

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

FORM 8-K

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

Date of Report (Date of earliest event reported): July 16, 2020

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

Nevada
(State or Other Jurisdiction of Incorporation)

000-53704
(Commission File Number)

26-1394771
(IRS Employer Identification Number)

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

(513) 360-4704
(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 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	WKHS	The Nasdaq Capital Market

Item 1.01. Entry into a Material Definitive Agreement.

On June 30, 2020, Workhorse Group Inc. (the “Company”) entered into a securities purchase agreement (the “Purchase Agreement”), with HT Investments MA LLC (the “Investor”) pursuant to which the Company agreed to issue and sell, in a registered public offering by the Company directly to the Investor (the “Registered Direct Offering”), a senior secured convertible note for the principal amount of \$70,000,000 (the “Note”) that is convertible into shares of the Company’s Common Stock, par value of \$0.001 per share (“Common Stock”).

The closing of the Registered Direct Offering took place on July 16, 2020. The representations, warranties and covenants contained in the Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement and may be subject to limitations agreed upon by the contracting parties.

The Company did not pay underwriting discounts or commissions. However, after discounts the proceeds before expenses were \$69,000,000. The Company expects to use the net proceeds from this offering for working capital to finance the production of its trucks and for general corporate purposes.

The Note is a senior secured obligation of the Company, ranks pari passu with the Company’s outstanding senior secured note and senior to all unsecured debt of the Company, and will be due on July 1, 2023. The Note bears interest at 4.50% per annum, paid quarterly commencing October 1, 2020 in cash or, subject to certain conditions, freely saleable shares of Common Stock, at the Company’s option. Any shares issued for such interest payment will be valued at the Market Stock Payment Price (as defined in the Purchase Agreement). The conversion price is \$19.00, subject to customary anti-dilution adjustments and adjustments for certain corporate events. If the Company elects to repay principal on the Note for any reason, it will be required to pay 110% of the amount of principal repaid (the “Repayment Price”). On the first day of each month beginning after October 1, 2020 (an “Early Redemption Date”), the Investor may require us to redeem up to \$3.5 million principal amount of the Note at the Repayment Price (each a “Redemption Payment”). Any unused Redemption Payment capacity may be used by the Investor on any future Early Redemption Date. The Company can elect to pay any Redemption Payment in cash or, subject to certain conditions, in freely saleable shares of Common Stock, or a combination thereof. Any shares issued for such Redemption Payment will be valued at the Market Stock Payment Price. The Company may redeem all (or any portion in excess of \$8,000,000) of the Note at any time at the greater of (a) 115% of the conversion value, calculated based on the highest VWAP during the period beginning 30 days prior to such redemption and ending the day prior to the redemption date, or (b) 105% of the Repayment Price, in each case plus accrued and unpaid interest. Any redemption amount above the Repayment Price can, subject to certain conditions, be paid in shares valued at the Market Stock Payment Price at the Company’s option.

The Registered Direct Offering was made pursuant to the Company’s shelf registration statement on Form S-3 (Registration No. 333-237920), which was declared effective by the Securities and Exchange Commission on May 8, 2020, including the prospectus contained therein, as well as a prospectus supplement filed with the SEC in connection with the Registered Direct Offering.

Pursuant to the credit agreement entered into between the Company and Marathon Asset Management, LP, on behalf of certain entities it manages (the “Marathon Lenders”), dated December 31, 2018 (the “Marathon Agreement”), until December 31, 2020, the Company must issue additional warrants to the Marathon Lenders when the Company makes certain equity issuances, in amount equal to approximately 1.88% of the Company’s fully diluted equity interests, and on substantially the same terms and conditions of the initial warrants issued to the Marathon Lenders, except that (i) the expiration date shall be five years from the issuance date, (ii) the exercise price shall be equal to 110% of the issuance price per share in the relevant issuance, and (iii) the holder shall be entitled to exercise the warrant on a cashless basis at any time. Accordingly, the Company issued the Marathon Lenders warrants to acquire an aggregate of 409,356 shares of Common Stock exercisable at a price of \$20.900 per share (the “Additional Warrants”). The Marathon Agreement is described more fully in the Company’s Current Report on Form 8-K filed with the SEC on January 2, 2019. The Company’s obligations under the Marathon Agreement were paid off on December 9, 2019, which is described more fully in the Company’s Current Report on Form 8-K filed with the SEC on December 9, 2019.

The description of the terms and conditions of the Purchase Agreement does not purport to be complete and is qualified in its entirety by the full text of the Purchase Agreement, which is an exhibit to this Form 8-K.

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

The Additional Warrants and the shares of Common Stock issuable upon exercise of the Additional Warrants (the “Underlying Shares”) have not been registered under the Securities Act of 1933, as amended (the “Securities Act”) and were issued and sold in reliance upon the exemption from registration contained in Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder. The Marathon Lenders acquired the securities for investment and acknowledged that each is an accredited investor as defined by Rule 501 under the Securities Act. The Additional Warrants may not be offered or sold in the absence of an effective registration statement or exemption from the registration requirements under the Securities Act.

Certain statements in this Current Report on Form 8-K are forward-looking statements that involve a number of risks and uncertainties. Such forward-looking statements include statements about the expected settlement of the sale and purchase of securities described herein and the Company's receipt of net proceeds therefrom. For such statements, the Company claims the protection of the Private Securities Litigation Reform Act of 1995. Actual events or results may differ materially from the Company's expectations. Factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to, the Company's ability to satisfy applicable closing conditions under the Underwriting Agreement. Additional factors that could cause actual results to differ materially from those stated or implied by the Company's forward-looking statements are disclosed in the Prospectus Supplement and accompanying prospectus and the Company's reports filed with the Securities and Exchange Commission.

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

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

Item 3.02 Unregistered Sales of Equity Securities.

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

Item 9.01. Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Form of Purchase Agreement (1)
10.2	Form of 4.50% Senior Secured Convertible Note
10.3	Form of Security Agreement
104	Cover page from this Current Report on Form 8-K, formatted as Inline XBRL

(1) Incorporated by reference to the Form 8-K Current Report filed with the Securities and Exchange Commission on June 30, 2020.

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: July 20, 2020

By: /s/ Steve Schrader
Name: Steve Schrader
Title: Chief Financial Officer

Workhorse Group Inc.**Senior Secured Convertible Note due 2023**

Certificate No. A-1

Workhorse Group Inc., a Nevada corporation (the “Company”), for value received, promises to pay to HT Investments MA, LLC (the “**Initial Holder**”), or its registered assigns, one hundred and ten percent (110%) of the principal sum of seventy million dollars (\$70,000,000) (such principal sum, the “**Principal Amount**,” and 110% of such Principal Amount, the “**Maturity Principal Amount**”) on July 1, 2023, and to pay interest thereon, as provided in this Note, in each case as provided in and subject to the other provisions of this Note, including the earlier redemption, repurchase or conversion of this Note.

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

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

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

Workhorse Group Inc.

Date: July 16, 2020

By:

Name: Duane A. Hughes
Title: Chief Executive Officer

[Signature Page to Senior Secured Convertible Note due 2023, Certificate No. A-1]

Workhorse Group Inc.

Senior Secured Convertible Note due 2023

This Note (this “**Note**” and, collectively with any Note issued in exchange therefor or in substitution thereof, the “**Notes**”) is issued by Workhorse Group Inc., a Nevada corporation (the “**Company**”), and designated as its “Senior Secured Convertible Notes due 2023.”

Section 1. Definitions.

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

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

“**Authorized Denomination**” means, with respect to the Notes, a Principal Amount thereof equal to \$1,000 or any integral multiple of \$1,000 in excess thereof.

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

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

“**Business Combination Event**” has the meaning set forth in **Section 10**.

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

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

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

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

“**Cash**” means all cash and liquid funds.

“**Cash Equivalents**” means, as of any date of determination, any of the following: (A) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (B) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor’s Corporation or at least P-1 from Moody’s Investors Service; (C) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor’s Corporation or at least P-1 from Moody’s Investors Service; (D) certificates of deposit or bankers’ acceptances maturing within one (1) year after such date and issued or accepted by any commercial bank organized under the laws of the United States of America or any State thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (E) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (A) and (B) above, (ii) has net assets of not less than \$500,000,000, and (iii) has the highest rating obtainable from either Standard & Poor’s Corporation or Moody’s Investors Service.

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

“**Collateral**” has the meaning set forth in the Security Agreement.

“**Collateral Agent**” means HT Investments MA, LLC in its capacity as collateral agent for the Holder and each Other Holder, together with any successor thereto in such capacity.

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Common Stock**” means the common stock, \$0.001 par value per share, of the Company, subject to **Section 8(J)**.

“**Common Stock Change Event**” has the meaning set forth in **Section 8(J)**.

“**Company Redemption Base Price**” means, with respect to a redemption of this Note pursuant to **Section 7(A)**, a cash amount equal to the greater of (A) one hundred and five percent (105%) of the portion of the then outstanding Maturity Principal Amount of such Note elected to be redeemed by the Company; and (B) one hundred and fifteen percent (115%) of the product of (i) the Conversion Rate in effect as of the Trading Day immediately preceding the related Company Redemption Date; (ii) the Principal Amount of this Note to be so redeemed divided by \$1,000; and (iii) the Company Redemption Stock Price for such redemption.

“**Company Redemption Date**” has the meaning set forth in **Section 7(A)**.

“**Company Redemption Excess Amount**” means, with respect to a redemption of this Note pursuant to **Section 7(A)**, a cash amount equal to (A) one hundred and fifteen percent (115%) of the product of (i) the Conversion Rate in effect as of the Trading Day immediately preceding the related Company Redemption Date; (ii) the Principal Amount of this Note to be so redeemed divided by \$1,000; and (iii) the Company Redemption Stock Price for such redemption; *minus* (B) the Maturity Principal Amount of such Note; *provided*, that such Company Redemption Excess Amount shall not be less than zero.

“**Company Redemption Price**” means the cash price payable by the Company to redeem this Note pursuant to **Section 7(A)(ii)**.

“**Company Redemption Stock Price**” means, with respect to any redemption of this Note, the highest Daily VWAP per share of Common Stock occurring during the thirty (30) consecutive days ending on, and including, the day immediately before the related Company Redemption Date.

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

“**Conversion Consideration**” has the meaning set forth in **Section 8(D)(i)**.

“**Conversion Date**” means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 8(C)(i)** to convert such Note are satisfied.

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

“**Conversion Rate**” initially means 52.6316 shares of Common Stock per \$1,000 Principal Amount of Notes; *provided, however*, that the Conversion Rate is subject to adjustment pursuant to **Section 8**; *provided, further*, that whenever this Note refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

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

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

“**Covering Price**” has the meaning set forth in **Section 8(D)(vi)(1)**.

“**Certus**” has the meaning set forth in the definition of “Permitted Investments”.

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

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

“**Default Interest**” has the meaning set forth in **Section 4(B)**.

“**Defaulted Amount**” has the meaning set forth in **Section 4(B)**.

“**Defaulted Shares**” has the meaning set forth in **Section 8(D)(vi)**.

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

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

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

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

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

“**DTC**” means The Depository Trust Company.

“**Early Redemption Date**” means, with respect to a Note, (A) the first calendar day of each month beginning on October 1, 2020; and (B) if not otherwise included in clause (A), the Maturity Date.

“**Early Redemption Payment**” means three million eight hundred fifty thousand dollars (\$3,850,000) on each such Early Redemption Date; *provided*, that the Holder and the Company may agree to increase the size of any Early Redemption Payment by mutual written consent; and *provided further*, that in no event shall the amount of any Early Redemption Payment exceed one hundred and ten percent (110%) of the portion of the Principal Amount being redeemed as of such Early Redemption Date.

“**Early Redemption Stock Payment Date**” has the meaning set forth in Section 5(C).

“**Early Redemption Stock Payment Notice**” has the meaning set forth in Section 5(C).

“**Early Redemption Stock Payment Period**” has the meaning set forth in Section 5(C).

“**Eligible Exchange**” means any of The New York Stock Exchange, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

“**Equipment**” means all “**equipment**” as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**Equity Conditions**” will be deemed to be satisfied as of any date if all of the following conditions are satisfied as of such date and on each of the twenty (20) previous Trading Days: (A) the shares issuable upon conversion of this Note are Freely Tradable; (B) the Holder is not in possession of any material non-public information provided by or on behalf of the Company; (C) the issuance of such shares will not be limited by **Section 8(K)**; (D) the Company is in compliance with **Section 8(E)(i)** and such shares will satisfy **Section 8(E)(ii)**; (E) no public announcement of a pending, proposed or intended Fundamental Change has occurred that has not been abandoned, terminated or consummated; (F) the Daily VWAP per share of Common Stock is not less than \$4.00 (subject to proportionate adjustments for events of the type set forth in **Section 8(G)(i)**); (G) the daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the applicable Eligible Exchange is not less than one million five hundred thousand dollars (\$1,500,000); and (H) no Default or Event of Default will have occurred or be continuing.

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

“**Event of Default**” has the meaning set forth in **Section 11(A)**.

“**Event of Default Acceleration Amount**” means, with respect to the delivery of a notice pursuant to **Section 11(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to the greater of (A) one hundred percent (100%) of the then outstanding Maturity Principal Amount of this Note plus accrued and unpaid interest; and (B) one hundred and fifteen percent (115%) of the product of (i) the Conversion Rate in effect as of the Trading Day immediately preceding the date such notice is so delivered; (ii) the total then outstanding Principal Amount (expressed in thousands) of this Note plus accrued and unpaid interest; and (iii) the greater of (x) the highest Daily VWAP per share of Common Stock occurring during the thirty (30) consecutive VWAP Trading Days ending on, and including, the VWAP Trading Day immediately before the date such notice is so delivered and (y) the highest Daily VWAP per share of Common Stock occurring during the thirty (30) consecutive VWAP Trading Days ending on, and including, the VWAP Trading Day immediately before the date the applicable Event of Default occurred.

“**Event of Default Additional Shares**” means, with respect to the conversion of this Note (or any portion of this Note), an amount equal to the excess, if any, of (A) the Event of Default Conversion Rate applicable to such conversion over (B) the Conversion Rate that would otherwise apply to such conversion without giving effect to **Section 8(I)**. For the avoidance of doubt, the Event of Default Additional Shares cannot be a negative number.

“**Event of Default Conversion Period**” means, with respect to an Event of Default, the period beginning on, and including, the date such Event of Default occurs and ending on later of (A) the twentieth (20th) Trading Day after the Holder’s receipt of an Event of Default Notice and (B) five (5) Trading Days after the date the Holder receives notice from the Company that such Event of Default has been cured.

“**Event of Default Conversion Price**” means, with respect to the conversion of this Note (or any portion of this Note), the greater of (i) the Floor Price and (ii) the lesser of (A) the Conversion Price that would be in effect immediately after the Close of Business on the Conversion Date for such conversion, without giving effect to **Section 8(I)**; and (B) seventy five percent (75%) of the lowest Daily VWAP per share of Common Stock during the ten (10) consecutive VWAP Trading Days ending on, and including, such Conversion Date (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day).

“**Event of Default Conversion Rate**” means, with respect to the conversion of this Note (or any portion of this Note), an amount (rounded to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward)) equal to (A) one thousand dollars (\$1,000) *divided by* (B) the Event of Default Conversion Price applicable to such conversion.

“**Event of Default Notice**” has the meaning set forth in **Section 11(C)**.

“**Ex-Dividend Date**” means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Excess Shares**” has the meaning set forth in **Section 8(K)(i)**.

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

“**Expiration Date**” has the meaning set forth in **Section 8(G)(i)(5)**.

“**Expiration Time**” has the meaning set forth in **Section 8(G)(i)(5)**.

“**Floor Price**” means \$1.00.

“**Forced Conversion**” means the conversion of this Note pursuant to **Section 8(G)**.

