, and other terms used in this Supplement, to have the meanings set forth in Article I of the Guarantee) from time to time party thereto, in favor of the Secured Parties.

W I T N E S S E T H:

WHEREAS, pursuant to a Credit Agreement, dated as of December 31, 2018 (as amended, supplemented, or otherwise modified from time to time, the "Credit Agreement"), by and among Workhorse Group Inc., a Nevada corporation (the "Borrower"), the Lenders and the Agent, the Lenders have extended Commitments to make the Loans to the Borrower; and

WHEREAS, pursuant to the provisions of Section 5.6 of the Guarantee, each of the undersigned is becoming a Guarantor under the Guarantee; and

WHEREAS, each of the undersigned desires to become a "Guarantor" under the Guarantee in order to induce the Lenders to continue to extend the Loans under the Credit Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the undersigned agrees, for the benefit of the Secured Parties, as follows.

SECTION 1. Party to Guarantee, Etc. In accordance with the terms of this Guarantee, by its signature below, each of the undersigned hereby irrevocably agrees to become a Guarantor under the Guarantee with the same force and effect as if it were an original signatory thereto and each of the undersigned hereby (a) agrees to be bound by and comply with all of the terms and provisions of the Guarantee applicable to it as a Guarantor and (b) represents and warrants that the representations and warranties made by it as a Guarantor thereunder are true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the date hereof, unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date. In furtherance of the foregoing, each reference to a "Guarantor" and/or "Guarantors" in the Guarantee shall be deemed to include each of the undersigned.

SECTION 2. Representations. Each of the undersigned Guarantors hereby represents and warrants that this Supplement has been duly authorized, executed and delivered by it and that this Supplement and the Guarantee constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. Full Force of Guarantee. Except as expressly supplemented hereby, the Guarantee shall remain in full force and effect in accordance with its terms.

SECTION 4. Severability. Wherever possible each provision of this Supplement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Supplement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Supplement or the Guarantee.

SECTION 5. Governing Law, Entire Agreement, Etc. THIS SUPPLEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS GUARANTEE OR ANY DOCUMENT CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). This Supplement, along with the other Loan Documents, constitutes the entire understanding among the parties hereto with respect to the subject matter thereof and supersedes any prior agreements, written or oral, with respect thereto.

SECTION 6. Effective. This Supplement shall become effective when a counterpart hereof executed by the Guarantor shall have been received by the Agent. Delivery of an executed counterpart of a signature page to this Supplement by email (e.g., “pdf” or “tiff”) or telecopy shall be effective as delivery of a manually executed counterpart of this Supplement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Supplement to be duly executed and delivered by its Authorized Officer as of the date first above written.

[NAME OF ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

[NAME OF ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

[Signature Page to Guarantee Supplement]

Exhibit 10.5

Execution Version

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of December 31, 2018, is entered into by and between Workhorse Group Inc., a Nevada corporation (the "Company"), Marathon Structured Product Strategies Fund, LP, a Delaware limited partnership ("Structured Product"), Marathon Blue Grass Credit Fund, LP, a Delaware limited partnership ("Blue Grass"), Marathon Centre Street Partnership, L.P., a Delaware limited partnership ("Centre Street"), and TRS Credit Fund, LP, a Delaware limited partnership ("TRS" and collectively with Structured Product, Blue Grass and Centre Street, the "Initial Holders").

R E C I T A L S

WHEREAS, on or about the date hereof, the Company issued to each Initial Holder a certain Common Stock Purchase Warrant (such warrants collectively, the "Warrants"), pursuant to which, among other things, such Initial Holder is entitled, subject to the terms and conditions set forth therein, to purchase from the Company shares of common stock, $0.001 par value per share, of the Company (the "Company Common Stock"); and

WHEREAS, the Company has agreed to provide the Initial Holders with the registration rights specified in this Agreement with respect to Registrable Securities (as defined herein), on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. The following terms shall have the meanings set forth in this Section 1.1:

"Additional Warrant Securities" means any additional warrants issued to any Holder in accordance with Section 7 of each respective Warrant.

"Adverse Effect" has the meaning given such term in Section 2.1.5 herein.

"Advice" has the meaning given such term in Section 2.6 herein.

"Affiliate" means with respect to a party hereto, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party. For purposes of this definition, "control" and, with correlative meanings, the terms "controlled by" and "under common control with" as used with respect to a Person means (a) the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such Person, whether through the ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise, or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of a Person.

"Agreement" has the meaning given such term in the introductory paragraph of this Agreement.

"Block Sale" means the sale of shares of Company Common Stock to one of several purchasers in a registered transaction by means of a bought deal, a block trade or a direct sale.

"Blue Grass" has the meaning given such term in the introductory paragraph of this Agreement.

"Business Days" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York City.

"Centre Street" has the meaning given such term in the introductory paragraph of this Agreement.

"Company" has the meaning given such term in the introductory paragraph of this Agreement and includes the Company's successors by merger, acquisition, reorganization or otherwise.

"Company Common Stock" has the meaning given such term in the recitals of this Agreement.

"Company Indemnified Person" has the meaning given such term in Section 2.8.2 herein.

"Demand Registration" has the meaning given such term in Section 2.2.1(a) herein.

"Demand Request" has the meaning given such term in Section 2.2.1(a) herein.

"Demanding Shareholders" has the meaning given such term in Section 2.2.1(a) herein.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations promulgated by the SEC thereunder.

"Excluded Registration" means a registration under the Securities Act (i) of Registrable Securities pursuant to one or more Demand Registrations pursuant to Section 2 hereof, (ii) of equity securities issuable in connection with the Company's stock option or other employee benefit plans registered on Form S-8 or any similar successor form, (iii) of equity securities registered to effect the acquisition of, or combination with, another Person on Form S-4 or any similar successor form, (iv) relating solely to the sale of non-convertible debt instruments and (v) of securities registered in connection with any dividend reinvestment plan.

"Existing Registration Rights Holders" refers to those individuals or entities possessing registration rights prior to the date hereof, which consist of Arosa Capital Management LP.

"FINRA" has the meaning given such term in Section 2.5(xvi) herein.

"Holder" means (i) any Initial Holder and (ii) any direct or indirect transferee of any Initial Holder who shall become a party to this Agreement in accordance with Section 2.9 and has agreed in writing to be bound by the terms of this Agreement.

"Initial Holders" has the meaning given such term in the introductory paragraph of this Agreement.

"Inspectors" has the meaning given such term in Section 2.5(xii) herein.

"Losses" has the meaning given such term in Section 2.8.1 herein.

"Marketed Underwritten Offering" has the meaning given such term in Section 2.1.3 herein.