“**Freely Tradable**” means, with respect to any shares of Common Stock issued or issuable upon conversion of this Note, that (A) such shares would be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or “blue sky” laws; or (B) such shares are (or, when issued, will be) (i) represented by book-entries at DTC and identified therein by an “unrestricted” CUSIP number; (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (iii) listed and admitted for trading, without suspension or material limitation on trading, on an Eligible Exchange; and (C) no delisting or suspension by such Eligible Exchange has been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (x) a writing by such Eligible Exchange or (y) the Company falling below the minimum listing maintenance requirements of such Eligible Exchange.

“**Fundamental Change**” means any of the following events:

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

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than solely to one or more of the Company’s Wholly Owned Subsidiaries); or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property (other than a subdivision or combination, or solely a change in par value, of the Common Stock); *provided, however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly “beneficially owned” (as defined below) all classes of the Company’s common equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company’s stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(D) the Common Stock ceases to be listed on any Eligible Exchange.

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

“**Fundamental Change Redemption Date**” means the date designated by the Holder for redemption of this Note in connection with a Fundamental Change, as provided in **Section 6(F)**.

“**Fundamental Change Base Repurchase Price**” means, with respect to this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change, a cash amount equal to the greater of (x) one hundred percent (100%) of the Maturity Principal Amount of such Note (or portion thereof) to be so repurchased; and (y) one hundred and fifteen percent (115%) of the product of (A) the Conversion Rate in effect as of the Trading Day immediately preceding the effective date of such Fundamental Change; (B) the Principal Amount of this Note to be repurchased upon a Repurchase Upon Fundamental Change divided by \$1,000; and (C) the Fundamental Change Stock Price for such Fundamental Change.

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

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

“**Fundamental Change Repurchase Price**” means the cash price payable by the Company to repurchase this Note (or any portion of this Note) upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 6(D)**.

“**Fundamental Change Stock Price**” means, with respect to any Fundamental Change, the highest Daily VWAP per share of Common Stock occurring during the thirty (30) consecutive days ending on, and including, the day immediately before the effective date of such Fundamental Change.

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

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

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

“**Indebtedness**” means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services (excluding trade credit entered into in the ordinary course of business due within ninety (90) days), including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

“**Independent Investigator**” has the meaning set forth in **Section 9(Q)**.

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

“**Interest Payment Date**” means, with respect to a Note, (A) each January 1, April 1, July 1 and October 1 of each calendar year, beginning on October 1, 2020; and (B) if not otherwise included in **clause (A)**, the Maturity Date.

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

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

“Issue Date” means July 16, 2020.

“Last Reported Sale Price” of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company.

“License” means any Copyright License, Patent License, Trademark License or other written license of rights or interests.

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

“Market Disruption Event” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**Market Stock Payment Price**” means, with respect to any Interest Payment Date, Early Redemption Stock Payment Date, Fundamental Change Redemption Date or Company Redemption Date, as applicable, an amount equal to the greater of (A) the Floor Price and (B) ninety two and one half percent (92.5%) of the lesser of (i) the Daily VWAP on the VWAP Trading Day immediately prior to such Interest Payment Date, Early Redemption Stock Payment Date, Fundamental Change Redemption Date or Company Redemption Date, as applicable, and (ii) the average of the lowest two (2) Daily VWAPs during the five (5) VWAP Trading Day period ending on the VWAP Trading Day immediately prior to such Interest Payment Date, Early Redemption Stock Payment Date, Fundamental Change Redemption Date or Company Redemption Date, as applicable.

“**Maturity Date**” means July 1, 2023.

“**Maturity Principal Amount**” has the meaning set forth in the cover page of this Note.

“**Maximum Percentage**” has the meaning set forth in **Section 8(K)(i)**.

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

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

“**Other Holder**” means any person in whose name any Other Note is registered on the books of the Company.

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

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

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

“**Permitted Indebtedness**” means (A) Indebtedness evidenced by this Note; (B) Indebtedness deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date (including all other Indebtedness accrued in the balance sheet included in the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2020); (C) Indebtedness of up to five million dollars (\$5,000,000) outstanding at any time secured by a Lien described in clause (G) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed the cost of the Equipment and related expenses financed with such Indebtedness; (D) Indebtedness to trade creditors incurred in the ordinary course of business, including Indebtedness incurred in the ordinary course of business with corporate credit cards; (E) Indebtedness that also constitutes a Permitted Investment; (F) Subordinated Indebtedness of the Company; (G) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed \$1,000,000 at any time outstanding; (H) other unsecured Indebtedness of the Company, so long as such Indebtedness does not have (i) a final maturity date, amortization payment, sinking fund, mandatory redemption or other repurchase obligation or put right at the option of the lender or holder of such Indebtedness earlier than one hundred eighty-one (181) days following the Maturity Date, or (ii) any other material terms more favorable to the holder of such Indebtedness than this Note, including applicable interest rates; (I) Indebtedness in respect of a Traditional Working Capital Facility in aggregate amount not to exceed one hundred million dollars (\$100,000,000); (J) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (E) and (G) and (I); (K) extensions, refinancings and renewals of any items of Permitted Indebtedness (other than any Indebtedness repaid with the proceeds of this Note), *provided* that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon the Company or its Subsidiaries, as the case may be, and *provided further*, that if the lender of any such proposed extension, refinancing or renewal of Permitted Indebtedness incurred hereunder is different from the lender of the Permitted Indebtedness to be so extended, refinanced or renewed then, in addition to the foregoing proviso, such Permitted Indebtedness shall also not have a final maturity date, amortization payment, sinking fund, mandatory redemption or other repurchase obligation earlier than one hundred eighty-one (181) days following the Maturity Date.

“Permitted Intellectual Property Licenses” means Intellectual Property (A) licenses in existence at the Issue Date, including those listed on the Schedules to the Security Agreement, and (B) non-perpetual licenses granted in the ordinary course of business on arm’s length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during continuance of a Default or an Event of Default.

“Permitted Investment” means: (A) Investments deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date; (B) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (iii) certificates of deposit issued by any bank headquartered in the United States with assets of at least \$500,000,000 maturing no more than one year from the date of investment therein, and (iv) money market accounts; (C) Investments accepted in connection with Permitted Transfers; (D) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of the Company’s business; (E) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers in the ordinary course of business and consistent with past practice, provided that this subparagraph (E) shall not apply to Investments of the Company in any Subsidiary; (F) Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Company pursuant to employee stock purchase plans or other similar agreements approved by the Company’s Board of Directors; (G) Investments consisting of travel advances in the ordinary course of business; (H) (i) Investments in wholly-owned Subsidiaries and (ii) Investments in a 50/50 joint venture with Moog Inc. formed as Certus Unmanned Aerial Systems LLC, a Delaware limited liability company (“**Certus**”) (provided that there shall be no amendment, restatement, supplement or modification to that certain Asset Purchase Agreement dated October 1, 2019 by and among Moog Inc., Surefly, Inc. and the Company, as amended by Amendment No. 1 dated October 4, 2019, that (i) results in any additional obligations of the Company (provided however that such restrictions shall not prohibit an amendment to such Asset Purchase Agreement that extends the closing date thereunder by thirty (30) days or less) or (ii) require any additional consideration from the Company or its Subsidiaries (in cash, equity, indebtedness or otherwise); (I) Permitted Intellectual Property Licenses; (J) additional Investments that do not exceed fifty thousand dollars (\$50,000) in the aggregate in any twelve (12) month period.

“Permitted Liens” means any and all of the following: (A) Liens in favor of Holder or the Collateral Agent; (B) Liens deemed to be disclosed pursuant to the Securities Purchase Exchange Agreement, as in effect as of the Issue Date; (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers’ compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) Liens on Equipment or software or other intellectual property constituting purchase money Liens and Liens in connection with Capital Leases securing Indebtedness permitted in clause (C) of “Permitted Indebtedness”; (H) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company’s business and not interfering in any material respect with the business of the licensor; (I) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (J) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (K) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (L) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (M) Liens on Cash or Cash Equivalents securing obligations permitted under clause (D) and (G) of the definition of Permitted Indebtedness; (N) Liens securing obligations related to Indebtedness in respect of a Traditional Working Capital Facility permitted under clause (I) of the definition of Permitted Indebtedness; and (O) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (A) through (N) above (other than any Indebtedness repaid with the proceeds of this Note); provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

“Permitted Transfers” means (A) dispositions of inventory sold, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business; (B) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (C) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (D) transfers consisting of Permitted Investments in wholly-owned Subsidiaries and Certus under clause (H) of Permitted Investments; (E) the sale of assets of Surefly, Inc. pursuant to that certain Asset Purchase Agreement dated October 1, 2019 by and among Moog Inc., Surefly, Inc. and the Company, as may be amended, restated, supplemented or modified from time to time (provided that any such amendment, restatement, supplement or modification does not (i) result in any additional obligations of the Company or (ii) require any additional consideration from the Company or its Subsidiaries (in cash, equity, indebtedness or otherwise), and (F) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars (\$50,000) in the aggregate in any fiscal year.

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

“Principal Amount” has the meaning set forth in the cover page of this Note; *provided, however*, that the Principal Amount of this Note will be subject to reduction (A) pursuant to **Section 6**, **Section 7**, and **Section 8** and (B) by an amount equal to (i) the sum of all Early Redemption Payments made prior to date of determination of the Principal Amount of the Note then outstanding, divided by (ii) one and ten-hundredths (1.10).

“Reference Property” has the meaning set forth in **Section 8(J)(i)**.

“Reference Property Unit” has the meaning set forth in **Section 8(J)(i)**.

“Related Parties” has the meaning set forth in **Section 22(B)**.

“Reported Outstanding Share Number” has the meaning set forth in **Section 8(K)(i)**.

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

“Requisite Stockholder Approval” means the stockholder approval contemplated by Nasdaq Listing Standard Rule 5635(d) with respect to the issuance of shares of Common Stock upon conversion of this Note in excess of the limitations imposed by such rule; *provided, however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of The Nasdaq Capital Market, such stockholder approval is no longer required for the Company to settle all conversions of this Note by delivering shares of Common Stock without limitation pursuant to **Section 8(K)(ii)**.

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then “Scheduled Trading day” means a Business Day.

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

“**Securities Purchase Agreement**” means that certain Securities Purchase Agreement, dated as of June 30, 2020, between the Company and HT Investments MA, LLC providing for the issuance of this Note.

“**Security Agreement**” means that certain Security Agreement, dated as of July 16, 2020, between the Company and the Collateral Agent.

“**Security Document**” has the meaning set forth in the Security Agreement.

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

“**Spin-Off**” has the meaning set forth in **Section 8(G)(i)(3)(b)**.

“**Spin-Off Valuation Period**” has the meaning set forth in **Section 8(G)(i)(3)(b)**.

“**Stated Interest Rate**” means, as of any date, a rate per annum equal to 4.50%.

“**Subordinated Indebtedness**” means Indebtedness subordinated to the Notes in amounts and on terms and conditions satisfactory to the Holder in its sole discretion.

“**Stock Payment Notice**” has the meaning set forth in **Section 5(B)**.

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

“**Successor Corporation**” has the meaning set forth in **Section 10(A)**.

“**Successor Person**” has the meaning set forth in **Section 8(J)(i)**.

“**Tender/Exchange Offer Valuation Period**” has the meaning set forth in **Section 8(G)(i)(5)**.

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

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

“**Trading Day**” means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“**Traditional Working Capital Facility**” means non-convertible debt (or similar instruments) resulting in net proceeds to the Company of no less than thirty million dollars (\$30,000,000) with (A) annual interest of no greater than LIBOR plus 8.00%, including any original issue discount, allocated levelly over the scheduled maturity of the facility (B) no redemption provisions prior to the Maturity Date, (C) the only liens on the assets of the Company and its Subsidiaries securing the facility shall be on the Cash, Cash Equivalents, accounts receivable, accounts and inventory of the Company and its Subsidiaries and (D) the purpose of which is to fund working capital for truck production.

“**Transaction Documents**” has the meaning set forth in the Securities Purchase Agreement.

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

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

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

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

“**Withheld Shares**” has the meaning set forth in **Section 8(K)(ii)**.

Section 2. Persons deemed owners.

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

Section 3. Registered Form.

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

Section 4. Accrual of Interest; Defaulted Amounts.

(A) *Accrual of Stated Interest.* This Note will accrue interest (the “**Stated Interest**”) at a rate per annum equal to the Stated Interest Rate. Stated Interest on this Note will (i) accrue on the Principal Amount of this Note; (ii) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the Issue Date) to, but excluding, the date of payment of such Stated Interest; (iii) be payable quarterly in arrears on each Interest Payment Date; and (iv) be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts.* If (i) the Company fails to pay any amount payable on this Note on or before the due date therefor as provided in this Note, then, regardless of whether such failure constitutes an Event of Default, or (ii) a Default or Event of Default occurs (such amount payable or the Principal Amount outstanding as of such failure to pay or Default or Event of Default, (as applicable, a “**Defaulted Amount**”)) then in each case, to the extent lawful, interest (“**Default Interest**”) will accrue on such Defaulted Amount at a rate per annum equal to eighteen percent (18.0%), from, and including, such due date or the date of such Default or Event of Default, as applicable, to, but excluding, the date such failure to pay or Default or Event of Default is cured and all outstanding Default Interest under this Note has been paid, as applicable.

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

(A) *Method of Payment.* Except as set forth in **Section 5(B)**, the Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to the account or accounts specified by the Holder by written notice at least three (3) Business Days in advance of the date such amount is due.

(B) *Company's Election to Pay Stated Interest or Company Redemption Excess Amounts in Cash or Common Stock* At least ten (10) Trading Days (but no more than twenty (20) Trading Days) prior to an Interest Payment Date or, with respect to a redemption of this Note pursuant to **Section 7(A)**, the Company Redemption Date (if any), the Company, if it desires to elect to make a payment of Stated Interest due on such Interest Payment Date or the Company Redemption Excess Amount (if any) due on such Company Redemption Date, as applicable, in shares of Common Stock, shall deliver to the Holder a written notice of such election (a "**Stock Payment Notice**") (and such election shall be irrevocable as to such Interest Payment Date or Company Redemption Date, as applicable). Failure to timely deliver such written notice to the Holder shall be deemed an election by the Company to pay the Stated Interest or Company Redemption Excess Amount (if any) on such Interest Payment Date or Company Redemption Date, as applicable, in cash. With respect to any Interest Payment Date or applicable Company Redemption Date for which the Company has elected to make a payment of Stated Interest or the Company Redemption Excess Amount (if any) in shares of Common Stock in accordance with this **Section 5(B)**, the Company shall issue to the Holder, in lieu of such payment in cash of Stated Interest or the Company Redemption Excess Amount (if any), as applicable, a number of validly issued, fully paid and Freely Tradable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing such payment of Stated Interest or the Company Redemption Excess Amount (if any), as applicable, by the Market Stock Payment Price for such payment of Stated Interest or the Company Redemption Excess Amount (if any), as applicable. In the event that the number of shares of Common Stock issued to the Holder under this **Section 5(B)** is reduced as a result of the Floor Price, the Company shall concurrently with the issuance of such shares also pay to the Holder an amount, in cash, equal to the product of (i) the number of shares by which the Stated Interest or Company Redemption Excess Amount, as applicable, was reduced as a result of the Floor Price, multiplied by (ii) the Market Stock Payment Price. Notwithstanding anything herein to the contrary, the Company will not have the right to, and will not, make any payment of Stated Interest or pay any Company Redemption Excess Amount in shares of Common Stock if the Equity Conditions are not satisfied for each VWAP Trading Day occurring between the day of the delivery of the Stock Payment Notice and the applicable Interest Payment Date or Company Redemption Date, and such payment of Stated Interests or Company Redemption Excess Amount shall instead be paid in cash in accordance with **Section 5(A)**, unless such failure of the Equity Conditions to be so satisfied is waived in writing by the Holder, which waiver may be granted or withheld by the Holder in its sole discretion.

(C) *Company's Election to Pay Early Redemption Payments in Cash or Common Stock.* At least ten (10) Trading Days (but no more than twenty (20) Trading Days) prior to an Early Redemption Date, the Company, if it desires to elect to make an Early Redemption Payment with respect to such Early Redemption Date, entirely or partially, in shares of Common Stock, shall deliver to the Holder a written notice of such election stating which portion thereof the Company has elected to pay in shares of Common Stock (an “**Early Redemption Stock Payment Notice**”) (and such election shall be irrevocable as to such Early Redemption Date). Failure to timely deliver such written notice to the Holder shall be deemed an election by the Company to pay the Early Redemption Payment with respect to such Early Redemption Date in cash. With respect to any Early Redemption Date for which the Company has elected to make an Early Redemption Payment (or any applicable portion thereof) in shares of Common Stock in accordance with this **Section 5(C)**, (i) the Holder shall have the right to (x) convert such Early Redemption Payment (or any applicable portion thereof) into shares of Common Stock pursuant to **Section 8** hereof at any time up until the subsequent Early Redemption Date, (y) allocate all or any portion of the applicable Early Redemption Payment to up to three (3) different Scheduled Trading Days (any such date, an “**Early Redemption Stock Payment Date**”) during the period beginning on, and including, the applicable Early Redemption Date and ending on, and including, the Scheduled Trading Day immediately before the subsequent Early Redemption Date (the “**Early Redemption Stock Payment Period**”) or (z) defer such Early Redemption Payment (or applicable portion thereof) to any future Early Redemption Date selected by the Holder; and (ii) the Company shall issue to the Holder, a number of validly issued, fully paid and Freely Tradable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing such Early Redemption Payment (or any applicable portion thereof) by the Market Stock Payment Price as of such Early Redemption Stock Payment Date. In the event that the number of shares of Common Stock issued to the Holder under this **Section 5(C)** is reduced as a result of the Floor Price, the Company shall concurrently with the issuance of such shares also pay to the Holder an amount, in cash, equal to the product of (i) the number of shares by which the Stated Interest or Company Redemption Excess Amount, as applicable, was reduced as a result of the Floor Price, multiplied by (ii) the Market Stock Payment Price. The Holder must provide notice to the Company of its election of any Early Redemption Stock Payment Date and the applicable portion of the Early Redemption Payment it is electing to receive on each such Early Redemption Stock Payment Date no later than 4:30 p.m. New York Time on such Early Redemption Stock Payment Date. Notwithstanding anything herein to the contrary, the Company will not have the right to, and will not, make any Early Redemption Payment (or any applicable portion thereof) in shares of Common Stock if the Equity Conditions are not satisfied for each VWAP Trading Day occurring between the Early Redemption Stock Payment Notice and the applicable Early Redemption Date, and such Early Redemption Payment (or any applicable portion thereof) shall instead be paid in cash in accordance with **Section 5(A)**, unless such failure of the Equity Conditions to be so satisfied is waived in writing by the Holder, which waiver may be granted or withheld by the Holder in its sole discretion. Any portion of the Early Redemption Payment not paid in shares of Common Stock because the Holder did not elect to receive shares of Common Stock for such Early Redemption Payment (or applicable portion thereof) or because the Holder elected to defer the receipt of such shares to a future Early Redemption Date during the applicable Early Redemption Stock Payment Period will be automatically deferred to the next Early Redemption Date or such future Early Redemption Date as was elected by the Holder, as applicable. Any such shares of Common Stock will be delivered by the Company to the Holder on or before the second (2nd) Business Day following the applicable Early Redemption Stock Payment Date.

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

(E) *Event of Default/Equity Triggering Event Additional Shares*. In the event of issuance of any Event of Default Additional Shares, to the extent that the amount of such shares was reduced as a result of the Floor Price, then concurrently with the issuance of such shares, the Company shall also pay to the Holder an amount, in cash, equal to the product of (i) the number of shares by which such amount was reduced as a result of the Floor Price, multiplied by (ii) the Event of Default Conversion Price.

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

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

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

(C) *Fundamental Change Notice*. No later than the fifth (5th) Business Day before the occurrence of any Fundamental Change, the Company will send to the Holder a written notice (the "**Fundamental Change Notice**") thereof, stating the expected date such Fundamental Change will occur.

(D) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for this Note (or any portion of this Note) to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the Fundamental Change Base Repurchase Price for such Fundamental Change plus accrued and unpaid interest on this Note (or such portion of this Note) to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change. For the avoidance of doubt, if such Fundamental Change Repurchase Date is on an Interest Payment Date, then the interest otherwise payable on this Note (or such portion of this Note) on such Interest Payment Date will be paid as part of the Fundamental Change Repurchase Price, in satisfaction of the Company's obligation to pay such interest on such Interest Payment Date.

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

(F) *Fundamental Change Redemption*. Notwithstanding anything in this **Section 6** to the contrary, at the Holder's sole discretion following receipt of a Fundamental Change Notice, in lieu of receiving the Fundamental Change Repurchase Price (or any portion thereof), the Holder may require the Company to redeem this Note (or any portion of this Note in an Authorized Denomination) in exchange for a number of validly issued, fully paid and Freely Tradable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing the Fundamental Change Repurchase Price (or applicable portion thereof) by the Market Stock Payment Price. The Fundamental Change Redemption Date for any Fundamental Change will be a Business Day of the Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to the Holder the related Fundamental Change Notice pursuant to **Section 6(C)**; and (y) the effective date of such Fundamental Change. Any such shares of Common Stock will be delivered by the Company to the Holder on or before the second (2nd) Business Day following a Fundamental Change Redemption Date. In the event that the number of shares of Common Stock issued to the Holder under this **Section 6(F)** is reduced as a result of the Floor Price, the Company shall concurrently with the issuance of such shares also pay to the Holder an amount, in cash, equal to the product of (i) the number of shares by which such amount was reduced as a result of the Floor Price, multiplied by (ii) the Market Stock Payment Price.

Section 7. Redemption of this Note.

(A) *Company Redemption of this Note.*

(i) *Company Redemption Election*. The Company may redeem all of the then outstanding Principal Amount of this Note (or any portion thereof in an amount equal to at least \$8,000,000) on a date (any such date a "**Company Redemption Date**") to be determined by the Company, for a cash redemption price equal to the Company Redemption Price; provided, that the Company must provide notice thereof at least ten (10) Trading Days prior to any Company Redemption Date and the Company must have, on or prior to 9:00 am, New York city time, on the Trading Day immediately preceding such notice delivery date, publicly disclosed any material, non-public information regarding the Company on a Form 8-K or otherwise.

(ii) *Company Redemption Price*. The Company Redemption Price for this Note to be redeemed pursuant to **Section 7(A)(i)** is an amount in cash equal to the Company Redemption Base Price plus accrued and unpaid interest on such amount to, but excluding, the related Company Redemption Date. For the avoidance of doubt, if such Company Redemption Date is on an Interest Payment Date, then the interest otherwise payable on this Note on such Interest Payment Date will be paid as part of the Company Redemption Price, in satisfaction of the Company's obligation to pay such interest on such Interest Payment Date. If the Company elects to pay the Company Redemption Excess Amount in shares of Common Stock pursuant to **Section 5(B)**, the cash amount payable pursuant to this **Section 7(A)(ii)** will be reduced by such Company Redemption Excess Amount.

(iii) *Effect of Redemption*. If this Note is to be redeemed in full pursuant to **Section 7(A)(i)**, then, from and after the date the related Company Redemption Price is paid in full, this Note will cease to be outstanding and interest will cease to accrue on this Note.

(B) Early Redemption Payments.

(i) At the Holder's election, in its sole discretion, the Company shall be required to redeem a portion of this Note up to or equal to the applicable Early Redemption Payment on each Early Redemption Date; *provided, however*, that the Holder may, in its sole discretion, defer any Early Redemption Payment to any subsequent Early Redemption Date. The Holder shall deliver to the Company a written notice of any such election under this **Section 7(B)(i)** at least eight (8) Business Days prior to the applicable Early Redemption Date in order to make an effective election; *provided*, that the Holder may, in its sole discretion, defer any Early Redemption Payment to any subsequent Early Redemption Date in accordance with the immediately preceding sentence at any time prior to the applicable Early Redemption Date.

Section 8. Conversion.

(A) Right to Convert.

(i) *Generally.* Subject to the provisions of this **Section 8**, the Holder may, at its option, convert this Note, including any portion constituting an Early Redemption Payment that the Holder has elected to convert pursuant to **Section 5(C)** hereof or that is required to be paid by the Company on the next Early Redemption Date or Early Redemption Stock Payment Date, as applicable, or a deferred Early Redemption Payment, into Conversion Consideration.

(ii) *Conversions in Part.* Subject to the terms of this **Section 8**, this Note may be converted in part, but only in an Authorized Denomination. Provisions of this **Section 8** applying to the conversion of this Note in whole will equally apply to conversions of any permitted portion of this Note.

(B) When this Note May Be Converted.

(i) *Generally.* The Holder may convert this Note at any time until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date; *provided* that, with respect to the conversion of any Early Redemption Payment, the Holder must provide notice of such conversion no later than the Close of Business on the second (2nd) Scheduled Trading Day immediately preceding the date such Early Redemption Payment is due in accordance with the terms of this Note, and any such conversion will not reduce the amount of future Early Redemption Payments. For the avoidance of doubt, the Holder's right to convert this Note shall not be impacted by a prior notice or election to defer any Early Redemption Payment delivered by the Holder electing pursuant to **Section 7(B)(i)** hereof.

(ii) *Limitations and Closed Periods.* Notwithstanding anything to the contrary in this **Section 8**, (x) if this Note (or any portion of this Note) is to be redeemed pursuant to **Section 7(A)**, then in no event may this Note (or such portion) be converted after the Close of Business on the Scheduled Trading Day immediately before the related Company Redemption Date; and (y) if this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change pursuant to **Section 6**, then in no event may this Note (or such portion) be converted after the Close of Business on the Scheduled Trading Day immediately before the related Fundamental Change Repurchase Date.

(C) *Conversion Procedures.*

(i) *Generally.* To convert this Note, the Holder must (1) complete, manually sign and deliver to the Company the conversion notice attached to this Note or a facsimile or portable document format (.pdf) version of such conversion notice (at which time such conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 8(C)(iii)**. For the avoidance of doubt, the conversion notice may be delivered by e-mail in accordance with **Section 14**. If the Company fails to deliver, by the related Conversion Settlement Date, any shares of Common Stock forming part of the Conversion Consideration of the conversion of this Note, the Holder, by written notice to the Company, may rescind all or any portion of the corresponding conversion notice at any time until such Defaulted Shares are delivered.

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

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

(D) *Settlement upon Conversion.*

(i) *Generally.* The consideration (the “**Conversion Consideration**”) due in respect of each \$1,000 Principal Amount of this Note, including any portion constituting an Early Redemption Payment required to be paid by the Company on the next Early Redemption Date or Early Redemption Stock Payment Date, as applicable, or any outstanding deferred Early Redemption Payment, to be converted will consist of the following:

(1) subject to **Section 8(D)(ii)**, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion; and

(2) cash in an amount equal to the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date for such conversion or, at the election of the Company, a number of validly issued, fully paid and Freely Tradable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date by the Market Stock Payment Price (the “**Conversion Consideration Interest Shares**”).

(ii) *Company's Election to Convert Accrued Interest into Common Stock* At least ten (10) Trading Days prior to a Conversion Date, the Company, if it desires to elect to convert accrued and unpaid interest on this Note into Conversion Consideration Interest Shares pursuant to **Section 8(D)(i)(2)**, shall deliver to the Holder a written notice of such election (a "**Conversion Consideration Interest Shares Notice**") (and such election shall be irrevocable with respect to such interest and all subsequent conversions until the Company provides to the Holder at least ten (10) Trading Days written notice of its intent to terminate such election). Failure to timely deliver such written notice to the Holder shall be deemed an election by the Company to pay such accrued and unpaid interest in cash. Notwithstanding anything herein to the contrary, the Company will not have the right to, and will not, make any conversion of accrued interest into Conversion Consideration Interest Shares if the Equity Conditions are not satisfied for each VWAP Trading Day occurring between the day of the delivery of the Conversion Consideration Interest Shares Notice and the applicable Conversion Settlement Date, and such conversion of accrued interest shall instead be paid in cash in accordance with **Section 8(D)(2)**, unless such failure of the Equity Conditions to be so satisfied is waived in writing by the Holder, which waiver may be granted or withheld by the Holder in its sole discretion.

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

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

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

(vi) *Conversion Settlement Defaults.* If (x) the Company fails to deliver, by the related Conversion Settlement Date, any shares of Common Stock (the “Defaulted Shares”) forming part of the Conversion Consideration of the conversion of this Note, including any portion constituting an Early Redemption Payment required to be paid by the Company on the next Early Redemption Date or Early Redemption Stock Payment Date, as applicable, or any outstanding deferred Early Redemption Payment; and (y) the Holder (whether directly or indirectly, including by any broker acting on the Holder’s behalf or acting with respect to such Defaulted Shares) purchases any shares of Common Stock (whether in the open market or otherwise) to cover any such Defaulted Shares (whether to satisfy any settlement obligations with respect thereto of the Holder or otherwise), then, without limiting the Holder’s right to pursue any other remedy available to it (whether hereunder, under applicable law or otherwise), the Holder will have the right, exercisable by written notice to the Company, to cause the Company to either:

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

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

To exercise such right, the Holder must deliver written notice of such exercise to the Company, specifying whether the Holder has elected **clause (1)** or **(2)** above to apply. If the Holder has elected **clause (1)** to apply, then the Company’s obligation to deliver the Defaulted Shares in accordance with this Note will be deemed to have been satisfied and discharged to the extent the Company has paid the Covering Price in accordance with **clause (1)**.

(E) *Reserve and Status of Common Stock Issued upon Conversion.*

(i) *Stock Reserve.* At all times when this Note is outstanding, the Company will reserve, out of its authorized but unissued and unreserved shares of Common Stock, a number of shares of Common Stock equal to three hundred percent (300%) of a fraction, the numerator of which shall be (x) the then outstanding Principal Amount of this Note and the denominator of which shall be (y) the Market Stock Payment Price then in effect.

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

(i) *Transferability of Conversion Shares.* Any shares of Common Stock issued upon conversion of this Note will be issued in the form of book-entries at the facilities of DTC, identified therein by an “unrestricted” CUSIP number.

(F) *Forced Conversion.*

(i) *Generally.* If (1) the Daily VWAP per share of Common Stock exceeds one hundred and fifty percent (150%) of the Conversion Price on each of fifteen (15) consecutive VWAP Trading Days beginning after the Issue Date; and (2) the Equity Conditions are satisfied on each of such fifteen (15) consecutive VWAP Trading Days, then, subject to the limitations on conversion contained in **Section 8(K)(i)**, the Company may provide written notice to the Holder electing to convert all or a portion of Principal Amount of this Note on the Conversion Date into Conversion Consideration no later than the fifth (5th) Business Day following such last VWAP Trading Day; *provided* that no Forced Conversion will be effected unless (x) the Daily VWAP per share of Common Stock exceeds one hundred and fifty percent (150%) of the Conversion Price and (y) the Equity Conditions are satisfied on each VWAP Trading Day from the date of such notice until the corresponding Conversion Consideration is delivered. The Conversion Date with respect to any such Forced Conversion will be deemed to occur on the second (2nd) Business Day after such written notice to the Holder. Solely for purposes of the preceding sentence, the Conversion Price will be calculated without giving effect to any adjustments pursuant to **Section 8(I)**.

(ii) *Effect of Forced Conversion.* A Forced Conversion will have the same effect as a conversion of the applicable outstanding Principal Amount of this Note effected at the Holder’s election pursuant to **Section 8(A)(i)** with a Conversion Date occurring on the Business Day referred to in **Section 8(F)(i)** (for the avoidance of doubt, without the need for the Holder to deliver a conversion notice); *provided, however*, that the Company will not be obligated to deliver the Conversion Consideration until the Holder has complied, if applicable, with its obligations under **Section 8(C)(iii)**.