"Permitted Transferee" has the meaning given such term in Section 2.9 herein.

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

"Piggyback Registration" has the meaning given such term in Section 2.3.1 herein.

"Records" has the meaning given such term in Section 2.5(xii) herein.

"register," "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement under the Securities Act (to the extent such declaration or order is required in order for such registration statement to become effective).

"Registrable Securities" means any shares of Company Common Stock issuable or issued upon the exercise of any Warrant and any shares of Company Common Stock issuable or issued upon the exercise of any Additional Warrant Securities; provided, however, that Registrable Securities shall not include shares of Company Common Stock (a) when a registration statement with respect to the sale of such shares of Company Common Stock has become effective under the Securities Act and such shares of Company Common Stock have been disposed of in accordance with such registration statement; (b) that have been sold to the public pursuant to Rule 144 or other exemption from registration under the Securities Act; (c) that have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of them shall not require registration or qualification of them under the Securities Act or any similar state law then in force; (d) as to which the Company has delivered an opinion of counsel reasonably satisfactory to the transfer agent for the Company Common Stock to the effect that such Registrable Securities are able to be sold by the Holders without restriction as to volume or manner of sale pursuant to Rule 144; (e) that are otherwise sold or transferred by a Holder in a transaction where its rights under this Agreement are not assigned; or (f) that have ceased to be outstanding.

"Requesting Holders" shall mean any Holder(s) requesting to have its (their) Registrable Securities included in any Demand Registration or Shelf Registration.

"Required Filing Date" has the meaning given such term in Section 2.2.1(b) herein.

"Rule 144" means Rule 144 under the Securities Act or any successor rule thereto.

"SEC" means the United States Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations promulgated by the SEC thereunder.

"Seller Affiliates" has the meaning given such term in Section 2.8.1 herein.

"Shelf Registration Statement" has the meaning given such term in Section 2.1.1 herein.

"Shelf Takedown" has the meaning given such term in Section 2.2.2(b) herein.

"Structured Product" has the meaning given such term in the introductory paragraph of this Agreement.

"Suspension Notice" has the meaning given such term in Section 2.6 herein.

"TRS" has the meaning given such term in the introductory paragraph of this Agreement.

"Underwritten Offering" shall mean an offering registered under the Securities Act in which securities of the Company are sold to one or more underwriters on a firm-commitment basis for reoffering to the public.

"Warrants" has the meaning given such term in the recitals of this Agreement.

1.2 Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) "or" is not exclusive;

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

(4) whenever the masculine is used in this Agreement, the same shall include the feminine and whenever the feminine is used herein, the same shall include the masculine, where appropriate;

(5) provisions apply to successive events and transactions; and

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

ARTICLE 2
REGISTRATION RIGHTS

2.1 Shelf Registration.

2.1.1 Registration Requirement. The Company shall prepare and file a resale registration statement on Form S-3 under the Securities Act (it being agreed that such registration statement shall be a registration statement filed for an offering to be made on a delayed or continuous basis pursuant to Rule 415 (or any successor rule), including any post-effective amendment thereto, if then available to the Company, and if such Form S-3 is not then available to the Company, such resale registration statement shall be on Form S-1 or any similar or successor to such form under the Securities Act (the registration statement filed pursuant to this Section 2.1.1 being referred to as a "Shelf Registration Statement")) for the resale of all or part of its or their Registrable Securities as promptly as practicable after the date hereof, but in no event more than 90 days after the date hereof.

2.1.2 Effectiveness of the Registration Statement. The Company shall use its best efforts to cause the Shelf Registration Statement to be declared effective by the SEC staff no later than 180 days after the date hereof. Thereafter, the Company shall use its best efforts to keep such Shelf Registration Statement continuously effective, including by filing any necessary post-effective amendments to such Shelf Registration Statement or a new Shelf Registration Statement, until the earlier of (x) the date on which all Registrable Securities have been sold pursuant to such Shelf Registration Statement or another Shelf Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder) and (y) such time as the Registrable Securities are no longer outstanding or otherwise no longer constitute Registrable Securities. A Holder shall provide notice to the Company prior to any use of the Shelf Registration Statement by such Holder, and shall provide the information required by, and comply with the obligations under, Section 2.6 following the receipt of a Suspension Notice. Further, each Holder agrees to complete and execute all questionnaires and other documents reasonably required by the Company in order to prepare and file any Shelf Registration Statement.

2.1.3 Shelf Takedowns.

(a) Subject to the provisions of Section 2.1.3(b) hereof, any Holder or Holders of Registrable Securities shall be entitled, at any time and from time to time when a Shelf Registration Statement is effective, to sell such Registrable Securities held by such Holder or Holders as are then registered pursuant to a Shelf Registration Statement (each, a "Shelf Takedown"). The number of Shelf Takedowns that such Holder or Holders may effect pursuant to this Section 2.1.3 shall not be limited, provided, that the number of offerings where the plan of distribution contemplates a customary "road show" (including an "electronic road show") or other substantial marketing effort of by the Company and the underwriters (any such Underwritten Offering, a "Marketed Underwritten Offering") that may be effected hereunder shall be limited to a total of three (less any Demand Requests pursuant to Section 2.2.1), and such other restriction as may be set forth in Section 2.1.3(b) are complied with. Any such Shelf Takedown may be made in the United States by and pursuant to any method or combination of methods legally available to any Holder or Holders of Registrable Securities (including, but not limited to, an Underwritten Offering, a direct sale to purchasers, a sale to or through brokers, dealers or agents, a sale over the internet, Block Sales, derivative transactions with third parties, sales in connection with short sales and other hedging transactions). The Company shall comply with the applicable provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by the Shelf Registration Statement in accordance with the intended methods of disposition by the Holder or Holders of Registrable Securities. If any Holder intends to sell any Registrable Securities pursuant to a Shelf Takedown, such Holder shall give the Company written notice of the consummation of each Shelf Takedown (whether or not such Shelf Takedown constitutes an Underwritten Offering) reasonably promptly after the consummation thereof.

(b) Upon receipt of prior written notice by any Holder or Holders of Registrable Securities that it intends to effect a Shelf Takedown, the Company shall use its reasonable best efforts to cooperate in such Shelf Takedown, whether or not such Shelf Takedown constitutes an Underwritten Offering, by amending or supplementing the prospectus related to such Shelf Registration Statement as may be reasonably requested by such Holder or Holders for so long as such Holder or Holders holds Registrable Securities; provided, that the Company shall not be obligated to cooperate in an Underwritten Offering to be effected by means of a Block Sale if notice of such Underwritten Offering has not been delivered to the Company at least five Business Days prior to the intended launch of such Block Sale.