(G) *Adjustments to the Conversion Rate.*

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

(1) *Stock Dividends, Splits and Combinations.* If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 8(J)** will apply), then the Conversion Rate will be adjusted based on the following formula:

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

where:

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

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

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

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

If any dividend, distribution, stock split or stock combination of the type described in this **Section 8(G)(i)(1)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) *Rights, Options and Warrants.* If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which the provisions set forth in **Sections 8(G)(i)(3)(a)** and **8(G)(v)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

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

where:

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

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

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

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

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

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

For purposes of this **Section 8(G)(i)(2)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors in good faith.

(3) Spin-Offs and Other Distributed Property.

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

(v) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required pursuant to **Section 8(G)(i)(1)** or **Section 8(G)(i)(2)**;

(w) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required pursuant to **Section 8(G)(i)(4)**;

(x) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 8(G)(v)**;

(y) Spin-Offs for which an adjustment to the Conversion Rate is required pursuant to **Section 8(G)(i)(3)(b)**; and

(z) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 8(J)** will apply,

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

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

where:

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

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

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

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

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

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

(b) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interest, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to a Common Stock Change Event, as to which **Section 8(J)** will apply), and such Capital Stock or equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

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

where:

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

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

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

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

The adjustment to the Conversion Rate pursuant to this **Section 8(G)(i)(3)(b)** will be calculated as of the Close of Business on the last Trading Day of the Spin-Off Valuation Period but will be given effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off, with retroactive effect. If a Note is converted and the Conversion Date occurs during the Spin-Off Valuation Period, then, notwithstanding anything to the contrary in this Note, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last day of the Spin-Off Valuation Period.

To the extent any dividend or distribution of the type set forth in this **Section 8(G)(i)(3)(b)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

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

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

where:

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

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

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

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

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

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

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

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

where:

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

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

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

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

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

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

provided, however, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 8(G)(i)(5)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Rate pursuant to this **Section 8(G)(i)(5)** will be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but will be given effect immediately after the Expiration Time, with retroactive effect. If a Note is converted and the Conversion Date occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Note, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last day of the Tender/Exchange Offer Valuation Period.

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

(ii) *No Adjustments in Certain Cases.*

(1) *Where the Holder Participates in the Transaction or Event Without Conversion.* Notwithstanding anything to the contrary in **Section 8(G)(i)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 8(G)(i)** (other than a stock split or combination of the type set forth in **Section 8(G)(i)(1)** or a tender or exchange offer of the type set forth in **Section 8(G)(i)(5)**) if the Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being the Holder of this Note, in such transaction or event without having to convert this Note and as if the Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate Principal Amount (expressed in thousands) of this Note held by this Holder on such date.

(2) *Certain Events.* The Company will not be required to adjust the Conversion Rate except as provided in **Section 8(G)**, **Section 8(H)** or **Section 8(I)**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(a) except as otherwise provided in **Section 8(G)**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

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

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

(d) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Issue Date (other than an adjustment pursuant to **Section 8(G)(i)(3)(a)** in connection with the separation of rights under the Company's stockholder rights plan existing, if any, as of the Issue Date);

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

(f) accrued and unpaid interest on this Note.

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

(1) this Note is to be converted;

(2) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 8(G)(i)** has occurred on or before the Conversion Date for such conversion, but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date;

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

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

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

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

(1) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 8(G)(i)**;

(2) a Note is to be converted;

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

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

(5) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 8(C)(ii)**),

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

(v) *Stockholder Rights Plans*. If any shares of Common Stock are to be issued upon conversion of any Note and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Note upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 8(G)(i)(3)(a)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to readjustment in accordance with such Section if such rights expire, terminate or are redeemed.

(vi) *Limitation on Effecting Transactions Resulting in Certain Adjustments*. The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 8(G)(i)**, **Section 8(H)** or **Section 8(I)** to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(vii) *Equitable Adjustments to Prices*. Whenever any provision of this Note requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Rate), the Company will make proportionate adjustments, if any, to such calculations to account for any adjustment to the Conversion Rate pursuant to **Section 8(G)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period.

(viii) *Calculation of Number of Outstanding Shares of Common Stock* For purposes of this **Section 8(G)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

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

(x) *Notice of Conversion Rate Adjustments*. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 8(G)(i)**, the Company will promptly send notice to the Holder containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

(H) *Voluntary Adjustments*.

(i) *Generally*. To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines in good faith that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; and (ii) such increase is irrevocable during such period. The Company and the Holder agree that any such voluntary adjustment to the Conversion Rate and any conversion of any portion of the Note based upon any such voluntary adjustment shall not constitute material non-public information with respect to the Company.

(ii) *Notice of Voluntary Increases*. If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 8(H)(i)**, then, no later than the first Business Day following such determination, the Company will send notice to the Holder of such increase, the amount thereof and the period during which such increase will be in effect.

(I) *Adjustments to the Conversion Rate in Connection with an Event of Default*. If an Event of Default occurs and the Conversion Date for the conversion of a Note occurs during the related Event of Default Conversion Period, then, subject to **Section 8(K)**, the Conversion Rate applicable to such conversion will be increased by a number of shares equal to the Event of Default Additional Shares.

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

(i) *Generally*. If there occurs:

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

- (2) consolidation, merger, combination or binding or statutory share exchange involving the Company;
- (3) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or
- (4) other similar event,

and, in each case, as a result of such occurrence, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities or other property (including cash or any combination of the foregoing) (such an event, a “**Common Stock Change Event**,” and such other securities or other property, the “**Reference Property**,” and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue fractional shares of securities or other property), a “**Reference Property Unit**”), then, notwithstanding anything to the contrary in this Note, at the effective time of such Common Stock Change Event, (x) the Conversion Consideration due upon conversion of any Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 8** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (y) for purposes of **Section 8(A)**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (z) for purposes of the definition of “Fundamental Change,” the term “Common Stock” and “common equity” will be deemed to mean the common equity, if any, forming part of such Reference Property. For these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of “Daily VWAP,” substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

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

At or before the effective date of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver such instruments or agreements that (x) provides for subsequent conversions of this Note in the manner set forth in this **Section 8(J)**; (y) provides for subsequent adjustments to the Conversion Rate pursuant to **Section 8(G)**, **Section 8(H)** and **Section 8(I)** in a manner consistent with this **Section 8(J)**; and (z) contains such other provisions as the Company reasonably determines are appropriate to preserve the economic interests of the Holder and to give effect to the provisions of this **Section 8(J)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such instruments or agreements and such instruments or agreements will contain such additional provisions the Company reasonably determines are appropriate to preserve the economic interests of the Holder.

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

(iii) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 8(J)**.

(K) *Limitations on Conversions.*

(i) *Beneficial Ownership Limitation.* Notwithstanding anything to the contrary contained herein, the Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note, pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, unconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 8(K)(i)**. For purposes of this **Section 8(K)(i)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Note, in determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (3) any other written notice by the Company or the Transfer Agent (as defined in the Securities Purchase Agreement) setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a conversion notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall promptly notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such conversion notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 8(K)(i)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of conversion shares to be issued pursuant to such conversion notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 8(K)(i)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 8(K)(i)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) *Stock Exchange Limitations.* Notwithstanding anything to the contrary in this Note, until the Requisite Stockholder Approval is obtained, in no event will the number of shares of Common Stock issuable upon conversion or otherwise pursuant to this Note, including pursuant to **Section 8(I)**, together with all other shares, if any, theretofore issued upon conversion of this Note, including any portion constituting an Early Redemption Payment, exceed [*insert # representing one share less share than 20% of the outstanding shares*] shares in the aggregate. If any one or more shares of Common Stock are not delivered upon conversion of this Note as a result of the operation of the preceding sentence (such shares, the “**Withheld Shares**”), then on the Conversion Settlement Date for such conversion, the Company will pay to the Holder, in addition to the Conversion Consideration otherwise due upon such conversion, cash in an amount equal to the product of (x) the number of such Withheld Shares; and (y) the Daily VWAP per share of Common Stock on the Conversion Date for such conversion.

Section 9. Affirmative and Negative Covenants.

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

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

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

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

provided, however, that the Company need not preserve or keep in full force and effect any such license or franchise if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder.

(C) *Ranking.* All payments due under this Note shall rank (i) *pari passu* with all Other Notes for so long as such Other Notes are secured indebtedness of the Company and, except as set forth in clause (ii) of this paragraph, all unsecured indebtedness of the Company, (ii) effectively senior to all unsecured indebtedness of the Company (including any Other Notes that are not at such time secured indebtedness of the Company) to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof, (iii) senior to any Subordinated Indebtedness, and (iv) effectively junior to all indebtedness in respect of a Traditional Working Capital Facility to the extent of the value of the Cash, Cash Equivalents, accounts receivable, accounts and inventory of the Company and its Subsidiaries securing such indebtedness.

(D) *Indebtedness; Amendments to Indebtedness.* The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness except for (i) by the conversion of Indebtedness into equity securities and the payment of cash in lieu of fractional shares in connection with such conversion, or (ii) a refinancing of the entire amount of such Indebtedness which does not impose materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such refinancing, but with a maturity date which is later than one hundred eighty-one (181) days following the Maturity Date; or (c) amend or modify any documents or notes evidencing any Indebtedness in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder.

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

(F) *Investments.* The Company shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments.

(G) *Distributions.* The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other equity interest other than pursuant to employee, director or consultant repurchase plans or other similar agreements provided under plans approved by the Board of Directors, or (b) except with respect to the Company's Series B Preferred Stock outstanding as of the Issue Date, declare or pay any cash dividend or make a cash distribution on any class of stock or other equity interest, except that a Subsidiary or Certus may pay dividends or make distributions to the Company or a parent company that is a direct or indirect wholly owned Subsidiary of the Company), or (c) lend money to any employees, officers or directors (except as permitted under clauses (F) or (G) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of fifty thousand dollars (\$50,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of fifty thousand dollars \$50,000 in the aggregate.

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

(I) *Taxes.* The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom. The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns. Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(J) *Minimum Liquidity.* The Company shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States and subject to a Control Agreement (as defined in the Security Agreement) in favor of the Collateral Agent in a minimum amount equal to four million dollars (\$4,000,000).

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

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

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

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

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

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

(Q) *Independent Investigation*. At the request of the Holder at any time when an Event of Default has occurred and is continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to the Holder of such breach. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries; provided that the Company's chief financial officer and chief executive officer shall also be invited to attend any discussion with a key employee or the independent public accountants), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(R) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this **Section 9(R)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

(S) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company and that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

Section 10. Successors.

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

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

(B) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

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

Section 11. Defaults and Remedies

(A) *Events of Default*. “**Event of Default**” means the occurrence of any of the following:

(i) a default in the payment when due of the Principal Amount, Maturity Principal Amount, Fundamental Change Repurchase Price, Company Redemption Price or Early Redemption Payment of this Note;

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

(iii) a default in the Company's obligation to convert this Note in accordance with **Section 8** upon the exercise of the conversion right with respect thereto or upon Forced Conversion;

(iv) a default in the Company's obligation to deliver a Fundamental Change Notice pursuant to **Section 6(C)**, and such default continues for three (3) Business Days;

(v) a materially false or inaccurate certification (including a false or inaccurate deemed certification) by the Company (A) that the Equity Conditions are satisfied, (B) that there has been no failure of the Equity Conditions, or (C) as to whether any Event of Default has occurred;

(vi) a default in any of the Company's obligations or agreements under this Note or the Transaction Documents (in each case, other than a default set forth in clause **(i)**, **(ii)** or **(iii)** of this **Section 11(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) of the Securities Purchase Agreement; *provided, however*, that if such default or breach can be cured, then such default or breach will not be an Event of Default unless the Company has failed to cure such default within ten (10) days after its occurrence;

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

(viii) a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) of any Transaction Document;

(ix) at any time, this Note or any shares of Common Stock issuable upon conversion of this Note are not Freely Tradable;

(x) any breach or default by the Company under Section 4(s) of the Securities Purchase Agreement;

(xi) the Company fails to comply with **Section 9(J)** of this Note.

(xii) the suspension from trading or failure of the Common Stock to be trading or listed on an Eligible Exchange for a period of ten (10) consecutive Trading Days;

(xiii) any breach or default by the Company under any Transaction Document except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of ten (10) consecutive days;

(xiv) a default by the Company or any of its Subsidiaries with respect to any Indebtedness of at least two hundred fifty thousand dollars (\$250,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, subject to the lapse of any applicable notice or cure period provided therein; provided, however that for the avoidance of doubt this Section 11(A)(xiv) shall not apply to Capital Leases;

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

(xvi) (A) the Company fails to timely file its quarterly reports on Form 10-Q or its annual reports on Form 10-K with the Commission in the manner and within the time periods required by the Exchange Act, or (B) the Company withdraws or restates any such quarterly report or annual report previously filed with the Commission in a manner that results in (A) the Company failing for any reason to satisfy the requirements of Rule 144(c)(1) under the Securities Act, including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) or (B) if the Company is or becomes an issuer as described in Rule 144(i) (1)(i), the Company failing to satisfy any condition set forth in Rule 144(i)(2);

(xvii) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral in favor of the Collateral Agent or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xviii) any material damage to, or loss, theft or destruction of, any material portion of the Collateral (provided that any damage, loss, theft or destruction of the Collateral that reduces the value of such Collateral by \$250,000 or more shall be deemed to be material), whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than sixty (60) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could reasonably be expected have a Material Adverse Effect (as defined in the Securities Purchase Agreement). For clarity, an Event of Default under this **Section 11(A)(xviii)** will not require any curtailment of revenue;

(xix) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder upon conversion or exercise (as the case may be) of any Securities (as defined in the Securities Purchase Agreement) acquired by the Holder under the Securities Purchase Agreement (including this Note) as and when required by such Securities or the Securities Purchase Agreement, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

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

- (1) commences a voluntary case or proceeding;
- (2) consents to the entry of an order for relief against it in an involuntary case or proceeding;
- (3) consents to the appointment of a custodian of it or for any substantial part of its property;
- (4) makes a general assignment for the benefit of its creditors;
- (5) takes any comparable action under any foreign Bankruptcy Law; or
- (6) generally is not paying its debts as they become due; or

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

- (1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;
- (2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;
- (3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or
- (4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 11(A)(xxi)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances.* If an Event of Default set forth in **Section 11(A) (xx)** or **(xxi)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Maturity Principal Amount of, and all accrued and unpaid interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration.* If an Event of Default (other than an Event of Default set forth in **Section 11(A) (xx)** or **(xxi)**) with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and is continuing, then the Holder, by notice to the Company, may declare this Note to become due and payable immediately for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default.* Promptly, but in no event later than two (2) Business Days after an Event of Default, the Company will provide written notice of such Event of Default (an “**Event of Default Notice**”) to the Holder, which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (iii) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the date of such cure.

Section 12. Ranking.

The indebtedness represented by this Note will constitute the senior secured obligations of the Company; *provided*, that upon the consummation of a Traditional Working Capital Facility, indebtedness represented by this Note will be secured on a second priority basis to the liens securing the Indebtedness in respect of such Traditional Working Capital Facility over the Cash, Cash Equivalents, accounts receivable, accounts and inventory of the Company and its Subsidiaries securing such Traditional Working Capital Facility and will constitute the junior secured obligations of the Company.

Section 13. Replacement Notes.

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company from any loss that it may suffer if this Note is replaced.

Section 14. Notices.

Any notice or communication to the Company will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission (including e-mail) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

Workhorse Group Inc.
100 Commerce Drive
Loveland, Ohio 45140
Attention: Chief Financial Officer
Email address: greg.ackerson@workhorse.com

The Company, by notice to the Holder, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Holder will be by email to its email address, which initially are as set forth in the Securities Purchase Agreement. The Holder, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is mailed in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Section 15. Successors.