2.1.4 Selection of Underwriters. At the request of a majority of the Holders, the offering of Registrable Securities pursuant to a Shelf Takedown, shall be in the form of a "firm commitment" Underwritten Offering. In the case of an Underwritten Offering, a majority of such Holders shall select the investment banking firm or firms to manage the Underwritten Offering; provided, that such selection shall be subject to the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. No Holder may participate in any such Underwritten Offering unless such Holder (x) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements described above and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder's representations and warranties in connection with any such registration shall be substantially consistent in substance and scope with those that are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder's Registrable Securities pursuant to such Underwritten Offering.

2.1.5 Priority on Shelf Takedowns. No securities to be sold for the account of any Person (including the Company) other than any Existing Registration Rights Holders shall be included in a Shelf Takedown unless the managing underwriter or underwriters shall advise that the inclusion of such securities will not adversely affect the price or success of the offering (an "Adverse Effect"). Furthermore, if the managing underwriter or underwriters shall advise that, even after exclusion of all securities of other Persons pursuant to the immediately preceding sentence, the amount of securities proposed to be included in such Shelf Takedown by the Existing Registration Rights Holders is sufficiently large to cause an Adverse Effect, the number of securities to be included in such Shelf Takedown shall equal the number of shares that can be sold in such offering without an Adverse Effect, allocated as follows: (i) first, the securities requested to be included in such offering by the Existing Registration Rights Holders and (ii) second, the Registrable Securities requested to be included in such offering by the Holders (and such shares shall be allocated *pro rata* among the Holders on the basis of the number of Registrable Securities requested to be included in such registration by each such Holder).

2.1.6 Deferral of Filing. If the filing, initial effectiveness or continued use of a Registration Statement, including a Shelf Registration Statement, filed hereunder would require the Company to make a public disclosure of material non-public information, which disclosure in the good-faith judgment of the Company based on the advice of counsel (i) would be required to be made in any registration statement so that such registration statement would not be materially misleading, (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement or (iii) would reasonably be expected to adversely affect in any material respect the Company or its business or the Company's ability to effect a *bona fide* material proposed acquisition, disposition, financing, reorganization, recapitalization or similar transaction, then the Company may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement; provided that the Company shall not be permitted to do so (x) more than once in any six-month period or (y) for any single period of time in excess of 90 days, or for periods exceeding, in the aggregate, 90 days during any 12-month period. In the event that the Company exercises its rights under the preceding sentence, the Holders agree to suspend, promptly upon receipt of the notice referred to above, the use of any prospectus relating to such registration in connection with any sale or offer to sell Registrable Securities. In order to defer the filing of a registration statement pursuant to this Section 2.1.6, the Company shall promptly (but in any event within 10 days), upon determining to seek such deferral, deliver to each Requesting Holder a certificate signed by an executive officer of the Company stating that the Company is deferring such filing pursuant to this Section 2.1.6 and a statement of the reason for such deferral and an approximation of the anticipated delay.

2.1.7 Form S-3. The Company shall use its reasonable best efforts to cause the Shelf Registration Statement to be registered on Form S-3 (or any successor form), and if the Company is not then eligible under the Securities Act to use Form S-3, such Shelf Registration Statement shall be registered on the form for which the Company then qualifies.

2.2 Demand Registration.

2.2.1 Request for Registration.

(a) If the Company is unable to file, cause to become effective or maintain the effectiveness of a Shelf Registration Statement as required under Section 2.1, or at any time after the issuance of any Additional Warrant Securities, the Holder shall have the right to require the Company to, pursuant to the terms of this Agreement, register under and in accordance with the provisions of the Securities Act all or part of its or their Registrable Securities (a "Demand Registration"), by delivering to the Company written notice stating that such right is being exercised, naming, if applicable, the Holders whose Registrable Securities are to be included in such registration (collectively, the "Demanding Shareholders"), specifying the number of each such Demanding Shareholder's Registrable Securities to be included in such registration and, subject to Section 2.2.3 hereof, describing the intended method of distribution thereof (a "Demand Request").

(b) Subject to this Section 2.2.1 and Section 2.2.5, the Company shall file a registration statement in respect of a Demand Registration as soon as reasonably practicable and, in any event, within 30 days after receiving a Demand Request (the "Required Filing Date") and shall use reasonable best efforts to cause the same to be declared effective by the SEC as promptly as reasonably practicable after such filing; provided, however, that the Company shall not be obligated to effect:

(i) a Demand Registration pursuant to Section 2.2.1(a) within 90 days after the effective date of a previous Demand Registration or any previous registration statement in which the Holder or Holders of Registrable Securities was given piggyback rights pursuant to Section 2.3 in which there was no reduction in the number of Registrable Securities to be included, and in each case in which the sale of Registered Securities was consummated; and

(ii) any Demand Registration if a Shelf Registration Statement is then effective, and such Shelf Registration Statement may be utilized by the Holder or Holders of Registrable Securities for the resale of Registrable Securities, including through an Underwritten Offering, without a requirement under the SEC's rules and regulations for a post-effective amendment thereto.

Notwithstanding the foregoing, the Company shall not be obligated to effect, in total, more than four Demand Registrations (less the number of any Shelf Takedowns constituting an Underwritten Offering), which may consist of (a) no more than three Demand Registrations where the plan of distribution contemplates a Marketed Underwritten Offering, less the number of any Shelf Takedowns constituting a Marketed Underwritten Offering and (b) no more than two Demand Registrations (less the number of any Shelf Takedowns constituting an Underwritten Offering) during any 12-month period.

(c) Each Holder requesting a Demand Registration agrees to complete and execute all questionnaires and other documents reasonably required by the Company in order to prepare and file any Shelf Registration Statement.

2.2.2 Selection of Underwriters. At the request of a majority of the Requesting Holders, the offering of Registrable Securities pursuant to a Demand Registration, shall be in the form of a "firm commitment" Underwritten Offering. In the case of an Underwritten Offering, a majority of the Requesting Holders shall select the investment banking firm or firms to manage the Underwritten Offering; provided, that such selection shall be subject to the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. No Holder may participate in any such Underwritten Offering unless such Holder (x) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements described above and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder's representations and warranties in connection with any such registration shall be substantially consistent in substance and scope with those that are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder's Registrable Securities pursuant to such Underwritten Offering.

2.2.3 Rights of Nonrequesting Holders. Upon receipt of any Demand Request, the Company shall promptly (but in any event within 10 days) give written notice of such proposed Demand Registration to all other Holders (if any), who shall have the right, exercisable by written notice to the Company within 15 days of their receipt of the Company's notice, to elect to include in such Demand Registration such portion of their Registrable Securities as they may request. All Holders requesting to have their Registrable Securities included in a Demand Registration in accordance with the preceding sentence shall be deemed to be "Requesting Holders" for purposes of this Section 2.2.