All agreements of the Company in this Note will bind its successors.

Section 16. Severability.

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

Section 17. Headings, Etc.

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

Section 18. Amendments

This Note may not be amended or modified unless in writing by the Company and the Required Holders (as defined in the Securities Purchase Agreement), and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

Section 19. Governing Law; Waiver of Jury Trial.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS NOTE. THE COMPANY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE.

Section 20. Submission to Jurisdiction.

The Company (A) agrees that any suit, action or proceeding against it arising out of or relating to this Note may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (B) waives, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has been brought in an inconvenient forum; and (C) submits to the nonexclusive jurisdiction of such courts in any such suit, action or proceeding.

Section 21. Enforcement Fees.

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable attorneys' fees and expenses.

Section 22. Collateral Agent.

(A) *Appointment; Authorization.* The Holder hereby irrevocably appoints, designates and authorizes HT Investments MA, LLC as collateral agent to take such action on its behalf under the provisions of this Note and each Security Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each Security Document, together with such powers as are reasonably incidental thereto. The provisions of this **Section 22** are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Document (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding any provision to the contrary contained elsewhere in this Note, any Security Document or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Note, any Security Document or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent.

(B) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Document by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates, partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this **Section 22** shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(C) Exculpatory Provisions.

(i) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Documents, and its duties shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default 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; and (iii) shall not, except as expressly set forth in the Security Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(ii) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(iii) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with this Note, any Security Document or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of this Note, any Security Document or any other agreement, instrument or document related hereto or thereto, or (e) any failure of the Company or any other party to this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Note, any Security Document or any other agreement, instrument or document related hereto or thereto, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(D) *Reliance by Collateral Agent.* The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(E) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Holder and each Other Holder and the Company. If the Collateral Agent resigns under this Note, the Holder and each Other Holder shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Holder and each Other Holder after consulting with the Holder and each other Holder. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this **Section 22** shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Holder, together with each Other Holder, shall perform all of the duties of the Collateral Agent hereunder until such time as the Holder and each Other Holder shall appoint a successor agent as provided for above.

(F) *Non-Reliance on the Collateral Agent.* The Holder acknowledges that it has, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Note. The Holder also acknowledges that it will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Note, any Security Document or any related agreement or any document furnished hereunder or thereunder.

(G) *Collateral Matters.* The Holder irrevocably authorizes the Collateral Agent to release any Lien granted to or held by the Collateral Agent under any Security Document (i) when all Obligations (as defined in the Security Agreement) have been paid in full or a Traditional Working Capital Facility is consummated; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under this Note and each other agreement, instrument or document related hereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with this Note and each other agreement, instrument or document related hereto); or (iii) if approved, authorized or ratified in writing by the Holder and each Other Holder. The Collateral Agent shall have the right, in accordance with the Security Documents to sell, lease or otherwise dispose of any Collateral (as defined in the Security Agreement) for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations.

(H) *Reimbursement by Holder and Other Holders.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(e) or 9(k) of the Securities Purchase Agreement to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Holder hereby agrees, jointly and severally with each Other Holder, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(I) *Marshaling; Payments Set Aside.* Neither the Collateral Agent nor the Holder shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Holder agrees to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Holder.

* * *

CONVERSION NOTICE

Workhorse Group Inc.

Senior Secured Convertible Note due 2023

Subject to the terms of this Note, by executing and delivering this Conversion Notice, the undersigned Holder of this Note directs the Company to convert the following Principal Amount of this Note: \$ _____,000 in accordance with the following details.

Check if the Conversion Date occurs during an Event of Default Conversion Period.

Shares of Common Stock to be delivered:

Accrued interest amount:

DTC Participant Number:

DTC Participant Name:

Date: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Check if the Conversion Rate is at a rate other than is otherwise currently applicable (counter signature by the Company is not required unless a Conversion Rate other than the currently applicable Conversion Rate is requested).

Requested Conversion Rate:

Date: _____

Workhorse Group Inc.

By: _____

Name:

Title:

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”) dated as of July 16, 2020 among Workhorse Group Inc., a Nevada corporation (the “**Grantor**”), and HT Investments MA LLC, a Delaware limited liability company, in its capacity as collateral agent for the benefit of the Holders (as defined below) (together with its successors and assigns in such capacity, the “**Secured Party**”).

WITNESSETH:

WHEREAS, the Grantor will enter into that certain Securities Purchase Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “**Securities Purchase Agreement**”), with HT Investments MA LLC (the “**Initial Holder**”) and each other party thereto, pursuant to which, among other things, the Grantor will issue, and the Initial Holder will purchase, subject to the terms set forth therein, the Convertible Notes (as defined in the Securities Purchase Agreement);

AND WHEREAS, it is a condition precedent to the closing under the Securities Purchase Agreement that the Grantor shall have executed and delivered this Agreement to the Secured Party for its benefit and the benefit of the Holders.

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

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

“**Account**” means any “account”, as such term is defined in the UCC.

“**Agreement**” has the meaning set forth in the preamble hereof.

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

“**Certus**” means Certus Unmanned Aerial Systems LLC, a Delaware limited liability company owned 50% by the Grantor and 50% by Moog Inc.

“**Chattel Paper**” means all “chattel paper”, as such term is defined in the UCC, including, without limitation, “electronic chattel paper” and “tangible chattel paper”, as each term is defined in the UCC.

“**Collateral**” has the meaning ascribed thereto in Section 3 hereof.

“**Collateral Records**” means all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” means all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

“**Commercial Tort Claims**” means “commercial tort claims”, as such term is defined in the UCC, including, without limitation, all commercial tort claims listed on Schedule VIII hereto.

“**Contracts**” means all contracts, undertakings, or other agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which the 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.

“**Convertible Notes**” has the meaning set forth in the Securities Purchase Agreement.

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

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

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

“**Equipment**” means (i) all “equipment”, as such term is defined in the UCC and, in any event, shall include, Motor Vehicles, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC); and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

“**Excluded Accounts**” means any accounts maintained by the Grantor exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Grantor’s 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 Collateral**” has the meaning set forth in Section 2.1(a) hereof.

“**GAAP**” has the meaning set forth in the Securities Purchase Agreement.

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

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

“**Governmental Entity**” means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

“**Grantor**” has the meaning set forth in the preamble hereof.

“**Holders**” means the Initial Holder and each Holder under and as defined in any Convertible Note.

“**Initial Holder**” has the meaning set forth in the preamble hereof.

“**Instruments**” means all “instruments”, as such term is defined in the UCC, and shall include, without limitation, promissory notes, drafts, bills of exchange and trade acceptances.

“**Insurance**” means (i) all insurance policies covering any or all of the Collateral (regardless of whether the Secured Party is the loss payee thereof) and (ii) all key man life insurance policies (if any).

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

“**Intellectual Property Licenses**” means any written agreement, including all contractual obligations (and all related IP Ancillary Rights), granting any right, title and interest in any Intellectual Property, including software license agreements, whether the Grantor is a licensee or licensor under any such license agreement, and including, without limitation, the license agreements listed on Schedule IV attached hereto and all Copyright Licenses, Patent Licenses and Trademark Licenses (each as defined in the Convertible Notes).

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

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

“**Inventory**” means (i) any “inventory”, as such term is defined in the UCC, and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in the Grantor’s business; all goods in which the Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by the Grantor, all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

“**Investment Property**” means all “investment property”, as such term is defined in the UCC.

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

“**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 Secured Party, creating in favor of the Secured Party a Lien on real property owned, leased, subleased or otherwise occupied by the Grantor.

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

“**Note Documents**” means the Securities Purchase Agreement, the Convertible Notes, the Warrants (as defined in the Securities Purchase Agreement), the Security Documents 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.

“**Notes Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the date hereof, among the Secured Party, the Grantor and HT Investments MA LLC, a Delaware limited liability company, in its capacity as First Lien Representative and First Lien Collateral Agent (each as defined in the Notes Intercreditor Agreement) (in such capacities, the “**Existing Notes Collateral Agent**”).

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

“**Patents**” means any patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, all patentable inventions and those patents and patent applications listed on Schedule V attached hereto (if any), all Patents (as defined in the Convertible Notes), and all IP Ancillary Rights in respect of any of the foregoing.

“**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity.

“**Pledge Supplement**” has the meaning set forth in Section 4.1(j) hereof.

“**Pledged Collateral**” means (a) all of the Pledged Interests, (b) the certificates, if any, representing the Pledged Interests and any interest of the Grantor on the books and records of any Pledged Entity pertaining to such Pledged Interests and (c) all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the Pledged Interests

“**Pledged Entities**” means the corporations, limited liability companies and other entities set forth on Exhibit A and each other corporation, limited liability company or other entity, the stock or other equity interests and securities of which are owned or acquired by the Grantor and described on a Pledge Supplement.

“**Pledged Interests**” means all of the capital stock, limited liability company interests and other equity interests and securities of the Pledged Entities or any other entity now owned or hereafter acquired by the Grantor.

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

“**Receivables**” means all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Property, together with all of the Grantor’s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

“**Receivables Records**” means (i) all originals or copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables; (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of the Grantor or any computer bureau or agent from time to time acting for the Grantor or otherwise; (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers; and (iv) all other written or non-written forms of information related in any way to the foregoing or any Receivable.

“**Record**” has the meaning specified in the UCC.

“**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 Mortgages, and each other agreement or instrument pursuant to or in connection with which the Grantor grants a security interest in any Collateral to the Secured Party, for its benefit and the benefit of the Holders, or pursuant to which any such security interest in Collateral is perfected, each as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

“**Secured Party**” has the meaning set forth in the preamble hereof.

“**Securities Purchase Agreement**” has the meaning set forth in the recitals hereof.

“**Software**” means all “software”, as such term is defined in the UCC, now owned or hereafter acquired by the 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.

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

“**Trademarks**” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in any trademarks, trade names, internet domain names, URLs, all websites, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source or business identifiers, 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, all Trademarks (as defined in the Convertible Notes).

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

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

(a) The Grantor has rights in and the power to transfer the Collateral in which it purports to grant a security interest pursuant to Section 3 hereof (subject, with respect to after acquired Collateral, to the Grantor acquiring the same) and no Lien other than (x) with respect to the Collateral other than the Pledged Collateral, Permitted Liens, and (y) with respect to the Pledged Collateral, the Permitted Liens described in clause (A) or (N) of the definition thereof, in either case, exists or will exist upon such Collateral at any time.

(b) This Agreement is the legal, valid and binding obligation of the Grantor, enforceable against the Grantor in accordance with its terms except to the extent that such enforceability is subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance and moratorium laws and other laws of general application affecting enforcement of creditors’ rights generally, or the availability of equitable remedies, which are subject to the discretion of the court before which an action may be brought.

(c) This Agreement is effective to create in favor of the Secured Party a valid security interest in and Lien upon all of the 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 Grantor, depository institution and the Secured Party on behalf of the Holders, (iii) filings in the United States Patent and Trademark Office or United States Copyright Office with respect to Collateral that is Patents, Trademarks or Copyrights, as the case may be, (iv) the filing of the Mortgages in the jurisdictions listed on Schedule I hereto, (v) the delivery to the Secured Party of the Pledged Collateral together with assignments in blank, (vi) the security interest created hereby being noted on each certificate of title evidencing the ownership of any Motor Vehicle in accordance with Section 4.1(d) hereof, (vii) delivery to the Secured Party or its Representative of Instruments duly endorsed by the Grantor or accompanied by appropriate instruments of transfer duly executed by the Grantor with respect to Instruments not constituting Chattel Paper and (viii) the consent of the issuer and any confirmer of any letter of credit to an assignment to the Secured Party of the proceeds of any drawing thereunder, such security interest will be a duly perfected first priority security interest (subject only to Permitted Liens) in all of the Collateral. No consent, approval or authorization of or designation or filing with any Governmental Entity on the part of the Grantor is required in connection with the pledge and security interest granted under this Agreement (other than (x) any consent or approval which has been obtained and is in full force and effect and (y) the filings described in clauses (c) (i), (iii) and (iv) above).

(d) The execution, delivery and performance of this Agreement will not violate (i) any material provision of any Applicable Law, (ii) any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, which are applicable the Grantor, (iii) the articles or certificate of incorporation, certificate of formation, bylaws or any other similar organizational documents of the Grantor or any Pledged Entity or of any securities issued by the Grantor or any Pledged Entity, (iv) any mortgage, indenture, lease, contract, or other agreement, instrument or undertaking to which the Grantor or any Pledged Entity is a party or which is binding upon the Grantor or any Pledged Entity or upon any of the assets of the Grantor or any Pledged Entity, and will not result in the creation or imposition of any lien, charge or encumbrance on or security interest in any of the assets of the Grantor or any Pledged Entity, except as otherwise contemplated by this Agreement.

(e) All of the Equipment, Inventory and Goods with a value in excess of \$50,000 individually or in the aggregate owned by the 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 the 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 the Grantor (including corporation, partnership, limited partnership or limited liability company), organizational identification number issued by the Grantor's state of incorporation, formation or organization (or a statement that no such number has been issued), the 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 the Grantor keeps its books and records and the states in which the Grantor conducts its business. The Grantor has only one state or province, as applicable, of incorporation, formation or organization. The Grantor does not do business and has not done business during the past five years under any trade name or fictitious business name, and has not changed its jurisdiction of incorporation, formation or organization or its corporate structure in any way, except as disclosed on Schedule II attached hereto.

(f) To the Grantor's knowledge, no Copyrights, Patents, Intellectual Property Licenses or Trademarks listed on Schedules III, IV, V and VI attached hereto, respectively, if any, have been adjudged invalid or unenforceable or have been canceled, in whole or in part, or are not presently subsisting. To the Grantor's knowledge, each of such Copyrights, Patents, Intellectual Property Licenses and Trademarks (if any) is valid and enforceable. To the Grantor's knowledge and as of the date hereof, the 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 the Grantor, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by the Grantor not to sue third persons, other than Permitted Liens and Permitted Intellectual Property Licenses. The Grantor has adopted, used and is currently using, or has a current bona fide intention to use, all of the Trademarks and Copyrights listed on Schedules III and VI, respectively. As of the date hereof, the 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.

(g) Without duplication of any information required to be delivered by the Grantor to the Secured Party under and in accordance with the terms of the Convertible Notes, then subject to Section 2(r), the 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 each Interest Payment Date.

(h) All depository and other accounts including, without limitation, Deposit Accounts, securities accounts, brokerage accounts and other similar accounts, maintained by the Grantor (other than Excluded Accounts) are described on Schedule VII hereto, which description includes for each such account, the name and address of the financial institution at which such account is maintained and the account number of such account. The Grantor shall not open any new Deposit Accounts, securities accounts, brokerage accounts or other accounts unless the Grantor shall have given the Secured Party prior written notice of its intention to open any such new accounts. Subject to Section 2(r), the 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. The Grantor hereby authorizes the financial institutions at which the 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 the Grantor hereby consents to such information being provided to the Secured Party. In addition, all of the Grantor's depository, 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.

(i) The Grantor does not own any Commercial Tort Claims having a value in excess of \$50,000 individually or in the aggregate except for those disclosed on Schedule VIII hereto (if any).

(j) The Grantor does not have any interest in real property except as disclosed on Schedule IX (if any). Subject to Section 2(r), the 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 Secured Party, all such interests in real property with a fair market value in excess of \$500,000 with respect to such real property are, or within 30 days after the Grantor acquires any additional real property interest with a fair market value in excess of \$500,000 shall be, subject to a Mortgage in favor of the Secured Party; provided, that if at any time the fair market value of any real property interest of the Grantor that is not subject to a Mortgage in favor of the Secured Party (whether individually or in the aggregate with other such real property interests) exceeds \$1,000,000, then Grantor shall promptly cause its real property interests to be subject to one or more Mortgages in favor of the Secured Party such that the fair market value of the real property interests of the Grantor that are not subject to a Mortgage does not exceed \$1,000,000.

(i) The Grantor shall duly and properly record each interest in real property held by the 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 the 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 the Grantor's business or, with respect to state and federal rights of way, are not capable of being recorded as a matter of state and federal law.

(ii) The Grantor shall cause a title insurance company reasonably satisfactory to the Collateral Agent to issue, in respect of each mortgaged real property interest (including any additional real property interest (whether fee, leasehold or otherwise) that is required to be subject to a Mortgage), a mortgagee's title insurance policy (or policies) or marked up unconditional binder for such insurance or unconditional commitment to issue a title policy for such insurance. Each such policy shall (1) be in an amount reasonably satisfactory to the Collateral Agent and in any event such amount shall not exceed 120% of the then fair market value of the property; (2) insure that the Mortgage insured thereby creates a valid first Lien on, and security interest in, such mortgaged real property interest free and clear of all defects and encumbrances, except for Permitted Liens; (3) name the Collateral Agent, for the benefit of the Holders, as the insured thereunder; (4) be in the form of ALTA Loan Policy reasonably acceptable to the Collateral Agent; and (5) contain such endorsements and affirmative coverage as the Collateral Agent may reasonably request, each in form and substance reasonably acceptable to the Collateral Agent.

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

(l) None of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC).

(m) The Grantor does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut.

(n) All actions and consents, including all filings, notices, registrations and recordings necessary for the exercise by the Secured Party of the rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained, other than those required under federal and state securities laws (in each case, with respect only to the exercise of remedies).

(o) Exhibit A sets forth (i) the authorized capital stock and other equity interests of each Pledged Entity, (ii) the number of shares of capital stock and other equity interests of each Pledged Entity that are issued and outstanding as of the date hereof and (iii) the percentage of the issued and outstanding shares of capital stock and other equity interests of each Pledged Entity held by the Grantor. The Grantor is the record and beneficial owner of, and has good and marketable title to, the Pledged Interests, and such shares are and will remain free and clear of all pledges, liens, security interests and other encumbrances and restrictions whatsoever, except the liens and security interests in favor of the Secured Party created by this Agreement and any Permitted Lien described in clause (N) of the definition thereof.

(p) Except as set forth on Exhibit A, there are no outstanding options, warrants or other similar agreements with respect to the Pledged Interests or any of the other Collateral.

(q) The Pledged Interests have been duly and validly authorized and issued, are fully paid and non-assessable, and the Pledged Interests listed on Exhibit A constitute all of the issued and outstanding capital stock or other equity interests of the Pledged Entities or, with respect to Certus, such other percentage of ownership as set forth on Exhibit A.

(r) Upon delivery by the Grantor to the Secured Party of any updated schedule required to be delivered pursuant to this Section 2, unless the Grantor has in good faith determined that the matters contained in such updated schedule do not constitute material, nonpublic information relating to the Grantor or any of its Subsidiaries, the Grantor shall on or prior to 9:00 am, New York city time on the Business Day immediately following such updated schedule delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Grantor believes that any updated schedule required to be delivered pursuant to this Section 2 contains material, non-public information relating to the Grantor or any of its Subsidiaries, the Grantor so shall indicate to the Secured Party explicitly in writing concurrently with the delivery of such updated schedule, and in the absence of any such written indication, the Secured Party shall be entitled to presume that information contained in such updated schedule does not constitute material, non-public information relating to the Grantor or any of its Subsidiaries.

Section 3. Collateral.

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

- i) all Instruments, together with all payments thereon or thereunder, and Letter-of-Credit Rights;
- ii) all Accounts;
- iii) all Inventory;
- iv) all General Intangibles (including Software);
- v) all Equipment;
- vi) all Documents;
- vii) all Contracts;
- viii) all Goods;
- ix) all Investment Property;
- x) all Deposit Accounts and the balance from time to time in all bank accounts maintained by the Grantor;
- xi) all Commercial Tort Claims specified on Schedule VIII;
- xii) all Intellectual Property;
- xiii) all Chattel Paper, all amounts payable thereunder, all rights and remedies of the Grantor thereunder including but limited to the right to amend, grant waivers and declare defaults, any and all accounts evidenced thereby, any guarantee thereof, and all collections and monies due or to become due or received by any Person in payment of any of the foregoing;
- xiv) all Receivables and Receivable Records;
- xv) all Insurance;
- xvi) all Pledged Collateral;
- xvii) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the

foregoing; and

xviii) all other tangible and intangible property of the 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 the 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 the Grantor, any computer bureau or service company from time to time acting for the Grantor.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in, and the term "Collateral" shall be deemed to exclude, all of the following property (the "**Excluded Collateral**"): (A) any intent-to-use trademark applications filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, to the extent that, and solely during the period in which, the grant of a security interest therein would otherwise invalidate the Grantor's right, title or interest therein, (B) any property owned by the Grantor that is subject to a purchase money Lien or a "capital lease" in accordance with GAAP permitted hereunder or under the Note Documents if the contractual obligation pursuant to which such Lien is granted (or the document providing for such capital lease) prohibits the creation of a Lien thereon or expressly requires the consent of any person other than the Grantor, unless such consent has been obtained or such prohibitions otherwise cease to exist, in which case such Collateral shall automatically become subject to the security interest granted hereunder, (C) any General Intangibles or other rights, in each case arising under any contracts, instruments, licenses or other documents as to which the grant of a security interest would violate or invalidate any such contract, instrument, license or other document or give any other party to such contract, instrument, license or other document the right to terminate its obligations thereunder, (D) any asset, the granting of a security interest in which would be void or illegal under any applicable governmental law, rule or regulation, or pursuant thereto would result in, or permit the termination of, such asset, provided, that the property described in clauses (C) and (D) above shall only be excluded from the term "Collateral" to the extent the conditions stated therein are not rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC or any other Applicable Law, (E) assets sold pursuant to the Asset Purchase Agreement dated October 1, 2019 by and among Moog Inc., Surefly, Inc. and the Grantor, as in effect on the date hereof and as may be amended to extend the closing date of the transactions contemplated by such Asset Purchase Agreement so long as such amendment does not impose further obligations on the Grantor and would not cause additional assets being sold thereunder, and any assets of Certus, and (F) the Excluded Accounts. Notwithstanding the foregoing, all Proceeds of the property described in clauses (A) through (F) above shall constitute Collateral and shall be included within the property and assets over which a security interest is granted pursuant to this Agreement, unless such Proceeds would independently constitute Excluded Collateral.

(b) The security interest granted under this Section does not constitute and is not intended to result in a creation or an assumption by the Secured Party of any obligation of the 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 the 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 the Grantor has been dispossessed of such Collateral by the Secured Party (or its assignee), which, by their nature, may not be satisfied without possession of such Collateral and (ii) the Secured Party shall not have any obligations or liability in respect of the Collateral by reason of this Agreement, nor shall the Secured Party be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(c) Subject to the Notes Intercreditor Agreement, any obligation of the Grantor in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of any Investment Property that is represented by a certificate or that is an "instrument", Chattel Paper or any other Instrument (including any endorsements related thereto) or other Collateral to the Secured Party shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of such Investment Property is made to, or such possession is with, the Existing Notes Collateral Agent (acting as gratuitous bailee for perfection purposes pursuant to the Intercreditor Agreement).

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

4.1 Delivery and Other Perfection; Maintenance, etc.

(a) Delivery of Instruments, Documents, Etc. The Grantor shall deliver and pledge to the Secured Party or its Representative any and all Instruments, negotiable Documents and Chattel Paper evidencing amounts greater than \$50,000 individually or in the aggregate 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 the 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, the Grantor may retain for collection in the ordinary course of business any Instruments, negotiable Documents and Chattel Paper received by the Grantor in the ordinary course of business, and the Secured Party or its Representative shall, promptly upon request of the Grantor, make appropriate arrangements for making any other Instruments, negotiable Documents and Chattel Paper pledged by the Grantor available to the 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 the Grantor retains possession of any Chattel Paper, negotiable Documents or Instruments evidencing amounts greater than \$25,000 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 HT Investments MA LLC, in its capacity as agent for one or more creditors, as Secured Party."

(b) Other Documents and Actions. The Grantor shall give, execute, deliver, file and/or record any financing statement, registration, notice, instrument, document, agreement, Mortgage or other papers that may be necessary (as determined in the reasonable judgment of the Secured Party or its Representative) to create, preserve, perfect or validate the security interest granted pursuant hereto (or any security interest or mortgage contemplated or required hereunder, including with respect to Section 2(j) of this Agreement) or to enable the Secured Party or its Representative to exercise and enforce the rights of the Secured Party hereunder with respect to such pledge and security interest; provided that notices to account debtors in respect of any Accounts or Instruments shall be subject to the provisions of clause (e) below. Notwithstanding the foregoing the 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 the 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 the Grantor is an organization, the type of organization and any organization identification number issued to the 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. The Grantor agrees to furnish any such information to the Secured Party promptly upon request.

(c) Books and Records; Inspections. The 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 material dealings with the Collateral. Upon the occurrence and during the continuation of any Event of Default, the 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 written demand. The Grantor shall permit, at reasonable times during business hours and with reasonable prior notice, the Secured Party or its Representative to: (i) inspect the properties and operations of the Grantor or any Pledged Entity (to the extent the Grantor is permitted to inspect the Pledged Entity's property and operations); (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 Grantor hereby authorizes such independent auditors to discuss such financial matters with the Secured Party or its Representative; provided that the Grantor shall be invited to attend any such meeting with its independent auditors); (iii) examine (and, at the expense of the Grantor, photocopy extracts from) any of its books or other records; and (iv)(A) inspect the Collateral and other tangible assets of the Grantor or any Pledged Entity (to the extent the Grantor is permitted to inspect the Pledged Entity's assets), (B) perform appraisals of the equipment of the Grantor or any Pledged Entity (to the extent the Grantor is permitted to perform appraisals of the equipment of the Pledged Entity) and (C) inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral, for purposes of or otherwise in connection with conducting a review, audit or appraisal of such books and records. The Grantor will pay the Secured Party the reasonable out-of-pocket costs and expenses of any audit or inspection of the Collateral promptly after receiving the invoice; provided that the Grantor shall not be required to reimburse the Secured Party for the foregoing expenses relating to more than one such inspection or audit in any calendar year unless an Event of Default has occurred and is continuing, in which event the Grantor shall be required to reimburse the Secured Party for any and all of the foregoing expenses. Notwithstanding anything contained in this Section 4.1(c) to the contrary, if an Event of Default shall have occurred and be continuing, then the Secured Party or its Representative may take any of the actions specified in clauses (i) through (iv) of this Section 4.1(c) without prior notice to the Grantor, but shall endeavor in good faith to provide the Grantor subsequent notice.

(d) Motor Vehicles. The 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 \$50,000 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. The Secured Party will, promptly after receipt of written request therefor from the Grantor, return any such certificate of title as needed by the Grantor to maintain the registration and licensing of such Equipment and Motor Vehicles, and Grantor shall promptly return such certificates of title to Secured Party upon completion of such registration and licensing requirements.

(e)

(f) 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, the Grantor shall promptly notify (and the 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.

(g) Intellectual Property. The 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 issued or applied-for Patents, written Intellectual Property Licenses and registered or applied-for Trademarks owned by the Grantor as of the date hereof. If the 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 the Grantor shall promptly give to the Secured Party notice and any registered Copyrights, issued or applied-for Patents, written Intellectual Property Licenses, and registered or applied-for Trademarks. The Grantor hereby authorizes the Secured Party to modify this Agreement by amending Schedules III, IV, V and VI, as applicable, to include any such property in any such notice. The 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 the 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 the 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 the Grantor. Any expenses incurred in connection with the Grantor's obligations under this Section 4.1(f) shall be borne by the Grantor. Except for any such items that the Grantor reasonably believes in good faith are no longer necessary for the on-going operations of its business, Grantor shall not 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, which consent shall not be unreasonably withheld, conditioned or delayed. The Grantor represents that all Intellectual Property license agreements pursuant to which the Grantor is a licensee or licensor are written.

(h) Further Identification of Collateral. The 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.

(i) Investment Property. The 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 the 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 the Grantor delivers such certificated securities to the Secured Party (with assignments in blank or appropriate endorsements if such certificated securities are in registered form); (ii) such Investment Property consists of uncertificated securities and the issuer thereof agrees, pursuant to documentation in form and substance reasonably satisfactory to the Secured Party, that it will comply with instructions originated by the Secured Party without further consent by the Grantor, and (iii) such Investment Property consists of security entitlements and either (x) the Secured Party becomes the entitlement holder thereof or (y) the appropriate securities intermediary agrees, pursuant to the documentation in form and substance reasonably satisfactory to the Secured Party, that it will comply with entitlement orders originated by the Secured Party without further consent by the Grantor.

(i) Commercial Tort Claims. The Grantor shall promptly notify the Secured Party of any Commercial Tort Claims acquired by it that concerns claims in excess of \$50,000 individually or in the aggregate and unless otherwise consented to by the Secured Party, the Grantor shall enter into a supplement to this Agreement granting to the Secured Party a Lien on and security interest in such Commercial Tort Claim.

(j) Pledge Supplement. Within five (5) Business Days of the creation or acquisition of any new Pledged Interests, the Grantor shall execute a supplement to Exhibit A (a "**Pledge Supplement**") and deliver such Pledge Supplement to the Secured Party. Any Pledged Collateral described in a Pledge Supplement delivered by the Grantor shall thereafter be deemed to be listed on Exhibit A hereto.

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 to take any steps the Secured Party or its Representative reasonably deems necessary or appropriate to preserve any Collateral or any rights against third parties to any of the Collateral upon the Grantor's failure to do so, including obtaining insurance for the Collateral at any time when the Grantor has failed to do so, and the Grantor shall promptly pay, or reimburse the Secured Party for, all reasonable and customary out-of-pocket expenses incurred in connection therewith.

4.3 Name Change; Location; Bailees

(a) The Grantor shall not form or acquire any subsidiary other than in accordance with the express terms of the Note Documents.

(b) The 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. The 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 the 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 Note Documents and except for Collateral temporarily located for maintenance or repair (so long as the Grantor shall promptly provide the Secured Party with written notice of such temporary location), the Grantor will keep Collateral with a value in excess of \$100,000 individually or \$500,000 in the aggregate at the locations specified in Schedule I attached hereto. The Grantor will give the Secured Party 10 Business Days prior written notice before any change in the Grantor's chief place of business or of any new location for any of the Collateral with a value in excess of \$100,000 individually or \$500,000 in the aggregate at all such locations.

4.4 Other Liens. The Grantor 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 with a value in excess of \$500,000 in the aggregate is at any time in the possession or control of any warehousemen, bailee, consignee or processor, the 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) The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement naming the 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 the Grantor's rights under Section 9-509(d)(2) to the UCC.

4.5 Bank Accounts and Securities Accounts. Pursuant to this Agreement, the Grantor grants and shall grant to the Secured Party a continuing lien upon, and security interest in, all Deposit Accounts (general or special), securities accounts, brokerage accounts or other similar accounts (other than Excluded Accounts), which financial institutions are set forth on Schedule VII attached hereto and all funds at any time paid, deposited, credited or held in such accounts (whether for collection, provisionally or otherwise) or otherwise in the possession of such financial institutions. Following the date hereof, the Grantor shall not 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 the Grantor shall have entered into an account control agreement or securities account control agreement in form and substance reasonably satisfactory to the Secured Party (each a "**Control Agreement**") with such financial institution which purports to cover such account. The 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 or is subject to a control agreement in favor of the Existing Notes Collateral Agent.