2.2.4 Priority on Demand Registrations. No securities to be sold for the account of any Person (including the Company) other than any Requesting Holder or any Existing Registration Rights Holders shall be included in a Demand Registration unless the managing underwriter or underwriters shall advise such Requesting Holder (or, in the case of a Demand Registration that is not an Underwritten Offering, such Requesting Holder determines in good faith after considering the relevant facts and circumstances at the relevant time) that the inclusion of such securities will not cause an Adverse Effect. Furthermore, if the managing underwriter or underwriters shall advise the Requesting Holder (or such Requesting Holder determines, as applicable, in good faith after considering the relevant facts and circumstances at the relevant time) that, even after exclusion of all securities of other Persons pursuant to the immediately preceding sentence, the amount of securities proposed to be included in such Demand Registration by the Requesting Holders and the Existing Registration Rights Holders is sufficiently large to cause an Adverse Effect, the number of securities to be included in such Demand Registration shall equal the number of shares which the Requesting Holder is so advised can be sold in such offering without an Adverse Effect, allocated as follows: (i) first, the securities requested to be included in such offering by the Existing Registration Rights Holders and (ii) second, the Registrable Securities requested to be included in such offering by the Requesting Holders (and such shares shall be allocated *pro rata* among the Requesting Holders on the basis of the number of Registrable Securities requested to be included in such registration by each such Requesting Holder).

2.2.5 Deferral of Filing. With respect to any Demand Registration, the obligation of the Company to file, accelerate the initial effectiveness or continue the effectiveness of a regisstration statement shall be limited to the extent set forth in Section 2.1.6. If the Company so postpones the filing of a prospectus or the effectiveness of a registration statement with respect to a Demand Registration for the reasons set forth in Section 2.1.6, the Holders shall be entitled to withdraw such request and, if such request is withdrawn, such registration request shall not count for the purposes of the limitations set forth in Section 2.2. The Company shall promptly give the Holders requesting registration thereof pursuant to this Section 2 written notice of any postponement made in accordance with the preceding sentence. A deferral of the filing of a registration statement pursuant to this Section 2.2.5 shall be lifted, and the requested registration statement shall be filed forthwith. In order to defer the filing of a registration statement pursuant to this Section 2.2.5, the Company shall promptly (but in any event within 10 days), upon determining to seek such deferral, deliver to each Requesting Holder a certificate signed by an executive officer of the Company stating that the Company is deferring such filing pursuant to this Section 2.2.5 and a statement of the reason for such deferral and an approximation of the anticipated delay. Within 20 days after receiving such certificate, the holders of a majority of the Registrable Securities held by the Requesting Holders and for which registration was previously requested may withdraw such Demand Request by giving notice to the Company; if withdrawn, the Demand Request shall be deemed not to have been made for all purposes of this Agreement.

2.2.6 Form S-3. The Company shall use its reasonable best efforts to cause Demand Registrations to be registered on Form S-3 (or any successor form), and if the Company is not then eligible under the Securities Act to use Form S-3, Demand Registrations shall be registered on the form for which the Company then qualifies.

2.3 Piggyback Registrations.

2.3.1 Right to Piggyback. Each time the Company proposes to register any of its equity securities (other than pursuant to an Excluded Registration) under the Securities Act for sale to the public (whether for the account of the Company or the account of any securityholder of the Company) (a "Piggyback Registration"), the Company shall give prompt written notice to each Holder of Registrable Securities (which notice shall be given not less than 10 days prior to the anticipated filing date of the Company's registration statement), which notice shall offer each such Holder the opportunity to include any or all of such Holder's Registrable Securities in such registration statement on the same terms and conditions as the same class of securities otherwise being sold pursuant to such registration statement, subject to the limitations contained in Section 2.3.2 hereof. Each Holder who desires to have such Holder's Registrable Securities included in such registration statement shall so advise the Company in writing (stating the number of shares desired to be registered) within five days after the date of such notice from the Company. Any Holder shall have the right to withdraw such Holder's request for inclusion of such Holder's Registrable Securities in any registration statement pursuant to this Section 2.3.1 by giving written notice to the Company of such withdrawal on or before the fifth day prior to the planned effective date of such Piggyback Registration. Subject to Section 2.3.2 below, the Company shall include in such registration statement all such Registrable Securities so requested to be included therein; provided, however, that the Company may at any time, in its sole discretion and without the consent of the Holders, delay, withdraw or cease proceeding with any such registration if it shall at the same time withdraw or cease proceeding with the registration of all other equity securities originally proposed to be registered and will have no liability to the Holder in connection with such termination or withdrawal, except for the obligation to pay any registration expenses pursuant to Section 2.7.2.

2.3.2 Priority on Piggyback Registrations.

(a) If a Piggyback Registration is an Underwritten Offering and was initiated by the Company, and if the managing underwriter (or in the case of a Piggyback Registration that is not an Underwritten Offering, the Company, in good faith) advises the Company that the inclusion of Registrable Securities requested to be included in the Registration Statement would cause an Adverse Effect, the Company shall include in such registration statement (i) first, the securities of the Existing Registration Rights Holders requested to be included in such registration, (ii) second, the securities the Company proposes to sell, (iii) third, the Registrable Securities of any Holder requested to be included in such registration, *pro rata* among the Holders of such Registrable Securities on the basis of the number of Registrable Securities owned by each such Holder and (iv) fourth, any other securities requested to be included in such registration; provided, that if such other securities have been requested to be included pursuant to a registration rights agreement, then such securities would be included as set forth in (iii) above as if they were Registrable Securities of a Holder. If, as a result of the provisions of this Section 2.3.2(a), any Holder shall not be entitled to include all Registrable Securities in a registration that such Holder has requested to be so included, such Holder may withdraw such Holder's request to include Registrable Securities in such registration statement on or before the fifth day prior to the planned effective date of such Piggyback Registration.

(b) If a Piggyback Registration is an Underwritten Offering and was initiated by a securityholder of the Company, and if the managing underwriter (or in the case of a Piggyback Registration that is not an Underwritten Offering, the Company, in good faith) advises the Company that the inclusion of Registrable Securities requested to be included in the Registration Statement would cause an Adverse Effect, the Company shall include in such registration statement (i) first, the securities of the Existing Registration Rights Holders requested to be included in such registration, (ii) second, the securities requested to be included therein by the securityholders requesting such registration, (iii) third, the Registrable Securities requested to be included in such registration by any Holder, *pro rata* among the Holders on the basis of the number of Registrable Securities owned by each such Holder and (iv) fourth, any other securities requested to be included in such registration (including securities to be sold for the account of the Company). If, as a result of the provisions of this Section 2.3.2(b), any Holder shall not be entitled to include all Registrable Securities in a registration that such Holder has requested to be so included, such Holder may withdraw such Holder's request to include Registrable Securities in such registration statement on or before the fifth day prior to the planned effective date of such Piggyback Registration.