4.6 Events of Default, Etc. During the period during which an Event of Default shall have occurred and be continuing:

(a) the Grantor shall, at the request of the Secured Party or its Representative, assemble the Collateral and make it available to the Secured Party or its Representative at a place or places designated by the Secured Party or its Representative which are reasonably convenient to the Secured Party or its Representative, as applicable, and the Grantor;

(b) the Secured Party or its Representative may make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, any of the Collateral;

(c) the Secured Party shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not said UCC is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral in accordance with this Agreement and the other Note Documents as if the Secured Party were the sole and absolute owner thereof (and the Grantor agrees to take all such action as may be appropriate to give effect to such right);

(d) the Secured Party or its Representative shall have the right, in the name of the Secured Party or in the name of the Grantor or otherwise, to demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so;

(e) the Secured Party or its Representative shall have the right to take immediate possession and occupancy of any premises owned, used or leased by the Grantor and exercise all other rights and remedies which may be available to the Secured Party;

(f) the Secured Party shall have the right, upon reasonable written notice (such reasonable notice to be determined by the Secured Party in its sole and absolute discretion, which shall not be less than 10 days), with respect to the Collateral or any part thereof (whether or not the same shall then be or shall thereafter come into the possession, custody or control of the Secured Party or its Representative), to sell, lease, license, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Secured Party deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), and the Secured Party or anyone else may be the purchaser, lessee, licensee, assignee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the Grantor, any such demand, notice and right or equity being hereby expressly waived and released. The Secured Party may, to the fullest extent permitted by Applicable Law, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

(g) the Secured Party may, prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Secured Party deems appropriate;

(h) the Secured Party may proceed to perform any and all of the obligations of the Grantor contained in any Contract and exercise any and all rights of the Grantor therein contained as the Grantor itself could;

(i) the Secured Party shall have the right to use the Grantor's rights under any Collateral consisting of Intellectual Property Licenses in connection with the enforcement of the Secured Party's rights hereunder; and

(j) the rights, remedies and powers conferred by this Section 4.6 are in addition to, and not in substitution for, any other rights, remedies or powers that the Secured Party may have under any Note Document, at law, in equity or by or under the UCC or any other statute or agreement. The Secured Party may proceed by way of any action, suit or other proceeding at law or in equity and no right, remedy or power of the Secured Party will be exclusive of or dependent on any other. The Secured Party may exercise any of its rights, remedies or powers separately or in combination and at any time.

Without limiting the foregoing, the Secured Party may, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Grantor or any other person or entity (all and each of which demands, advertisements and/or notices are hereby expressly waived), upon the occurrence and during the continuance of an Event of Default forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith date and otherwise fill in the blanks on any assignments separate from certificates or stock power or otherwise sell, assign, give an option or options to purchase, contract to sell or otherwise dispose of and deliver said Collateral, or any part thereof, in one or more portions at one or more public or private sales or dispositions, at any exchange or broker's board or at any of the Secured Party's offices or elsewhere upon such terms and conditions as the Secured Party may deem advisable and at such prices as it may deem best, for any combination of cash and/or securities or other property or on credit or for future delivery without assumption of any credit risk, with the right of the Secured Party (or the designee of the Secured Party) upon any such sale, public or private, to purchase the whole or any part of said Collateral so sold, free of any right or equity of redemption of the Grantor, which right or equity is hereby expressly waived or released. The Grantor agrees that, to the extent notice of sale shall be required by Applicable Law or this Agreement, at least ten (10) days' prior written notice to the Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Notwithstanding any provision in any operating agreement or shareholder agreement of any issuer of the Collateral or any other Applicable Law to the contrary, the undersigned, constituting a member and/or shareholder of each issuer hereby acknowledges that such member and/or shareholder, as applicable, may pledge to the Secured Party all of such member's and/or shareholder's right, title and interest in such issuer, and upon foreclosure the successful bidder (which may include the Secured Party or any Holder) will be deemed admitted as a member and/or shareholder, as applicable, of such issuer, and will automatically succeed to all of such pledged right, title and interest, including without limitation such members' and/or shareholder's limited liability company and equity interests, right to vote and participate in the management and business affairs of the issuer, right to a share of the profits and losses of the issuer and right to receive distributions from the issuer.

The proceeds of each collection, sale or other disposition under this Section 4.6 shall be applied in accordance with Section 4.9 hereof.

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 Grantor shall remain liable for any deficiency.

4.8 Private Sale. The 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. The 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 the 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 Grantor agrees that it would not be commercially unreasonable for the Secured Party to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. The Secured Party may sell the Collateral without giving any warranties as to the Collateral. The Secured Party may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. The Secured Party shall be under no obligation to delay a sale of any of the Collateral to permit the Grantor to register such Collateral for public sale under the Act, or under applicable state securities laws, even if the Grantor would agree to do so. The Secured Party shall not incur any liability as a result of the sale of any such Collateral, or any part thereof, at any private sale provided for in this Agreement and the Grantor hereby waives any claims against the Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Secured Party accepts the first offer received and does not offer the Collateral to more than one offeree. The Secured Party may sell the Collateral without giving any warranties as to the Collateral. The Secured Party may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

The 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 the Grantor’s expense. The Grantor further agrees that a breach of any of the covenants contained in this Section 4.8 will cause irreparable injury to the Secured Party, that the Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 4.8 shall be specifically enforceable against the Grantor, and the 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.

The Grantor further agrees not to exercise any and all rights of subrogation it may have against a Pledged Entity upon the sale or disposition of all or any portion of the Pledged Collateral by the Secured Party pursuant to the terms of this Agreement until the termination of this Agreement in accordance with Section 4.12.

4.9 Application of Proceeds. The proceeds of any collection, sale or other realization of all or any part of the Collateral following the occurrence and during the continuance of an Event of Default, and any other cash at the time held by the Secured Party under this Agreement, shall be applied to the Obligations in such order as the Secured Party shall elect.

4.10 Attorney-in-Fact. The 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 the Grantor and in the name of the 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 the Grantor, without notice to or assent by the Grantor (to the extent permitted by Applicable Law), to do the following upon the occurrence and during the continuance of an Event of Default:

(a) to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary to accomplish the purposes of this Agreement;

(b) to ask, demand, collect, receive and give acquittance and receipts for any and all moneys due and to become due under any Collateral and, in the name of the Grantor or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other Instruments for the payment of moneys due under any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Secured Party for the purpose of collecting any and all such moneys due under any Collateral whenever payable and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Secured Party for the purpose of collecting any and all such moneys due under any Collateral whenever payable;

(c) to pay or discharge charges or liens levied or placed on or threatened against the Collateral, to effect any insurance called for by the terms of this Agreement or the Note Documents and to pay all or any part of the premiums therefor;

(d) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due, and to become due thereunder, directly to the Secured Party or as the Secured Party shall direct, and to receive payment of and receipt for any and all moneys, claims and other amounts due, and to become due at any time, in respect of or arising out of any Collateral;

(e) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against the Grantor, assignments, verifications and notices in connection with accounts and other Documents constituting or relating to the Collateral;

(f) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral;

(g) to defend any suit, action or proceeding brought against the Grantor with respect to any Collateral;

(h) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Secured Party may deem appropriate;

(i) to the extent that the 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 the Grantor's signature;

(j) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Secured Party were the absolute owner thereof for all purposes;

(k) to prepare, sign, and file any document which may be required by the United States Patent and Trademark Office, the United States Copyright Office or similar registrar in order to effect an absolute assignment of all right, title and interest in all registered Intellectual Property and any application for all such registrations, and record the same;

(l) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of the Grantor as debtor; and

(m) to do, at the Secured Party's option and at the 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 realize upon the Collateral and the Secured Party's lien therein, in order to effect the intent of this Agreement, all as fully and effectively as the Grantor might do.

The 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.

The Grantor also authorizes the Secured Party, at any time from and after the occurrence and during the continuation of any Event of Default, (x) to communicate in its own name with any party to any Contract constituting Collateral with regard to the assignment of the right, title and interest of the Grantor in and under the Contract 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, the 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 or its Representative may request to perfect the security interests granted by Section 3 of this Agreement;

(b) at the Secured Party's request, deliver to the Secured Party or its Representative the originals of all Instruments required to be so delivered hereunder together with, in the case of Instruments constituting promissory notes, allonges attached thereto showing such promissory notes to be payable to the order of a blank payee;

(c) deliver to the Secured Party or its Representative all certificates representing the Pledged Interests now owned by the Grantor, together with undated assignments separate from certificates or stock/membership interest powers duly executed in blank by the Grantor and irrevocable proxies;

(d) deliver to the Secured Party or its Representative a Mortgage with respect to all real property held by the Grantor that is required to be subject to a Mortgage;

(e) deliver to the Secured Party or its Representative a Control Agreement for each Deposit Account owned by the Grantor, acceptable in all respects to the Secured Party, duly executed by the Grantor and the financial institution at which the Grantor maintains such Deposit Account; and

(f) deliver to the Secured Party or its Representative the originals of all Motor Vehicle titles with respect to Motor Vehicles having a value in excess of \$50,000 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 (except for contingent indemnity claims for which no claim has been made). 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 Grantor, and the Secured Party will promptly following such termination deliver possession of all Collateral (including, without limitation, the Pledged Interests, the other Pledged Collateral and any other property then held as part of the Pledged Collateral) to the Grantor and execute and deliver to the Grantor such documents as are necessary to evidence such termination, including UCC termination statements and such other documentation as shall be reasonably requested by the Grantor to effect the termination and release of the Liens and security interests in favor of the Secured Party affecting the Collateral. Upon any sale of property, permitted by the Note Documents, to a party who is not the Grantor or a Subsidiary of the Grantor, the Liens granted herein with respect to such property shall be deemed to be automatically released and such property shall automatically revert to the Grantor with no further action on the part of any Person. The Secured Party shall, at Grantor's expense, execute and deliver or otherwise authorize the filing of such documents as the Grantor 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 or its Representative, and at the sole expense of the Grantor, the Grantor shall promptly and duly execute and deliver any and all such further instruments, documents and agreements and take such further actions as the Secured Party or its Representative may reasonably require in order for the Secured Party to obtain the full benefits of this Agreement and of the rights and powers herein granted in favor of the Secured Party, including, without limitation, using the Grantor's commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the assignment to the Secured Party of any Collateral held by the Grantor or in which the Grantor has any rights not heretofore assigned, the filing of any financing or continuation statements under the UCC with respect to the liens and security interests granted hereby, transferring Collateral to the Secured Party's possession (if a security interest in such Collateral can be perfected by possession), placing the interest of the Secured Party as lienholder on the certificate of title of any Motor Vehicle, using commercially reasonable efforts to obtain waivers of liens from landlords and mortgagees, and delivering to the Secured Party all such Control Agreements as the Secured Party or its Representative shall require duly executed by the Grantor and the financial institution at which the Grantor maintains a Deposit Account covered by such Control Agreement. The Grantor also hereby authorizes the Secured Party and its Representative to file any such financing or continuation statement without the signature of the 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 Holders in the Collateral and shall not impose any duty upon it to exercise any such powers. Without in any way limiting the exculpation and indemnification provisions of the Note Documents, the Secured Party shall be accountable only for amounts that it actually receives and retains for its own account as a result of the exercise of such powers and neither the Secured Party nor its Representative nor any of their respective officers, directors, employees or agents shall be responsible to the Grantor 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 Grantor under or pursuant to any Contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or license, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

4.15 Dividends, Distributions, Etc. If, prior to the payment in full of the Obligations, the Grantor shall receive any certificate (including, without limitation, any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital, or issued in connection with any reorganization, merger or consolidation), or any options or rights, whether as an addition to, in substitution for, or in exchange for any of the Pledged Interests or otherwise, the Grantor agrees, in each case, to accept the same as the Secured Party's agent and to hold the same in trust for the Secured Party, and to deliver the same promptly (but in any event within five (5) Business Days of receipt) to Secured Party in the exact form received, with the endorsement of the Grantor when necessary and/or with appropriate undated assignments separate from certificates or stock powers duly executed in blank, to be held by the Secured Party subject to the terms hereof, as additional Pledged Collateral. The Grantor shall promptly deliver to the Secured Party (i) a Pledge Supplement with respect to such additional certificates, and (ii) any financing statements or amendments to financing statements as requested by the Secured Party. The Grantor hereby authorizes the Secured Party to attach each such Pledge Supplement to this Agreement. Except as provided in Section 4.16(b) below, all sums of money and property so paid or distributed in respect of the Pledged Interests which are received by the Grantor shall, until paid or delivered to the Secured Party, be held by the Grantor in trust as additional Pledged Collateral.

4.16 Voting Rights; Dividends; Certificates.

(a) So long as no Event of Default has occurred and is continuing, the Grantor shall be entitled (subject to the other provisions hereof, including, without limitation, Section 4.17 below) to exercise its voting and other consensual rights with respect to the Pledged Interests and otherwise exercise the incidents of ownership thereof in any manner not inconsistent with this Agreement and/or any of the other Note Documents. The Grantor hereby grants to the Secured Party or its nominee, an irrevocable proxy to exercise all voting, corporate and limited liability company rights relating to the Pledged Interests in any instance, which proxy shall be effective, at the discretion of the Secured Party, upon the occurrence and during the continuance of an Event of Default so long as the Secured Party has notified the Grantor in writing of its intent to exercise its voting power under this clause prior to the exercise thereof. Upon the request of the Secured Party at any time, the Grantor agrees to deliver to the Secured Party such further evidence of such irrevocable proxy or such further irrevocable proxies to vote the Pledged Interests as the Secured Party may reasonably request.

(b) So long as no Event of Default shall have occurred and be continuing, the Grantor shall be entitled to receive cash dividends or other distributions made in respect of the Pledged Interests, to the extent permitted to be made pursuant to the terms of the Note Documents. Upon the occurrence and during the continuance of an Event of Default, in the event that the Grantor, 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, the Grantor shall deliver to the Secured Party, and the Secured Party shall be entitled to receive and retain, for the benefit of the Secured Party and the Holders, all such cash or other distributions as additional security for the Obligations.

(c) The Grantor shall cause all Pledged Interests (other than the Pledged Interests of Certus) to be certificated at all times while this Agreement is in effect.

(d) Any or all of the Pledged Interests held by the Secured Party hereunder may, if an Event of Default has occurred and is continuing and so long as the Secured Party has notified the Grantor in writing of its intent to exercise its power of registration under this sentence prior to the exercise thereof, be registered in the name of Secured Party or its nominee, and the Secured Party or its nominee may thereafter without notice exercise all voting and corporate rights at any meeting with respect to any Pledged Entity and exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Interests as if it were the absolute owner thereof, including, without limitation, the right to vote in favor of, and to exchange at its discretion any and all of the Pledged Interests upon the merger, consolidation, reorganization, recapitalization or other readjustment with respect to any Pledged Entity or upon the exercise by any Pledged Entity, the Grantor or the Secured Party of any right, privilege or option pertaining to any of the Pledged Interests, and in connection therewith, to deposit and deliver any and all of the Pledged Interests with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Secured Party may reasonably determine, all without liability except to account for property actually received by the Secured Party, but the Secured Party shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing.

4.17 No Disposition, Etc. Until the irrevocable payment in full of the Obligations (except for contingent indemnity claims for which no claim has been made), the Grantor 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 the Grantor create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance with respect to any of the Pledged Interests or any other Pledged Collateral, or any interest therein, or any proceeds thereof, except for the lien and security interest of the Secured Party provided for by this Agreement, the other Security Documents and the Permitted Liens described in clause (k) of the definition thereof.

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 Convertible Notes; provided, that, to the extent any such communication is being made or sent to the Secured Party, such communication shall be made to the Secured Party at the address set forth below the Secured Party's signature hereto. The Grantor and the Secured Party may change their respective notice addresses by written notice given to the other parties hereto 10 days following the effectiveness of such change.

5.4 Amendments, Etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by the Grantor and the Secured Party. Any such amendment or waiver shall be binding upon the Secured Party and the 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 the Grantor shall not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Secured Party. The Secured Party, in its capacity as the Collateral Agent, may assign its rights and obligations hereunder (a) without the consent of the Grantor, to any 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)) or (b) with the Grantor's consent (not to be unreasonably withheld, conditioned or delayed), any other Person acceptable to the Secured Party; provided that the Grantor's 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. THE GRANTOR (A) AGREES THAT ANY SUIT, ACTION OR PROCEEDING AGAINST IT ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY U.S. FEDERAL COURT WITH APPLICABLE SUBJECT MATTER JURISDICTION SITTING IN THE CITY OF NEW YORK; (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (I) ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING; AND (II) ANY CLAIM THAT IT MAY NOW OR HEREAFTER HAVE THAT ANY SUCH SUIT, ACTION OR PROCEEDING IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; AND (C) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE SECURED PARTY'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE FOREGOING COURTS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE GRANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. THE GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

5.9 WAIVER OF RIGHT TO TRIAL BY JURY. THE 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. THE 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 Survival. All representations, warranties, covenants and agreements of the Grantor and the Secured Party shall survive the execution and delivery of this Agreement.

5.11 Collateral Agent.

(a) The Holders have, pursuant to Section 21 of each Convertible Note, designated and appointed the Secured Party as the collateral agent of the Holders under this Agreement and the other Note Documents.

(b) Nothing in this Section 5.11 shall be deemed to limit or otherwise affect the rights of the Secured Party to exercise any remedy provided in this Agreement or any other Security Document.

(c) The Secured Party shall have the discretion to allocate proceeds received by the Secured Party pursuant to the exercise of remedies under the Note Documents or at law or in equity (including without limitation with respect to any secured creditor remedies exercised against the Collateral and any other collateral security provided for under any Security Documents) to the then outstanding Obligations in such order as the Secured Party 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 NOTE DOCUMENTS, SUPERSEDES ALL OTHER PRIOR ORAL OR WRITTEN AGREEMENTS BETWEEN THE SECURED PARTY, THE GRANTOR, THEIR AFFILIATES AND PERSONS ACTING ON THEIR BEHALF WITH RESPECT TO THE MATTERS DISCUSSED HEREIN, AND THIS AGREEMENT, TOGETHER WITH THE OTHER NOTE DOCUMENTS AND THE OTHER INSTRUMENTS REFERENCED HEREIN AND THEREIN, CONTAINS THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE MATTERS COVERED HEREIN AND THEREIN AND, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR THEREIN, NEITHER THE SECURED PARTY NOR THE 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 GRANTOR AND THE SECURED PARTY.

5.14 Grantor Acknowledgement. The Grantor acknowledges receipt of an executed copy of this Agreement. The Grantor waives the right to receive any amount that it may now or hereafter be entitled to receive (whether by way of damages, fine, penalty, or otherwise) by reason of the failure of the Secured Party to deliver to the Grantor a copy of any financing statement or any statement issued by any registry that confirms registration of a financing statement relating to this Agreement.

5.15 Intercreditor Agreement. Notwithstanding anything to the contrary herein, in the event that Grantor consummates a Traditional Working Capital Facility, (i) the Liens granted pursuant to Section 3 shall be subject to the terms and conditions of any intercreditor agreement entered into by the Grantor and the Secured Party with respect to such Traditional Working Capital Facility and on terms reasonably acceptable to each of the Grantor and the Secured Party (an “**Intercreditor Agreement**”), and (ii) the exercise of any right or remedy by the Secured Party hereunder is subject in all instances to the provisions of the Intercreditor Agreement, if any. In the event of any conflict between the terms of the Intercreditor Agreement, if any, and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

5.16 Notes Intercreditor Agreement. All rights and remedies of the Secured Party hereunder are subject to the terms of the Notes Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Secured Party and the other parties to the Notes Intercreditor Agreement, other than the Grantor. For the avoidance of doubt, this provision is not for the benefit of the Grantor and may not, under any circumstances, be enforced by the Grantor.

[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.

GRANTOR:

WORKHORSE GROUP INC.

By: _____

Name: Duane A. Hughes

Title: Chief Executive Officer

[Signature Page to Security Agreement]

SECURED PARTY:

HT INVESTMENTS MA LLC,
as Collateral Agent

By: _____

Name: Eric Helenek

Title: Authorized Signatory

Notice Address:

HT Investments MA LLC
c/o High Trail Capital
221 River Street, 9th Floor
Hoboken, NJ 07030
Attention: Eric Helenek
Telephone: (917) 414-1733
Facsimile: (917) 905-9799
Email: eric@hightrailcap.com

[Signature Page to Security Agreement]

Schedule I

A. Organizational Information

<u>Exact Legal Name</u>	<u>Jurisdiction of Formation and Registration</u>	<u>Country / State / Provincial Entity Registration / ID No.</u>	<u>Federal employer identification number</u>	<u>Date of Formation</u>	<u>Chief executive offices</u>	<u>Principal mailing addresses</u>
Workhorse Group Inc.	Nevada	E0780542007-8	26-1394771	November 13, 2007	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140

B. Location of Equipment, Inventory and Goods

<u>Grantor Name</u>	<u>Location of Equipment, Inventory and Goods</u>
Workhorse Group Inc.	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Group Inc.	119 Northeast Drive, Loveland, Ohio 45140
Workhorse Group Inc.	940 S. State Road 32, Union City, Indiana 47390

C. Collateral in Possession of Bailee, Warehousemen, Processor or Consignee.

<u>Name</u>	<u>Complete Street and Mailing Address, including County and Zip Code</u>	<u>Company/Subsidiary</u>
None.		

Schedule II

List of Trade Names/Fictitious Names Used in the Past Five Years

Former names listed below:

Workhorse Group Inc., a Nevada company (f/k/a AMP Holding Inc.)

Schedule III
List of Copyrights

None.

Schedule IV

List of License Agreements

- 1) Intellectual Property License Agreement between the Grantor and Lordstown Motors Corp. dated November 7, 2019
- 2) The following software licenses:

Manufacturer	Product	Total # of Seats
Microsoft	Windows Server User Cals	85
	Server 2016	9
	Project Online Pro	5
	Office 365 Business	7
	Office 365 Business Premium	26
	Visio Plan 2	2
	Windows 10 Pro	100
	SQL Server 2014	2
	Business Central(NAV)	
Meraki	MX84-3Yr Firewall	1
	MX64-3Yr Firewall	2
Luxion	KeyShot	1
Adobe	CreativeCloud	1
Altaro	VM Backup	9
Techsmith	Snagit	1
Webroot	SecureAnywhere	100
Dessault	Solidworks Premium	9
	Solidworks Standard	11
	Solidworks Electrical Schematic 2D	8
	Solidworks Electrical 3D	6
	Solidworks Flow Simulation	1
	Solidworks Simulation	2
	Solidworks PDM Pro CAD Editor	14
	Solidworks PDM Pro Viewer 5 Pack	1
Solidworks Composer 2019	2	

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
WOR08-00006	Canada	2523653	10/17/2005	2523653	12/22/2009	10/17/2025	VEHICLE CHASSIS ASSEMBLY	Workhorse Group Inc.
WOR08-00007	United States	11/252,220	10/17/2005	7,717,464	05/18/2010	09/06/2026	Vehicle Chassis Assembly	Workhorse Group Inc.
WOR08-00008	United States	11/252,219	10/17/2005	7,559,578	07/14/2009	09/06/2026	Vehicle Chassis Assembly	Workhorse Group Inc.
WOR08-00009	United States	29/243,074	11/18/2005	D561,078	02/05/2008	02/05/2022	Vehicle Header	Workhorse Group Inc.
WOR08-00010	United States	29/243,129	11/18/2005	D561,079	02/05/2008	02/05/2022	Vehicle Header	Workhorse Group Inc.
WOR08-00011	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 Group Inc.
WOR08-00012	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 Group Inc.
WOR08-00020	United States	15/915,144	03/08/2018	Abandoned for Failure to Respond to Office Action on June 17, 2019	Taft can attempt to revive. Proposed Revival Approach to R. Willison		PACKAGE DELIVERY BY MEANS OF AN AUTOMATED MULTI-COPTER UAS/UAV DISPATCHED FROM A CONVENTIONAL DELIVERY VEHICLE	Workhorse Group Inc.
WOR08-00013	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.
WOR08-00001	United States	62/957,577	01/06/2020				SYSTEMS AND METHODS FOR MANUFACTURING LAND VEHICLES	Workhorse Group Inc.
WOR08-00002	United States	63/005,652	04/06/2020				FLYING VEHICLE SYSTEMS AND METHODS	Workhorse Group Inc.
WOR08-00004	United States	62/959,548	01/10/2020				ELECTRIC DELIVERY TRUCK CONTROL SYSTEM FOR ELECTRIC POWER MANAGEMENT	Workhorse Group Inc.
WOR08-00005	United States	29/719,591	01/06/2020				TRUCK	Workhorse Group Inc.
WOR08-00018	United States	63/038,456	06/12/2020				UAV DELIVERY CONTROL SYSTEM FOR UAV DELIVERY OF PACKAGES	Workhorse Group Inc.

Code/Matter No.	Country	Serial Number	Application Date	Patent Number	Issue/Grant Date	Expiration Date	Title	Assignee
WOR08-00006	Canada	2523653	10/17/2005	2523653	12/22/2009	10/17/2025	VEHICLE CHASSIS ASSEMBLY	Workhorse Group Inc.
WOR08-00007	United States	11/252,220	10/17/2005	7,717,464	05/18/2010	09/06/2026	Vehicle Chassis Assembly	Workhorse Group Inc.
WOR08-00008	United States	11/252,219	10/17/2005	7,559,578	07/14/2009	09/06/2026	Vehicle Chassis Assembly	Workhorse Group Inc.
WOR08-00009	United States	29/243,074	11/18/2005	D561,078	02/05/2008	02/05/2022	Vehicle Header	Workhorse Group Inc.
WOR08-00010	United States	29/243,129	11/18/2005	D561,079	02/05/2008	02/05/2022	Vehicle Header	Workhorse Group Inc.
WOR08-00011	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 Group Inc.
WOR08-00012	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 Group Inc.
WOR08-00020	United States	15/915,144	03/08/2018	Abandoned for Failure to Respond to Office Action on June 17, 2019	Taft can attempt to revive. Proposed Revival Approach to R. Willison		PACKAGE DELIVERY BY MEANS OF AN AUTOMATED MULTI-COPTER UAS/UAV DISPATCHED FROM A CONVENTIONAL DELIVERY VEHICLE	Workhorse Group Inc.
WOR08-00013	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.
WOR08-00001	United States	62/957,577	01/06/2020				SYSTEMS AND METHODS FOR MANUFACTURING LAND VEHICLES	Workhorse Group Inc.
WOR08-00002	United States	63/005,652	04/06/2020				FLYING VEHICLE SYSTEMS AND METHODS	Workhorse Group Inc.
WOR08-00004	United States	62/959,548	01/10/2020				ELECTRIC DELIVERY TRUCK CONTROL SYSTEM FOR ELECTRIC POWER MANAGEMENT	Workhorse Group Inc.
WOR08-00005	United States	29/719,591	01/06/2020				TRUCK	Workhorse Group Inc.
WOR08-00018	United States	63/038,456	06/12/2020				UAV DELIVERY CONTROL SYSTEM FOR UAV DELIVERY OF PACKAGES	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
WOR08 00305	NOTHING OUTWORKS A WORKHORSE	Canada	AMP Trucks Inc.	1,053,053	03/30/2000	601,870	02/11/2004	12, 28	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
WOR08 00309	WORKHORSE CUSTOM CHASSIS	Canada	AMP Trucks Inc.	1,053,052	03/30/2000	601,775	02/10/2004	12, 28	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
WOR08 00311	Workhorse UFO and Logo 	Canada	AMP Trucks Inc.	1,328,215	12/14/2006	757,840	01/26/2010	12	Chassis and bodies for recreational vehicles
WOR08 00307	WORKHORSE	Canada	AMP Trucks Inc.	1,468,395	02/04/2010	783,257	11/23/2010	12	Chassis, bodies, and parts thereof, for recreational land vehicles, buses and trucks
WOR08 00308	WORKHORSE	Mexico	Workhorse Custom Chassis, LLC	1068329	02/18/2010	1200569	02/10/2011	12	
WOR08 00310	WORKHORSE CUSTOM CHASSIS	Mexico	Workhorse Custom Chassis, LLC	419462	04/05/2000	685022	01/31/2001	12	
WOR08 00306	NOTHING OUTWORKS A WORKHORSE	Mexico	Workhorse Custom Chassis, LLC	419463	04/05/2000	685023	01/31/2001	12	
WOR08 00204	WORKHORSE CUSTOM CHASSIS	United States	Workhorse Group Inc.	75/816,152	10/05/1999	2,413,878	12/19/2000	12	Chassis, bodies, and parts thereof, for recreational land vehicles, buses [and specialized trucks, 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]
WOR08 00300	AMP (Abandoned)	Iceland	AMP Electric Vehicles Inc.	1295/2011	05/05/2011	557/2011	05/31/2011	12	Electric drives for vehicles; Electric vehicles, namely, land vehicles
WOR08 00203	WORKHORSE	United States	Workhorse Group Inc.	78/571,788	2/21/2005	3,214,777	03/06/2007	12	Chassis, bodies, and parts thereof, for recreational land vehicles, buses and trucks
WOR08 00301	HORSEFLY	Canada	Workhorse Group Inc.	1909131	07/12/2018			12	Package delivery systems consisting primarily of civilian drones
WOR08 00302	HORSEFLY	China P.R.	Workhorse Group Inc.	32402121	7/23/2018	32402121	04/21/2019	12	Package delivery systems consisting primarily of civilian drones
WOR08 00303	HORSEFLY	European Union	Workhorse Group Inc.	017930054	07/13/2018		11/27/2018	12, 39	Package delivery systems consisting primarily of civilian drones; drones Vehicle leasing services; leasing of land vehicles (delivery trucks); leasing of drones
WOR08 00304	HORSEFLY	Mexico	Workhorse Group Inc.	2075312	07/16/2018	1983272	03/26/2019	12	Package delivery systems consisting primarily of civilian drones

Schedule VII

Depository Accounts¹

Account Name	Account Number	Account Description	Financial Institution	Financial Institution Address
Corporate Business Account	40-0712-9788	Checking Account	PNC Bank	9180 Union Cemetery Rd. Cincinnati, OH 45249
Corporate Business Account	42-4047-6014	Debit Card Account	PNC Bank	9180 Union Cemetery Rd. Cincinnati, OH 45249
Premium Business Money Market	41-0284-5707	Sweep Account	PNC Bank	9180 Union Cemetery Rd. Cincinnati, OH 45249
Premium Business Money Market	41-3019-0699	Money Market	PNC Bank	9180 Union Cemetery Rd. Cincinnati, OH 45249

¹ Accounts are now in the name of Workhorse Group Inc. and the Blocked Account has now been closed.

Schedule VIII

List of Commercial Tort Claims

None.

Schedule IX

List of Interests in Real Property

<u>Complete Street and Mailing Address, including County and Zip Code</u>	<u>Interest</u>	<u>Company/Subsidiary</u>
119 Northeast Drive, Loveland, Ohio 45140	Leasehold	Workhorse Group Inc.
940 IN-32, Union City, Indiana 47390	Leasehold	Workhorse Group Inc.
100 Commerce Drive, Loveland, Ohio 45140	Leasehold	Workhorse Group Inc.

An Affiliate, Workhorse Motor Works Inc. owns the 940 IN-32 property

An Affiliate, Workhorse Properties LLC owns the 100 Commerce Dr. property

Schedule X

List of Titled Equipment

Year	Make	Model	Vehicle ID#
2011	Chevrolet Silverado	C3500	1GC5CZCG2BZ132623
2010	Gator Trailer		4Z1HD2029AS014857
2007	Saturn Sky		1G8MB35B87Y106581
2012	Mule Egen		5B4MDG199D3447867
1999	Workhorse P30		5B4HP32R8X3308074
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
2005	Workhorse P-42		5B4HP42P753403324

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
Certus Unmanned Aerial Systems LLC	Workhorse Group Inc.	50%	50,000	Uncertificated