(c) No Holder may participate in any registration statement in respect of a Piggyback Registration hereunder unless such Holder (x) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Company, in the case of an Underwritten Offering and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents, each in customary form, reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder's representations and warranties in connection with any such registration shall be of a substance and scope as are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder's Registrable Securities pursuant to such registration.

2.4 Holdback Agreements.

(a) In the case of any Underwritten Offering by any Holder hereunder, the Company shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the seven days prior to and during the 90-day period beginning on the effective date of any registration statement filed in connection with such Underwritten Offering or, in the case of an Underwritten Offering pursuant to a Shelf Takedown, the filing of any prospectus relating to the offer and sale of Registrable Securities (or, in either case, such shorter period that any lock-up period with respect to such Underwritten Offering is in effect), except (i) pursuant to any registrations on Form S-4 or Form S-8 or any successor form, (ii) pursuant to any registrations filed in connection with an exchange offer or any employee benefit or dividend reinvestment plan or (iii) unless the underwriters managing any such Underwritten Offering otherwise agree. The underwriters in connection with such Underwritten Offering are intended third-party beneficiaries of this Section 2.4(a) and shall have the right and power to enforce the provisions hereof as though they were a party thereto.

(b) Each Holder agrees, in the event of an Underwritten Offering by the Company (whether for the account of the Company or otherwise), not to offer, sell, contract to sell or otherwise dispose of any Registrable Securities, or any securities convertible into or exchangeable or exercisable for such securities, including any sale pursuant to Rule 144 (except as part of such Underwritten Offering), during the seven days prior to, and during the 90-day period beginning on, the effective date of the registration statement for such Underwritten Offering (or, in the case of an offering pursuant to an effective shelf registration statement pursuant to Rule 415, the pricing date for such Underwritten Offering) (or, in either case, such shorter period that any lock-up period with respect to such Underwritten Offering is in effect). The underwriters in connection with such Underwritten Offering are intended third-party beneficiaries of this Section 2.4(b) and shall have the right and power to enforce the provisions hereof as though they were a party thereto.

2.5 Registration Procedures. If and whenever any Holder has requested that any Registrable Securities be registered pursuant to this Agreement, the Company will use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as promptly as is reasonably practicable, and pursuant thereto the Company will as expeditiously as possible:

(i) prepare and file with the SEC, pursuant to Section 2.2.1(b) with respect to any Demand Registration, a registration statement on any appropriate form under the Securities Act with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective; provided, that as far in advance as practicable before filing such registration statement or any amendment thereto, the Company will furnish to the selling Holders copies of reasonably complete drafts of all such documents prepared to be filed (including exhibits), and any such Holder shall have the opportunity to review and reasonably object, as promptly as is reasonably practicable, to any information contained therein and the Company will make corrections reasonably requested by such Holder with respect to such information prior to filing any such registration statement or amendment; provided, that the Company shall not have any obligation to modify any information if the Company reasonably believes in good faith that so doing would cause (i) the registration statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the prospectus to contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(ii) except in the case of a Shelf Registration Statement, prepare and file with the SEC such amendments, post-effective amendments, and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than 180 days (or such lesser period as is necessary for the underwriters in an underwritten offering to sell unsold allotments) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(iii) in the case of a Shelf Registration Statement, prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities subject thereto for a period ending on the earlier of (x) 24 months after the effective date of such registration statement, (y) the date when all restrictive legends on the Registrable Securities have been removed or (z) the date on which all the Registrable Securities held by any Holder cease to be Registrable Securities;

(iv) furnish to each seller of Registrable Securities and the underwriters of any Underwritten Offering, such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus), any prospectus supplement, any documents incorporated by reference therein and such other documents as such seller or underwriters may reasonably request for purposes of permitting such seller's or underwriters' review in order to facilitate the disposition of the Registrable Securities owned by such seller or the sale of such securities by such underwriters (it being understood that, subject to Section 2.6 and the requirements of the Securities Act and applicable state securities laws, the Company consents to the use of the prospectus and any amendment or supplement thereto by each seller and the underwriters in connection with any Underwritten Offering covered by the registration statement of which such prospectus, amendment or supplement is a part);

(v) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions in the United States as the managing underwriter reasonably requests (or, in the event the registration statement does not relate to an Underwritten Offering, as the holders of a majority of such Registrable Securities may reasonably request); use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the period in which such registration statement is required to be kept effective and to take any other action that may be reasonably necessary or advisable to enable each seller to consummate the disposition of the Registrable Securities owned by such seller in such jurisdictions (provided, however, that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (B) subject itself to taxation in any jurisdiction wherein it is not so subject or (C) take any action that would subject it to general service of process in any jurisdiction where it is not then so subject);

(vi) promptly notify each seller and each underwriter of any Underwritten Offering and (if requested by any such Person) confirm such notice in writing (A) when a prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to a registration statement or any post-effective amendment, when the same has become effective, (B) of the issuance by any state securities or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or "blue sky" laws or the initiation of any proceedings for that purpose, and (C) of the happening of any event which makes any material statement made in a registration statement or related prospectus untrue or which requires the making of any material changes in such registration statement, prospectus or documents so that they will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and, as promptly as practicable thereafter, prepare and file with the SEC and furnish a supplement or amendment to such prospectus so that, as thereafter deliverable to the purchasers of such Registrable Securities, such prospectus will not contain any untrue statement of a material fact or omit a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(vii) permit any selling Holder, which in such Holder's judgment, based on the advice of counsel, might reasonably be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement, to the extent necessary, and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such Holder and its counsel should be included; provided, that the Company shall not have any obligation to include such information if the Company reasonably believes in good faith that so doing would cause (i) the registration statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the prospectus to contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(viii) in the case of any Underwritten Offering, make reasonably available members of management of the Company, as selected by the Holders of a majority of the Registrable Securities included in such registration, for assistance in the selling effort relating to the Registrable Securities covered by such registration, including, but not limited to, the participation of such members of the Company's management in road show presentations as the underwriters reasonably request; provided, that the underwriter shall take into account the reasonable business requirements of the Company in determining the scheduling and duration of any road show;

(ix) otherwise use its reasonable best efforts to comply with the Securities Act, the Exchange Act and all other applicable rules and regulations of the SEC, and make generally available to the Company's securityholders an earnings statement satisfying the provisions of Section 11(a) of the Securities Act no later than 45 days after the end of the 12-month period beginning with the first day of the Company's first fiscal quarter commencing after the effective date of a registration statement, which earnings statement shall cover said 12-month period, and which requirement will be deemed to be satisfied if the Company timely files complete and accurate information on Forms 10-Q, 10-K and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

(x) if requested by the managing underwriter of any Underwritten Offering or any seller, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or such seller reasonably requests to be included therein, including, without limitation, with respect to the Registrable Securities being sold by such seller, the purchase price being paid therefor by the underwriters and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering, and promptly make all required filings of such prospectus supplement or post-effective amendment;

(xi) cooperate with the seller and the managing underwriter of any Underwritten Offering to facilitate the timely preparation and delivery of certificates (which shall not bear any restrictive legends unless required under applicable law) representing securities sold under any registration statement, and enable such securities to be in such denominations and registered in such names as the managing underwriter or such sellers may request as promptly as reasonably practicable prior to any sale of Registrable Securities and keep available and make available to the Company's transfer agent prior to the effectiveness of such registration statement a supply of such certificates;

(xii) in the case of an Underwritten Offering, upon reasonable notice and during normal business hours, make reasonably available for inspection by any seller, any underwriter participating in any disposition pursuant to any registration statement, and any attorney, accountant or other agent or representative retained by any such seller or underwriter (collectively, the "Inspectors"), relevant financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply information reasonably requested by any such Inspector in connection with such registration statement; provided, however, that, unless the disclosure of such Records is necessary to avoid or correct a misstatement or omission in the registration statement or the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, the Company shall not be required to provide any information under this subparagraph (xii) if (A) the Company believes, after consultation with counsel for the Company, that either (1) the requested Records constitute confidential commercial and/or supervisory information within the meaning of 5 U.S.C. § 552(b)(4) and (8), respectively, or (2) to do so would cause the Company to forfeit an attorney-client privilege that was applicable to such information, or (B) if the Company has requested and been granted from the SEC confidential treatment of such information contained in any filing with the SEC or documents provided supplementally or otherwise; provided, further, however, that any Records and other information provided under this Section 2.5(xii) that is not generally publicly available shall be subject to such confidential treatment as is customary for underwriters' due diligence reviews;

(xiii) in the case of any Underwritten Offering, use its reasonable best efforts to furnish to each seller and the underwriter a signed counterpart of (A) an opinion or opinions of counsel to the Company (and/or internal counsel if acceptable to the managing underwriters and the sellers), and (B) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the type customarily covered by opinions or comfort letters, as the case may be, as the seller or managing underwriter reasonably requests;

(xiv) use its reasonable best efforts to cause the Registrable Securities covered by any registration statement to be listed on the primary national securities exchange, if any, on which similar securities issued by the Company are then listed;

(xv) provide a transfer agent and registrar for all Registrable Securities registered hereunder;

(xvi) reasonably cooperate with each seller and each underwriter of any Underwritten Offering participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the Financial Industry Regulatory Authority, Inc. ("FINRA");

(xvii) during the period when the prospectus is required to be delivered under the Securities Act, promptly file all documents required to be filed with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act;

(xviii) notify each seller of Registrable Securities promptly of any request by the SEC for the amending or supplementing of any registration statement or prospectus relating to such seller's Registrable Securities;

(xix) enter into such agreements (including underwriting agreements) as are customary in connection with an Underwritten Offering; and

(xx) advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of a registration statement relating to the such seller's Registrable Securities or the initiation or threatening of any proceeding for such purpose and promptly use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal as soon as practicable if such stop order should be issued.

The Company may, from time to time, require any Holder of Registrable Securities as to which any registration is being effected to furnish to the Company in writing such information as the Company reasonably determines, based on the advice of counsel, is required or advised to be included in connection with such registration regarding such Holder and the distribution of such Registrable Securities, and the Company may exclude from such registration the Registrable Securities of such Holder if such Holder fails to furnish such information within 15 days of receiving such request.

2.6 Suspension of Dispositions. Each Holder agrees by acquisition of any Registrable Securities that, upon receipt of any notice (a "Suspension Notice") from the Company of the happening of any event of the kind described in Section 2.5(vi)(C), such Holder will forthwith discontinue disposition of Registrable Securities until such Holder's receipt of the copies of the supplemented or amended prospectus, or until it is advised in writing (the "Advice") by the Company that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings which are incorporated by reference in the prospectus, and, if so directed by the Company, such Holder will deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the time period regarding the effectiveness of registration statements set forth in Section 2.5(ii) and Section 2.5(iii) hereof shall be extended by the number of days during the period from and including the date of the giving of the Suspension Notice to and including the date when each seller of Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus or the Advice. The Company shall use its reasonable best efforts and take such actions as are reasonably necessary to render the Advice as promptly as reasonably practicable. In any event, the Company shall not be entitled to deliver more than two Suspension Notices in any one year.

2.7 Registration Expenses.

2.7.1 Demand Registrations. The Company shall be responsible for all reasonable and documented, out-of-pocket fees and expenses incident to any Demand Registration including, without limitation, the Company's performance of or compliance with this Article 2, all registration and filing fees, all fees and expenses associated with filings required to be made with FINRA (including, if applicable, the reasonable fees and expenses of any "qualified independent underwriter" as such term is defined in FINRA Rule 5121, and of its counsel), as may be required by the rules and regulations of FINRA, fees and expenses of compliance with securities or "blue sky" laws (including reasonable fees and disbursements of counsel in connection with "blue sky" qualifications of the Registrable Securities), rating agency fees, printing expenses (including expenses of printing certificates for the Registrable Securities and of printing prospectuses if the printing of prospectuses is requested by any Holder of Registrable Securities), messenger and delivery expenses, the fees and expenses incurred in connection with any listing or quotation of the Registrable Securities, and the fees and expenses of counsel for the Company and its independent certified public accountants (including the expenses of any special audit or "comfort letters" required by or incident to such performance). The Holders shall be responsible for (i) any underwriting discounts, commissions, or fees attributable to the sale of the Registrable Securities, on a *pro rata* basis on the basis of the number of shares so sold whether or not any registration statement becomes effective, and (ii) any applicable transfer taxes. The Company shall be responsible for the fees and expenses of one firm of attorneys retained by all of the Holders in the aggregate in connection with the sale of Registrable Securities in a Demand Registration. Notwithstanding the foregoing, the Company shall not be responsible for the fees and expenses of any additional counsel, or any of the accountants, agents or experts retained by the Holders in connection with the sale of Registrable Securities in a Demand Registration. The Company will also be responsible for its internal expenses in any Demand Registration (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties, the expense of any annual audit and the expense of any liability insurance).

2.7.2 Piggyback Registrations. All fees and expenses incident to any Piggyback Registration including, without limitation, the Company's performance of or compliance with this Article 2, all registration and filing fees, all fees and expenses associated with filings required to be made with FINRA (including, if applicable, the reasonable and documented fees and expenses of any "qualified independent underwriter" as such term is defined in FINRA Rule 5121, and of its counsel), as may be required by the rules and regulations of FINRA, fees and expenses of compliance with securities or "blue sky" laws (including reasonable fees and disbursements of counsel in connection with "blue sky" qualifications of the Registrable Securities), rating agency fees, printing expenses (including expenses of printing certificates for the Registrable Securities and of printing prospectuses), messenger and delivery expenses, the fees and expenses incurred in connection with any listing or quotation of the Registrable Securities, fees and expenses of counsel for the Company and its independent certified public accountants (including the expenses of any special audit or "comfort letters" required by or incident to such performance) and the fees and expenses of other persons retained by the Company, will be borne by the Company (unless paid by a securityholder that is not a Holder for whose account the registration is being effected) whether or not any registration statement becomes effective; provided, however, that any underwriting discounts, commissions, or fees attributable to the sale of the Registrable Securities will be borne by the Holders *pro rata* on the basis of the number of shares so sold and the fees and expenses of any counsel, accountants, or other persons retained or employed by any Holder and any applicable transfer taxes will be borne by such Holder.

2.8 Indemnification.

2.8.1 The Company agrees to indemnify and reimburse, to the fullest extent permitted by law, each seller of Registrable Securities, and each of its employees, advisors, agents, representatives, partners, officers, and directors and each Person who controls such seller (within the meaning of the Securities Act) and any agent or investment advisor thereof (collectively, the "Seller Affiliates") (A) against any and all losses, claims, damages, liabilities, and expenses, joint or several (including, without limitation, reasonable attorneys' fees and disbursements except as limited by Section 2.8.3) (collectively, "Losses") based upon, arising out of, related to or resulting from any untrue or alleged untrue statement of a material fact contained in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) against any and all Losses, as incurred, to the extent of the aggregate amount reasonably paid in settlement of any litigation or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission made by the Company in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto; provided, that such settlement is effected with the consent of the Company (such consent not to be unreasonably withheld); and (C) against any Losses as may be reasonably incurred in investigating, preparing, or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission, or such violation of the Securities Act, the Exchange Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder, to the extent that any such expense or cost is not paid under subparagraph (A) or (B) above; provided, that the Company will have no obligation to provide any indemnification or reimbursement hereunder to the extent that any such Losses (or actions or proceedings in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto, in reliance upon and in substantial conformity with information furnished in writing to the Company by such seller or any of its Seller Affiliates (or on such seller's or Seller Affiliate's behalf) for use therein.

2.8.2 In connection with any registration statement in which a seller of Registrable Securities is participating, each such seller will furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the fullest extent permitted by law, each such seller will indemnify and reimburse, to the fullest extent permitted by law, the Company and each of its employees, advisors, agents, representatives, partners, officers and directors and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) and any agent or investment advisor ("Company Indemnified Persons") thereof against any and all Losses resulting from any untrue statement or alleged untrue statement of a material fact contained in the registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission is contained in any information or affidavit so furnished in writing to the Company by such seller or any Seller Affiliates (or on such seller's or Seller Affiliate's behalf) specifically for inclusion in the registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto and the Holders agree to reimburse the Company Indemnified Persons for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such action or claim as such expenses are incurred; provided, that the obligation to indemnify will be several, not joint and several, among such sellers of Registrable Securities, and the liability of each such seller of Registrable Securities will be in proportion and limited to the net amount received by such seller from the sale of Registrable Securities pursuant to such registration statement; provided, however, that such seller of Registrable Securities shall not be liable in any such case to the extent that prior to the filing of any such registration statement or prospectus or amendment thereof or supplement thereto, such seller has furnished in writing to the Company information expressly for use in such registration statement or prospectus or any amendment thereof or supplement thereto which corrected or made not misleading information previously furnished to the Company.

2.8.3 Any Person entitled to indemnification hereunder will (A) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided, that the failure to give such notice shall not limit the rights of such Person) and (B) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the reasonable and documented fees and expenses of such counsel shall be at the expense of such person unless (X) the indemnifying party has agreed to pay such fees or expenses or (Y) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person. If such defense is not assumed by the indemnifying party as permitted hereunder, the indemnifying party will not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). If such defense is assumed by the indemnifying party pursuant to the provisions hereof, such indemnifying party shall not settle or otherwise compromise the applicable claim unless (1) such settlement or compromise contains a full and unconditional release of the indemnified party or (2) the indemnified party otherwise consents in writing. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party, a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the reasonable fees and disbursements of such additional counsel or counsels.

2.8.4 Each party hereto agrees that, if for any reason the indemnification provisions contemplated by Section 2.8.1 or Section 2.8.2 are unavailable to or insufficient to hold harmless an indemnified party in respect of any Losses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such Losses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party in connection with the actions which resulted in the losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 2.8.4 were determined by *pro rata* allocation (even if the Holders or any underwriters or all of them were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 2.8.4. The amount paid or payable by an indemnified party as a result of Losses (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or, except as provided in Section 2.8.3, defending any such action or claim. Notwithstanding the provisions of this Section 2.8.4, no Holder shall be required to contribute an amount greater than the dollar amount by which the net proceeds received by such Holder with respect to the sale of any Registrable Securities exceeds the amount of damages which such Holder has otherwise been required to pay by reason of any and all untrue or alleged untrue statements of material fact or omissions or alleged omissions of material fact made in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto related to such sale of Registrable Securities. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Holders' obligations in this Section 2.8.4 to contribute shall be several in proportion to the amount of Registrable Securities registered by it and not joint.

If indemnification is available under this Section 2.8, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Section 2.8.1 and Section 2.8.2 without regard to the relative fault of said indemnifying party or indemnified party or any other equitable consideration provided for in this Section 2.8.4 subject, in the case of any Holder, to the limited dollar amounts set forth in Section 2.8.2.

2.8.5 The indemnification and contribution provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director, or controlling Person of such indemnified party and will survive the transfer of securities.

2.9 Transfer of Registration Rights. The rights of each Holder under this Agreement may be assigned or transferred to (i) any Affiliate of the Holder or (ii) third-party transferees of the Registrable Securities or Warrants that are not Affiliates of one another and that each acquire, or agree to acquire, an amount of Registrable Securities (or Warrants exercisable therefor), and, in the case of both (i) and (ii), such Affiliate of the Holder or transferee enters into a Joinder Agreement, substantially in the form of Exhibit A hereto (collectively, a "Permitted Transferee").

ARTICLE 3

3.1 Rule 144. The Company will file the reports required to be filed by it under the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, will, upon the request of the Holders, make publicly available other information so long as necessary to permit sales of Registrable Securities pursuant to Rule 144) and will take such further action as the Holders may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemption provided by Rule 144 or any similar rule or regulation hereafter adopted by the SEC. Upon the reasonable request of any Holder, the Company will deliver to such parties a written statement as to whether it has complied with such requirements. If any Initial Holder seeks to sell Company Common Stock under Rule 144, any legal opinion reasonably required by the transfer agent to effect such sale shall be provided by, or at the expense of, the Company.

3.2 Preservation of Rights. The Company will not (i) grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder or (ii) enter into any agreement, take any action or permit any change to occur, with respect to its securities that violates or subordinates the rights expressly granted to the Holders; provided, however, that the Company may take any such actions as are necessary to memorialize or effect any existing arrangements or agreements for the grant of registrations rights to the Existing Registration Rights Holders.

ARTICLE 4
TERMINATION

4.1 Termination. This Agreement shall terminate and be of no further force and effect at the earliest to occur of (i) its termination by the written agreement of all parties or their respective successors in interest, (ii) with respect to any Holder, the date on which all Company Common Stock held by such Holder have ceased to be Registrable Securities, (iii) with respect to the Company, the date on which all Company Common Stock has ceased to be Registrable Securities and (iv) the dissolution, liquidation or winding up of the Company.

ARTICLE 5
MISCELLANEOUS

5.1 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 5.1):

If to the Company:

Workhorse Group Inc.
100 Commerce Drive
Loveland, Ohio 45140
Attention: Paul Gaitan, CFO
Email: paul.gaitan@workhorse.com

with a copy to (which shall not constitute notice):

Fleming PLLC
30 Wall Street, 8th Floor
New York, New York 10005
Attention: Stephen M. Fleming
Email: smf@flemingpllc.com

and

Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza, 39th Floor
New York, New York 10112
Attention: Stephen A. Cohen
Email: scohen@sheppardmullin.com

If to any Initial Holder, to such Initial Holder at:

One Bryant Park, 38th Floor
New York, NY 10036
Attention: Robert Comizio; Jordan Bryk
Telephone: 212-500-3148; 212-500-3152
Facsimile: 212-205-8739
Email: rcomizio@marathonfund.com; jbryk@marathonfund.com

with a copy to (which shall not constitute notice):

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
Attention: Peter Schwartz
Email: pschwartz@cov.com

Any notice or communication hereunder shall be deemed to have been given or made as of the date so delivered if personally delivered and five calendar days after mailing if sent by registered or certified mail (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee). If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

5.2 Authority. Each of the parties hereto represents to the other that (i) it has the corporate power and authority to execute, deliver and perform this Agreement, (ii) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate action and no such further action is required, (iii) it has duly and validly executed and delivered this Agreement and (iv) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

5.3 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York irrespective of the choice of laws principles of the State of New York. Each party hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York sitting in the County of New York or the United States District Court for the Southern District of New York and the appellate courts having jurisdiction of appeals in such courts to resolve any dispute, controversy or claim arising out of, or relating to, the transactions contemplated by this Agreement, or the validity, interpretation, breach or termination of any provision of this Agreement.

5.4 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.4.

5.5 Successors and Assigns. The rights of a Holder may only be assigned in accordance with Section 2.9 to a Permitted Transferee. A Permitted Transferee to whom rights are transferred pursuant to Section 2.9 may not again transfer those rights to any other Permitted Transferee, other than as provided in Section 2.9. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and any and all successors to the Company and each Holder and their respective assigns.

5.6 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement; provided, however, the parties hereto hereby acknowledge that the Persons set forth in Section 2.4(b) are express third-party beneficiaries in accordance with Section 2.4(b).

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

5.8 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

5.9 Waivers. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term, but such waiver shall be effective only if it is in a writing signed by the party against whom the existence of such waiver is asserted. Unless otherwise expressly provided in this Agreement, no delay or omission on the part of any party in exercising any right or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right or privilege under this Agreement operate as a waiver of any other right or privilege under this Agreement nor shall any single or partial exercise of any right or privilege preclude any other or further exercise thereof or the exercise of any other right or privilege under this Agreement. No failure by either party to take any action or assert any right or privilege hereunder shall be deemed to be a waiver of such right or privilege in the event of the continuation or repetition of the circumstances giving rise to such right unless expressly waived in writing by the party against whom the existence of such waiver is asserted.

5.10 Entire Agreement. This Agreement, together with the Warrants and any related exhibits and schedules thereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

5.11 Amendment. This Agreement may not be amended or modified in any respect except by a written agreement signed by the Company and the Holders of a majority of the then-outstanding Registrable Securities.

5.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when each party hereto shall have received counterparts hereof signed by each of the other parties hereto. If any signature is delivered by facsimile transmission or by PDF, such signature shall create a valid and binding obligation of the party executing (or on whose behalf the signature is executed) with the same force and effect as if such facsimile or PDF signature were an original thereof.

5.13 Further Assurances. Each of the parties to this Agreement shall, and shall cause their Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and to give effect to the transactions contemplated hereby.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

WORKHORSE GROUP INC.

By: /s/ Stephen S. Burns
Name: Stephen S. Burns
Title: CEO

Marathon Structured Product Strategies Fund, LP
Marathon Blue Grass Credit Fund, LP
Marathon Centre Street Partnership, L.P.
TRS Credit Fund, LP

By: Marathon Asset Management LP, the investment advisor to each of the entities listed above

By: /s/ Louis Hanover
Name: Louis Hanover
Title: CIO, Co-Managing Partner

Exhibit A

JOINDER AGREEMENT

Reference is made to the Registration Rights Agreement, dated as of December 31, 2018 (as amended from time to time, the "Registration Rights Agreement"), by and among Workhorse Group Inc., a Nevada corporation, Marathon Structured Product Strategies Fund, LP, a Delaware limited partnership, Marathon Blue Grass Credit Fund, LP, a Delaware limited partnership, Marathon Centre Street Partnership, L.P., a Delaware limited partnership, TRS Credit Fund, LP, a Delaware limited partnership, and the other parties thereto, if any. The undersigned agrees, by execution hereof, to become a party to, and to be subject to the rights and obligations under the Registration Rights Agreement.

[NAME]

By: _____
Name:
Title:

Date:

Address: