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): October 14, 2020

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

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

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

(513) 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 Material Definitive Agreements.

4.0% Senior Secured Convertible Notes Due 2024

As previously disclosed, on October 12, 2020, Workhorse Group Inc. (the "Company") entered into a note purchase agreement (the "Purchase Agreement"), with certain investors (the "Investors"), pursuant to which the Company agreed to issue and sell, in a private placement by the Company to the Investors (the "Private Placement"), 4.00% senior secured convertible notes due 2024 in an aggregate principal amount of $200,000,000 (the "Notes") that are convertible into shares of the Company's common stock, par value of $0.001 per share ("Common Stock").

The Notes were issued pursuant to an Indenture dated October 14, 2020, between the Company, the subsidiary guarantors described below and U.S. Bank National Association as trustee (the "Indenture"). The Notes are senior secured obligations of the Company, and rank senior to all unsecured debt of the Company, and will be due on October 14, 2024. The Notes bear interest at 4.00% per annum, paid quarterly commencing January 15, 2021 in cash or, subject to certain conditions and other limitations, shares of Common Stock, at the Company's option. The interest rate on the Notes may be reduced to 2.75% if the Company meets certain conditions. The conversion price is $35.29, subject to customary anti-dilution adjustments and adjustments for certain corporate events. The number of shares issuable in lieu of cash interest on the Notes will be based on the share price of the Common Stock at the time. The Notes will generally not be redeemable at the option of the Company prior to the third anniversary of their issue date.

The Notes are guaranteed by all the Company's current and future subsidiaries and are secured by liens on substantially all the assets of the Company and its subsidiaries. The Company is required to hold the proceeds of the Notes in escrow until it completes certain requirements related to the collateral. The Indenture includes customary affirmative and negative covenants, including limitations on liens, additional indebtedness, investments, and dividends and other restricted payments, and customary events of default. In connection with the Indenture, the Company entered into a security agreement, including customary covenants and agreements governing the collateral.

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 paid commissions to Goldman Sachs & Co. LLC and BTIG, LLC in connection with the Private Placement, so the proceeds to the Company before expenses will be approximately $194,500,000, when they are released from escrow upon satisfaction of certain conditions related to the collateral. The Company expects to use the net proceeds from this offering to increase and accelerate production volume, advance new products to market, and support current working capital and other general corporate purposes.

The Notes and the shares of Common Stock issuable upon the conversion of the Notes (the "Conversion Shares") have not been registered under the Securities Act of 1933, as amended (the "Securities Act") and the Notes 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 Notes and Conversion Shares may not be offered or sold in the absence of an effective registration statement or exemption from the registration requirements under the Securities Act. In connection with the Purchase Agreement, the Company entered into a Registration Rights Agreement with one of the Investors, providing for certain customary registration rights with respect to the Conversion Shares under the Notes purchased by the Investor.

The representations, warranties and covenants contained in the Indenture, the Security Agreement and the Registration Rights 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.

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 629,675 shares of Common Stock exercisable at a price of $38.82 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 Securities and Exchange Commission (the "Commission") 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 Commission on December 9, 2019.

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 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.

Securities Exchange Agreement

In addition, pursuant to the Company's previously disclosed exchange agreement (the "Exchange Agreement") with HT Investments MA LLC, which was the holder of the Company's 4.50% convertible notes (the "Old Notes") on October 14, 2020, the Company exchanged the full $70.0 million outstanding principal amount of the Old Notes for 5,155,167 shares of Common Stock. The Old Notes contained restrictive covenants that, among other things, would have prohibited the issuance of the Notes. Accordingly, the Company agreed to convert the Old Notes at a premium to the conversion rate provided in the Old Notes in order to induce the holder of the Old Notes to consummate the exchange and thereby permit the issuance of the New Notes.
The representations, warranties and covenants contained in the Exchange 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 description of the terms and conditions of the agreements in this Item 1.01 do not purport to be complete and are qualified in their entirety by the full text of the form of the agreements described above, which are exhibits to this Form 8-K and the Company's Form 8-K filed with the Commission on October 12, 2020.

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 these securities 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.

Forward-Looking Statements

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 conditions to release the proceeds from the Private Placement from escrow. 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 Company's reports filed with the 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 7.01. Regulation FD Disclosure.

On October 16, 2020, the Company issued a press release about the closing of the Private Placement. The press release is furnished as exhibit 7.01 and incorporated by reference herein.

Item 9.01. Exhibits.

Exhibit No.	Description
10.1	Indenture
10.2	Form of Global 4.00% Senior Secured Convertible Note
10.3	Security Agreement
10.4	Registration Rights Agreement
7.01	Press Release, dated October 16, 2020
104	Cover page from this Current Report on Form 8-K, formatted as Inline XBRL

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: October 16, 2020

By: /s/ Steve Schrader

Name: Steve Schrader
Title: Chief Financial Officer

Workhorse Closes $200 Million Financing from Institutional Lenders

CINCINNATI, October 14, 2020 /PRNewswire/ –Workhorse Group Inc. (Nasdaq: WKHS) ("Workhorse" or "the Company"), an American technology company focused on providing sustainable and cost-effective drone-integrated electric vehicles to the last-mile delivery sector, closed the previously announced $200 million financing with Antara Capital GP LLC as lead investor.

The Notes are convertible into common stock by the holders at $35.29 per share as adjusted prior to closing, mature in four years and bear interest at a rate of 4.0% per year, which rate may be reduced to 2.75% if the Company meets certain conditions. Interest is payable in quarterly installments and can be paid at the Company's option either in cash or, subject to certain conditions, shares of common stock.

"We are excited to close this transaction with our financial partners led by Antara Capital. The funds will allow an acceleration of production, an advancement of new products directly for the last mile delivery market and an expansion of our drone operations", said Workhorse CEO Duane Hughes. "We appreciate our financial partners faith in us and their support in further solidifying our leadership and reach in the last-mile delivery segment."

When the proceeds of the financing are released from escrow, the Company will receive $194.5m in net proceeds after payment of certain fees and expenses.

Goldman Sachs & Co. LLC served as exclusive financial advisor to Workhorse Group Inc. BTIG LLC acted as the financial advisor to the lenders.

About Workhorse Group Inc.
Workhorse is a technology company focused on providing drone-integrated electric vehicles to the last-mile delivery sector. As an American original equipment manufacturer, we design and build high performance, battery-electric vehicles including trucks and aircraft. Workhorse also develops cloud-based, real-time telematics performance monitoring systems that are fully integrated with our vehicles and enable fleet operators to optimize energy and route efficiency. All Workhorse vehicles are designed to make the movement of people and goods more efficient and less harmful to the environment. For additional information visit **workhorse.com**.

Forward-Looking Statements
This press release includes forward-looking statements. These statements are made under the "safe harbor" provisions of the U.S. Private Securities Litigation Reform Act of 1995. These statements may be identified by words such as "believes," "expects," "anticipates," "estimates," "projects," "intends," "should," "seeks," "future," "continue," or the negative of such terms, or other comparable terminology. Forward-looking statements are statements that are not historical facts. Such forward-looking statements are subject to risks and uncertainties, which could cause actual results to differ materially from the forward-looking statements contained herein. Factors that could cause actual results to differ materially include, but are not limited to: our limited operations and need to expand in the near future to fulfill product orders; risks associated with obtaining orders and executing upon such orders; the ability to protect our intellectual property; the potential lack of market acceptance of our products; potential competition; our inability to retain key members of our management team; our inability to raise additional capital to fund our operations and business plan; our inability to satisfy covenants in our

financing agreements; our inability to maintain our listing of our securities on the Nasdaq Capital Market; our inability to satisfy our customer warranty claims; our ability to continue as a going concern; our liquidity and other risks and uncertainties and other factors discussed from time to time in our filings with the Securities and Exchange Commission ("SEC"), including our annual report on Form 10-K filed with the SEC. Workhorse expressly disclaims any obligation to publicly update any forward-looking statements contained herein, whether as a result of new information, future events or otherwise, except as required by law.

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WORKHORSE GROUP INC.,

THE GUARANTORS LISTED ON THE SIGNATURE PAGES HEREOF

and

U.S. Bank National Association

as Trustee and Collateral Agent

INDENTURE

Dated as of October 14, 2020

Senior Secured Convertible Notes due 2024

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INDENTURE, dated as of October 14, 2020, among Workhorse Group Inc., a Nevada corporation, as issuer (the "**Company**"), the Guarantors (as defined herein) listed on the signature pages hereof and U.S. Bank National Association, as trustee (in such capacity, the "**Trustee**") and as collateral agent (in such capacity, the "**Collateral Agent**").

Each party to this Indenture (as defined below) agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined below) of the Company's Senior Secured Convertible Notes due 2024 (the "**Notes**").

Article 1. DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01. DEFINITIONS.

"**Acceptable Security Interest**" means, with respect to any Property, a Lien that (A) exists in favor of the Collateral Agent for the benefit of the Holders, the Trustee and the Collateral Agent; (B) is superior to all Liens or rights of any other Person in the Property encumbered thereby (other than Permitted Prior Liens); (C) secures the Notes and other Obligations under the Notes and this Indenture; and (D) is perfected and enforceable.

"**Additional Interest**" means all amounts, if any, payable pursuant to **Section 3.19(D)**, **Section 3.19(E)** and **Section 7.04**, as applicable.

"**Affiliate**" has the meaning set forth in Rule 144 as in effect on the Issue Date.

"**Attribution Parties**" means, collectively, the following Persons and entities as it relates to any Holder: (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 any Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such 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 such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with such 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 any Holder and all other of such Holder's Attribution Parties to the Maximum Percentage.

"**Authorized Denominations**" has the meaning set forth in **Section 2.03(A)**.

"**Backlog Conversions**" means, as of any date, the total net sales made by the Company and its Subsidiaries pursuant to Firm Orders for the four most recently completed fiscal quarters of the Company, calculated on a basis consistent with GAAP and the Company's historical reporting practices (as reflected in the Company's most recent Forms 10-Q and 10-K); *provided* that, to the extent any business, division or assets are divested or disposed of, or acquired, merged, consolidated or amalgamated, in each case, as permitted hereunder, such calculation shall be made after giving *pro forma* effect to such divestiture, disposition, acquisition, merger, consolidated or amalgamation.

"**Backlog Orders**" means, as of any date, an amount equal to the product of (a) the total number of units for which the Company and its Subsidiaries have Firm Orders as of the last day of the Company's most recently ended fiscal quarter, multiplied by (b) the net purchase price applicable to such units, in each case, calculated on a basis consistent with GAAP and the Company's historical reporting practices (as reflected in the Company's most recent Forms 10-Q and 10-K); *provided* that, to the extent any business, division or assets are divested or disposed of, or acquired, merged, consolidated or amalgamated, in each case, as permitted hereunder, such calculation shall be made after giving *pro forma* effect to such divestiture, disposition, acquisition, merger, consolidated or amalgamation.

"**Backlog Sales**" means, as of any date, the sum of Backlog Conversions and Backlog Orders for such date.

"**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 6.01(A)**.

"**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 Expenditures**" means (A) all expenditures (whether paid in cash or accrued as liabilities) by the Company and its Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as additions during such period to property, plant or equipment reflected in the consolidated balance sheet of the Company and its Subsidiaries, (B) all capitalized research and development costs during such period and (C) all fixed asset additions financed through Financing Lease Obligations incurred by the Company and its Subsidiaries and recorded on the balance sheet in accordance with GAAP during such period.

"**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 security that is convertible into for 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 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.

"**Certus**" means Certus Unmanned Aerial Systems LLC, a Delaware limited liability company.

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

"**Collateral**" means all Property mortgaged under the Mortgages and any other Property, whether now owned or hereafter acquired, upon which a Lien securing the Obligations under this Indenture, the Notes and the Guarantees is granted or purported to be granted under any Collateral Agreement; *provided*, *however*, that "Collateral" does not include any Excluded Collateral.

"**Collateral Agent**" means the Person named as the "Collateral Agent" in the first paragraph of this Indenture until a successor collateral agent shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Collateral Agent" shall mean or include each Person who is then a Collateral Agent hereunder.

"**Collateral Agreements**" means, collectively, each Mortgage, the Security Agreement, and each other agreement or instrument creating Liens in favor of the Trustee or the Collateral Agent as required by this Indenture, in each case, as the same may be in force from time to time.

"**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 5.10(A)**.

"**Common Stock Change Event**" has the meaning set forth in **Section 5.10(A)**.

"**Company**" means the Person named as such in the first paragraph of this Indenture and, subject to **Article 6**, its successors and assigns.

"**Company Order**" means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

"**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 Agent**" has the meaning set forth in **Section 3.20**.

"**Conversion Consideration**" has the meaning set forth in **Section 5.04(A)**.

"**Conversion Consideration Interest Shares**" has the meaning set forth in **Section 5.04(A)(ii)**.

"**Conversion Consideration Interest Shares Notice**" has the meaning set forth in **Section 5.04(B)**.

"**Conversion Date**" means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** 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 28.3354 shares of Common Stock per $1,000 principal amount of Notes, which amount is subject to adjustment pursuant to **Article 5**. Whenever this Indenture 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 as of the Close of Business on such date.

"**Conversion Settlement Date**" has the meaning set forth in **Section 5.04(D)**.

"**Conversion Share**" means any share of Common Stock issued or issuable upon conversion of any Note.

"**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.

"**Corporate Trust Office**" means the office of the Trustee or the Collateral Agent, as applicable, at which at any particular time its corporate trust business shall be administered, which office on the date hereof is located at U.S. Bank Global Corporate Trust, 425 Walnut Street, CN-OH-W6CT, Cincinnati, OH 45202, or such other address as the Trustee or the Collateral Agent, as applicable, may designate from time to time by notice to the Holders and the Company, or the designated corporate trust office of any successor Trustee or Collateral Agent (or such other address as such successor Trustee or Collateral Agent, as applicable, may designate from time to time by notice to the Holders and the Company).

"**Covenant Defeasance**" means any defeasance pursuant to, and subject to the terms of, **Section 11.04**.

"**Covering Price**" has the meaning set forth in **Section 5.04(F)(i)**.

"**Custodian**" means the Trustee, as custodian for the Depositary, with respect to the Global Notes, or any successor entity thereto.

"**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**" means has the meaning set forth in **Section 2.03(C)**.

"**Defaulted Shares**" has the meaning set forth in **Section 5.04(F)**.

"**Depositary**" means The Depository Trust Company or its successor.

"**Depositary Procedures**" means, with respect to any conversion, transfer, exchange or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depositary applicable to such conversion, transfer, exchange or transaction.

"**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.

"**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 the Notes are Freely Tradable; (B) the Holders are 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 5.11**; (D) the Company is in compliance with **Section 5.05(A)** and such shares will satisfy **Section 5.05(B)**; (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 $5.00 (subject to proportionate adjustments for events of the type set forth in **Section 5.07(A)(i)**); (G) the daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the applicable Eligible Exchange is not less than five million dollars ($5,000,000); 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 7.01(A)**.

"**Event of Default Notice**" has the meaning set forth in **Section 7.03**.

"**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 5.11**.

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

"**Expiration Date**" has the meaning set forth in **Section 5.07(A)(d)**.

"**Expiration Time**" has the meaning set forth in **Section 5.07(A)(d)**.

"**Financing Lease Obligations**" means an obligation that is required to be accounted for as a financing or capital lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP as in effect on the Issue Date. At the time any determination thereof is to be made, the amount of the liability in respect of a financing or capital lease would be the

amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP as in effect on the Issue Date.

"**Firm Orders**" means orders that have been made by customers pursuant to a binding contract or purchase order.

"**Freely Tradable**" means, with respect to any shares of Common Stock issued or issuable upon conversion of the Notes, that (A) such shares would be eligible to be offered, sold or otherwise transferred by a 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 the Depositary 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 Repurchase Date**" means the date as of which the Notes must be repurchased for cash in connection with a Fundamental Change, as provided in **Section 4.02(B)**.

"**Fundamental Change Repurchase Notice**" has the meaning set forth in **Section 4.02(C)**.

"**Fundamental Change Repurchase Price**" has the meaning set forth in **Section 4.02(D)**.

"**Fundamental Change Repurchase Right**" has the meaning set forth in **Section 4.01(A)**.

"**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 the Notes and any financial calculations required thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

"**Global Note**" shall have the meaning specified in **Section 2.05(B)**.

"**Guarantee**" means the guarantee by each Guarantor of the Company's obligations under this Indenture and the Notes pursuant to **Article 9**.

"**Guaranteed Obligations**" has the meaning set forth in **Section 9.01(A)**.

"**Guarantor**" means (A) each Subsidiary of the Company executing this Indenture as an initial Guarantor and (B) any Subsidiary of the Company that becomes a Guarantor in accordance with this Indenture, and its successors and assigns.

"**Guarantor Business Combination Event**" has the meaning set forth in **Section 9.04(A)**.

"**Holder**" as applied to any Note, or other similar terms (but excluding the term "beneficial holder"), means any Person in whose name at the time a particular Note is registered on the Note Register.

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

Section 2.01. "**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.

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

"**Initial Holders**" means Antara Capital LP and HT Investments MA LLC and their respective Affiliates.

"**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.

"**Intellectual Property Rights**" means the rights or Licenses to use all Trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, Patents, Patent rights, Copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor.

"**Interest Payment Date**" means, with respect to a Note, (A) each January 15, April 15, July 15 and October 15 of each calendar year, beginning on January 15, 2021; and (B) if not otherwise included in **clause (A)**, the Maturity Date.

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

"**Issue Date**" means October 14, 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 the Notes.

"**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 Interest Payment Price**" means, with respect to any Interest Payment Date, an amount equal to the average of the five (5) Daily VWAPs during the five (5) VWAP Trading Day period ending on the VWAP Trading Day immediately prior to such Interest Payment Date; *provided* that the Market Stock Interest Payment Price shall in no case be less than $1.50.

"**Material Adverse Effect**" means any material adverse effect on (i) the business, Properties, assets, liabilities, operations (including results thereof), or condition (financial or otherwise) of the Company or a Guarantor, or any of their respective Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company or a Guarantor, or any of their respective

Subsidiaries, to perform any of their respective obligations under any of the Transaction Documents.

"**Maturity Date**" means October 15, 2024.

"**Maximum Percentage**" has the meaning set forth in **Section 5.11(A)**.

"**Minimum Backlog Sales**" has the meaning set forth in **Section 3.10**.

"**Mortgages**" means the mortgages, deeds of trust, deeds to secure Indebtedness, assignments of as-extracted collateral, fixture filings or other similar documents granting Liens on the Company's and the Subsidiaries' Properties and interests to secure the Notes.

"**Net Sales**" means with respect to any Person for any period, the total amount of net sales of such Person for such period on a consolidated basis and as determined in accordance with GAAP.

"**Net Sales Coverage Ratio**" means, as of any date of determination, the ratio of (A) Net Sales of the Company and its Subsidiaries for the most recently completed four consecutive fiscal quarters of the Company ending on or immediately preceding the date of determination for which internal financial statements are available, to (B) the total aggregate amount of the Traditional Working Capital Facilities then outstanding, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Traditional Working Capital Facility had been incurred, and the application of proceeds therefrom had occurred at the beginning of such period.

"**Note Purchase Agreement**" means that certain Note Purchase Agreement, dated as of October 12, 2020, among the Company, Antara Capital LP and HT Investments MA LLC, providing for the purchase of the Notes.

"**Note Register**" shall have the meaning specified in **Section 2.05(A)**.

"**Note Registrar**" has the meaning set forth in **Section 2.05(A)**.

"**Notes**" has the meaning set forth in the recitals.

"**Notice of Redemption**" has the meaning set forth in **Section 4.04(B)(i)**.

"**Obligations**" means any principal, premium, if any, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization, whether or not a claim for post-filing interest is allowed in such proceeding), penalties, fees, charges, expenses, indemnifications, reimbursement obligations, damages, guarantees, and other liabilities or amounts payable under the documentation governing any Indebtedness or in respect thereto.

"**Officer**" means, with respect to the Company, the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer, the Chief Legal Officer, the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether

or not designated by a number or numbers or word or words added before or after the title "Vice President").

"**Officer's Certificate**," when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by any Officer of the Company. Each such certificate shall include the statements provided for in **Section 13.18** if and to the extent required by the provisions of such **Section 13.18**.

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

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel who is reasonably acceptable to the Trustee, which opinion may contain customary exceptions and qualifications as to the matters set forth therein, that is delivered to the Trustee. Each such opinion shall include the statements provided for in **Section 13.18** if and to the extent required by the provisions of such **Section 13.18**.

"**Optional Redemption**" has the meaning set forth in **Section 4.04(A)**.

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

"**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.

"**Paying Agent**" has the meaning set forth in **Section 3.20**.

"**Permitted Indebtedness**" means:

(A) Indebtedness evidenced by the Notes;

(B) Indebtedness in existence 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 June 30, 2020), other than Indebtedness incurred pursuant to clauses (A) and (I) of this definition;

(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 or any Guarantor;

(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 Indenture, including applicable interest rates;

(I) Indebtedness in respect of Traditional Working Capital Facilities; provided that the Company may not incur any Indebtedness under a Traditional Working Capital Facility unless, after giving effect to such incurrence, the Net Sales Coverage Ratio for the Company would have been greater than or equal to 4.00 to 1.00;

(J) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (E) and (G) through (I); and

(K) extensions, refinancings and renewals of any items of Permitted Indebtedness (other than any Indebtedness repaid with the proceeds of the Notes), 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 existing on 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, (ii) non-cash Investments in joint ventures in businesses related or complementary to the business of the Company and its Subsidiaries (but excluding the use of Capital Stock or other equity interest of the Company or any of its Subsidiaries); provided that such Investments shall not include the transfer of ownership or title of any assets that are, individually or in the aggregate, material to the Company's medium-duty truck business, and (iii) net cash Investments in joint ventures in businesses related or complementary to the business of the Company and its Subsidiaries in an amount not to exceed twenty five million dollars ($25,000,000) at any time outstanding; provided that for any Investments pursuant to clauses (ii) and (iii),

the Capital Stock of any such joint venture owned by the Company or any of its Subsidiaries shall be concurrently added to the Collateral securing the Notes and the Guarantees in the manner and to the extent required under this Indenture or any of the Collateral Agreements; and

(I) Permitted Intellectual Property Licenses.

"**Permitted Liens**" means any and all of the following:

(A) Liens in favor of the Collateral Agent;

(B) Liens existing on the Issue Date, other than Liens securing the Notes and any Traditional Working Capital Facility;

(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 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; provided such Liens are on a pari passu or junior lien basis to the Notes; 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 the Notes); 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 Prior Liens**" means Liens described in the definition of Permitted Liens that, by operation of law, have priority over the Liens securing the Notes.

"**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 under clause (H) of Permitted Investments; and

(E) dispositions of the Company's Investment in Lordstown Motor Corp.; provided that (x) 100% of the consideration from such disposition is in the form of Cash or Cash Equivalents, (y) such consideration is at least equal to the fair market value of the shares or assets of such disposition and (z) such consideration shall be deposited directly into a collateral account pursuant to a Security Document; provided further that the proceeds of such disposition are used or useful in a Similar Business and used to make (i) an Investment in any one or more businesses, including any joint venture, as long as such Investment in any business is in the form of the acquisition of Capital Stock, (ii) Capital Expenditures, (iii) acquisitions of other assets or (iv) other capital, operating or research and development expenditures; provided further that any Investments, Property, Capital Stock or other assets purchased with the proceeds of such disposition shall be concurrently added to the Collateral securing the Notes and the Guarantees in the manner and to the extent required under this Indenture or any of the Collateral Agreements.

"**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.

"**Physical Notes**" means permanent certificated Notes in registered form issued in minimum denominations of $1,000 principal amount and integral multiple of $1,000 in excess thereof.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under **Section 2.06** in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

"**Property**" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"**Redemption Date**" has the meaning set forth in **Section 4.04(B)(i)**.

"**Redemption Price**" means for any Notes to be redeemed pursuant to **Section 4.04(A)**, 100% of the principal amount of such Notes, *plus* accrued and unpaid interest, if any, to, but excluding, the Redemption Date (unless the Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case the Company will pay, on or, at the Company's election, before such Interest Payment Date, the full amount of accrued and unpaid interest to the Holders of record of such Notes as of the close of business on such Regular Record Date, and the Redemption Price will be equal to 100% of the principal amount of such Notes to be redeemed).

"**Reference Property**" has the meaning set forth in **Section 5.10(A)**.

"**Reference Property Unit**" has the meaning set forth in **Section 5.10(A)**.

"**Regular Record Date**," with respect to any Interest Payment Date, means the January 1, April 1, July 1 or October 1 (whether or not such day is a Business Day), as the case may be, immediately preceding the applicable January 15, April 15, July 15 and October 15 Interest Payment Date, respectively.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 5.11(A)**.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Article 4**.

"**Resale Restriction Termination Date**" shall have the meaning specified in **Section 2.05(C)**.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee, including any senior vice president, vice president, assistant vice president, any trust officer or assistant trust officer, or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such person's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

"**Restricted Securities**" shall have the meaning specified in **Section 2.05(C)**.

"**Restrictive Notes Legend**" shall have the meaning specified in **Section 2.05(C)**.

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

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

"**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.

"**Security Agreement**" means that certain Security Agreement, dated as of October 14, 2020, among the Company, the Guarantors party thereto and the Collateral Agent.

"**Security Document**" has the meaning set forth in the Security Agreement.

"**Similar Business**" means any business conducted or proposed to be conducted by the Company and its Subsidiaries on the Issue Date or any business that is similar, complimentary, reasonably related, incidental or ancillary thereto or is a reasonable extension, development or expansion thereof.

"**Specified Courts**" has the meaning set forth in **Section 13.07**.

"**Spin-Off**" has the meaning set forth in **Section 5.07(A)(iii)(b)**.

"**Spin-Off Valuation Period**" has the meaning set forth in **Section 5.07(A)(iii)(b)**.

"**Stated Interest**" means, as of any date, a rate per annum equal to 4.00%; *provided* that in the event that the Company receives a USPS Minimum Firm Order, the Stated Interest shall be 2.75% beginning on the Interest Payment Date following receipt of such USPS Minimum Firm Order, certified to the Trustee in an Officer's Certificate, until the Maturity Date.

"**Subordinated Indebtedness**" means with respect to the Notes and the Guarantees,

(A) any Indebtedness of the Company which is by its terms subordinated in right of payment to the Notes; and

(B) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes;

provided, that, in each case, such Subordinated Indebtedness shall not have 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 Subordinated Indebtedness earlier than one hundred eighty-one (181) days following the Maturity Date.

"**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 6.01(A)(i)**.

"**Successor Guarantor Corporation**" has the meaning set forth in **Section 9.04(A)(i)**.

"**Successor Person**" has the meaning set forth in **Section 5.10(A)**.

"**Tender/Exchange Offer Valuation Period**" has the meaning set forth in **Section 5.07(A)(d)**.

"**Total Indebtedness**" means, as at any date of determination, an amount equal to the aggregate principal amount of all outstanding Indebtedness of the Company and its Subsidiaries on a consolidated basis consisting of (x) 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, all obligations evidenced by notes, bonds, debentures or similar instruments, all Capital Lease Obligations, all Contingent Obligations, and Disqualified Stock and (y) guarantees of Indebtedness of any Person (other than the Company or any Subsidiary) of the type described in **clause (x)**.

"**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 twenty million dollars ($20,000,000) with (A) annual interest of no greater than LIBOR plus 8.00%, (B) no redemption provisions prior to the Maturity Date, (C) no original issue discount, (D) no make-whole interest or payments and (E) the purpose of which is to fund working capital for truck production.

"**Transaction Documents**" means, collectively, the Note Purchase Agreement, the Notes, the Security Agreement, the instructions to the transfer agent pursuant to the Note Purchase Agreement and each of the other agreements and instruments entered into or delivered by the Company in connection with the transactions contemplated by thereby, as may be amended from time to time.

"**Trustee**" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder.

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

"**USPS**" means the United States Postal Service.

"**USPS Award**" means any award by the USPS pursuant to Contract No. 3D-20-A-0031 - Next Generation Delivery Vehicle (NGDV) Production Phase 3 Request for Proposal (RFP).

"**USPS Minimum Firm Order**" means a Firm Order of at least forty thousand (40,000) Next Generation Delivery Vehicles.

"**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 that Holders of a majority in the aggregate principal amount of the Notes then outstanding, 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.

Section 1.02. RULES OF CONSTRUCTION.

For purposes of this Indenture:

(A) "or" is not exclusive;

(B) "including" means "including without limitation";

(C) "will" expresses a command;

(D) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

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

(F) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;

(G) the exhibits, schedules and other attachments to this Indenture are deemed to form part of this Indenture; and

(H) the term "**interest**," when used with respect to a Note, includes any Additional Interest, in each case to the extent then due, unless the context requires otherwise.

Article 2. THE NOTES

Section 2.01. DESIGNATION AND AMOUNT.

The Notes shall be designated as the "4.00% Convertible Senior Secured Notes due 2024." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $200,000,000, subject to **Section 2.10** and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02. FORM OF NOTES.

The Notes and the Trustee's certificate of authentication shall be substantially in the form set forth in **Exhibit A**, the terms and provisions of which shall constitute, and are incorporated in and made a part hereof. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. In the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall control and govern to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule

or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03. DATE AND DENOMINATION OF NOTES; PAYMENTS OF INTEREST AND DEFAULTED AMOUNTS.

(A) Date and Denominations. The Notes shall be issuable in registered form without coupons in minimum denominations of $1,000 principal amount and integral multiples of $1,000 in excess thereof ("Authorized Denominations"). Each Note shall be dated the date of its authentication and shall bear cash interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(B) Payments. The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the United States of America, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay, or cause the Paying Agent to pay, interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $5,000,000, either by check mailed to each such Holder or, upon written application by such a Holder to the Note Registrar in a form reasonably satisfactory to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States if

such Holder has provided the Trustee or the Paying Agent (if other than the Trustee) with the requisite information necessary to make such wire transfer, which written application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(C) Defaulted Amounts. If (i) the Company fails to pay any amount payable on the Notes (including, without limitation, the Redemption Price, the Fundamental Change Repurchase Price, principal amount and interest) on or before the due date therefor as provided in this Indenture and the Notes, 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 eight percent (8.0%) in excess of the Stated Interest on the Notes, 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 Indenture has been paid, as applicable. Such Defaulted Amounts together with such Default Interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment (unless the Trustee shall consent to an earlier date). The Company shall promptly notify the Trustee in writing of such special record date at least five (5) Business Days before such notice is to be sent to the Holders and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be delivered to each Holder not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following **clause (ii)** of

this **Section 2.03(C)**. The Trustee shall have no responsibility whatsoever for the calculation of the Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

(D) *Company's Election to Pay Stated Interest 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, the Company, if it desires to elect to make a payment of Stated Interest due on such Interest Payment Date in shares of Common Stock, shall deliver to the Trustee and the Holders a written notice of such election (a "**Stock Payment Notice**") (and such election shall be irrevocable as to such Interest Payment Date). Failure to timely deliver such written notice to the Trustee and the Holders shall be deemed an election by the Company to pay the Stated Interest on such Interest Payment Date in cash. With respect to any Interest Payment Date for which the Company has elected to make a payment of Stated Interest in shares of Common Stock in accordance with this **Section 2.03(D)**, the Company shall issue to the Holders, in lieu of such payment in cash of Stated Interest 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 by the Market Stock Interest Payment Price, for such payment of Stated Interest. Notwithstanding anything herein to the contrary, the Company will not have the right to, and will not, make any payment of Stated Interest in shares of Common Stock (i) 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 (ii) to the extent the aggregate number of shares of Common Stock at all times issued pursuant to this **Section 2.03(D)** and **Section 5.04(B)** would exceed 23,835,572, and such payment of Stated Interest shall instead be paid in cash in accordance with **Section 2.03(B)**, unless such failure of the Equity Conditions to be so satisfied is waived in writing from Holders of a majority in aggregate principal amount of the Notes then outstanding. Promptly following the payment of any Stated Interest in Common Stock pursuant to this **Section 2.03(D)**, the Company shall deliver to the Trustee an Officer's Certificate certifying that the Company has satisfied its payment obligations in accordance with this **Section 2.03(D)**. The Trustee may accept (without any independent investigation) as conclusive evidence of the Company's payment of such Stated Interest in Common Stock, and shall be protected in relying upon, the Officer's Certificate with respect thereto.

Section 2.04. EXECUTION, AUTHENTICATION AND DELIVERY OF NOTES.

The Notes shall be signed in the name and on behalf of the Company by the manual, facsimile or electronic signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder; *provided*, *however*, that the Trustee shall be entitled to receive an Officer's Certificate and an Opinion of Counsel of the Company with respect to the issuance, authentication and delivery of such Notes.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as **Exhibit A** hereto, executed manually by an authorized officer of the Trustee (or an authenticating agent appointed by the Trustee as provided by **Section 13.17**, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05. EXCHANGE AND REGISTRATION OF TRANSFER OF NOTES; RESTRICTIONS ON TRANSFER DEPOSITARY

(A) *Registration*. The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to **Section 4.02**, the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with **Section 3.20**.

Upon surrender for registration of transfer of any Note to the Note Registrar or any coNote Registrar, and satisfaction of the requirements for such transfer set forth in this **Section 2.05**, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any Authorized Denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any Authorized Denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to **Section 3.20**. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase, redemption or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any coNote Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange for other Notes or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with **Article 4** or (iii) any Notes selected for redemption in accordance with **Article 4**, except the unredeemed portion thereof.

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

(B) *Global Notes.* So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fourth paragraph from the end of **Section 2.05(C)** all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary. Each Global Note shall bear the legend required on a Global Note set forth in **Exhibit A** hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor.

(C) *Legends.* Every Note that bears or is required under this **Section 2.05(C)** to bear the Restrictive Notes Legend (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in **Section 2.05(D)**, collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this **Section**

2.05(C) (including the Restrictive Notes Legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this **Section 2.05(C)** and **Section 2.05(D)**, the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the "**Resale Restriction Termination Date**") that is the later of (1) the date that is one year after the Issue Date, or such shorter period of time as permitted by Rule 144 or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing some or all of the Notes (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in **Section 2.05(D)**, if applicable) shall bear a legend in substantially the following form (the "**Restrictive Notes Legend**") (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY AND COMMON STOCK, IF ANY, ISSUED TO PAY STATED INTEREST, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF Workhorse Group Inc. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(a) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(b) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(c) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(d) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF WORKHORSE GROUP INC. OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF WORKHORSE GROUP INC. DURING THE PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this **Section 2.05**, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restrictive Notes Legend required by this **Section 2.05(C)** and shall not be assigned a restricted CUSIP number. The Restrictive Notes Legend set forth above and affixed on any

Note will be deemed, in accordance with the terms of the certificate representing such Note, to be removed therefrom upon the Company's delivery to the Trustee of written notice to such effect, without further action by the Company, the Trustee, the Holder(s) thereof or any other Person; at such time, such Note will be deemed to be assigned an unrestricted CUSIP number as provided in the certificate representing such Note, it being understood that the Depositary of any Global Note may require a mandatory exchange or other process to cause such Global Note to be identified by an unrestricted CUSIP number in the facilities of such Depositary; *provided, however*, that if such Note is a Global Note and the Depositary thereof

requires a mandatory exchange or other procedure to cause such Global Note to be identified by "unrestricted" CUSIP and ISIN numbers in the facilities of such Depositary, then (i) the Company will effect such exchange or procedure as soon as reasonably practicable; and (ii) for purposes of **Section 3.19**, such Global Note will not be deemed to be identified by unrestricted CUSIP and ISIN numbers until such time as such exchange or procedure is effected.

The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in **clauses (i)** through **(iii)** of the immediately preceding sentence have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the Restrictive Notes Legend specified in this **Section 2.05(C)** and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee in writing upon the occurrence of the Resale Restriction Termination Date and promptly after a registration statement, if any, with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this **Section 2.05(C)**), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to each Global Note. Initially, each Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and, subject to the Depositary's applicable procedures, a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of **clause (iii)**, a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of **clause (i)** or **(ii)**, Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this **Section 2.05(C)** shall be registered in such names and in such Authorized Denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of **clause (iii)** of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased upon a Fundamental Change, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased upon a Fundamental Change, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee, the Conversion Agent, the Paying Agent or any agent of the Company or the Trustee shall have any responsibility or liability for any act or omission of the Depositary or for the payment of amounts to owners of beneficial interest in a Global Note, for any aspect of the records relating to or payments made on account of those interests by the Depositary, or for maintaining, supervising or reviewing any records of the Depositary relating to those interests.

(D) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of a Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF Workhorse Group Inc. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE OF THE NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(a) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(b) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT,

(c) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(d) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

PRIOR TO THE REGISTRATION OF THIS SECURITY IN CONNECTION WITH ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for

a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this **Section 2.05(D).**

The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Trustee for cancellation in accordance with **Section 2.08**.

The Trustee and any other agent appointed under this Indenture shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depositary, and may assume performance absent written notice to the contrary.

(E) Any Note or Common Stock issued upon conversion of a Note that is repurchased or owned by the Company or any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the three months immediately preceding) may not be resold by the Company or such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined under Rule 144).

Section 2.06. MUTILATED, DESTROYED, LOST OR STOLEN NOTES.

(A) In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

(B) The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of a Company Order and such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may

require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for redemption or required repurchase or is about to be converted in accordance with **Article 5** shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

(C) Every substitute Note issued pursuant to the provisions of this **Section 2.06** by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07. TEMPORARY NOTES.

(A) Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any Authorized Denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to **Section 4.02** and the Trustee or such authenticating agent upon receipt of a Company Order shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so

exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08. CANCELLATION OF NOTES PAID, CONVERTED, ETC.

The Company shall cause all Notes surrendered for the purpose of payment, repurchase (including upon a Fundamental Change but not including Notes repurchased pursuant to cash-settled swaps and other derivatives), redemption, registration of transfer or exchange or conversion, if surrendered to the Company or any of its agents, Subsidiaries or Affiliates, as applicable, to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it in accordance with its customary procedures. Except for any Notes surrendered for registration of transfer or exchange, or as otherwise expressly permitted by any of the provisions of this Indenture, no Notes shall be authenticated in exchange for any Notes surrendered to the Trustee for cancellation. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request in a Company Order.

Section 2.09. CUSIP NUMBERS.

The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Note, notice or elsewhere, and, *provided, further,* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.10. REPURCHASES.

The Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or through a public tender or exchange offer, whether by the Company or its Subsidiaries, without the consent of or notice to the Holders of the Notes. The Company shall cause any Notes so repurchased to be surrendered to the Trustee for cancellation in accordance with **Section 2.08** and such Notes shall no longer be considered outstanding under this Indenture upon their repurchase.

Section 2.11. NOTES HELD BY THE COMPANY OR ITS AFFILIATES.

In determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any of its Affiliates (excluding, for these purposes, the Initial Holders and their respective Affiliates) will be deemed not to be outstanding; *provided*, *however*, that, for purposes of determining whether the Trustee is protected in relying on any such direction, waiver or consent, only Notes that a

Responsible Officer of the Trustee actually knows are so owned will be so disregarded. The Company and its Affiliates shall notify the Trustee in writing promptly, and in any event no later than ten (10) Business Days subsequent to a purchase of the Notes by the Company or any of its Affiliates, the amount of Notes so purchased.

Article 3. COVENANTS

Section 3.01. 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 the Notes; 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 Holders by the Indenture or the Notes, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 3.02. CORPORATE EXISTENCE.

Subject to **Section 3.01**, the Company will cause to preserve and keep in full force and effect:

(A) 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

(B) 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 Holders.

Section 3.03. RANKING.

All payments due under the Notes shall rank (i) except as set forth in **clause (ii)** of this paragraph, *pari passu* with all unsecured indebtedness of the Company and the Guarantors and all indebtedness in respect of a Traditional Working Capital Facility, (ii) effectively senior to all unsecured indebtedness of the Company and the Guarantors to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

Section 3.04. 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, (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 (iii) repayment of revolving obligations under a Traditional Working Capital Facility; 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 from Holders of a majority in aggregate principal amount of the Notes then outstanding.

Section 3.05. 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.

Section 3.06. 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.

Section 3.07 DIVIDENDS AND OTHER PAYMENT RESTRICTIONS AFFECTING AFFILIATES.

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 in existence as of the Issue Date and which have been approved by the Board of Directors, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other equity interest, except that a Subsidiary or Certus may pay dividends or make distributions to the Company or a Wholly-Owned Subsidiary of the Company), or (c) lend money to any employees, officers or directors (except as permitted under **clause (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.

Section 3.08. 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.

Section 3.09. 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.

Section 3.10. MINIMUM BACKLOG SALES.

The Company shall have Backlog Sales of at least twenty five million dollars ($25,000,000) as of the fiscal period ending on March 31, 2022, fifty million dollars ($50,000,000) as of the fiscal period ending on June 30, 2022, seventy five million dollars ($75,000,000) as of the fiscal period ending on September 30, 2022 and one hundred million dollars ($100,000,000) as of the fiscal period ending on December 31, 2022 ("**Minimum Backlog Sales**"). Notwithstanding the forgoing, the Company shall not be required to comply with this covenant if it has received a USPS Award.

Section 3.11. [RESERVED].

Section 3.12. CHANGE IN NATURE OF BUSINESS.

The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, (A) 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, or (B) directly or indirectly, modify its or their corporate structure or purpose.

Section 3.13. MAINTENANCE OF PROPERTIES. ETC.

The Company shall maintain and preserve all of its 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.

Section 3.14. MAINTENANCE OF INTELLECTUAL PROPERTY.

The Company will take all action necessary or advisable to maintain all of the Intellectual Property Rights of the Company that are necessary or material (as determined by the Company in good faith) to the conduct of its business in full force and effect.

Section 3.15. MAINTENANCE OF INSURANCE.

The Company shall 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.

Section 3.16. TRANSACTIONS WITH AFFILIATES.

The Company 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.

Section 3.17. 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 this Indenture and the Notes) or (ii) issue any other securities or incur any Indebtedness that would cause a breach or Default under this Indenture or the Notes or that by its terms would prohibit or restrict the performance of any of the Company's obligations under the this Indenture or Notes, including without limitation, the payment of interest and principal thereon.

Section 3.18. [RESERVED].

Section 3.19. RULE 144A INFORMATION AND ANNUAL REPORTS.

(A) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and, upon written request, any Holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A.

(B) The Company shall file with the Trustee, within five (5) days after the same are required to be filed with the Commission, copies of any annual or quarterly reports (on Form 10-K or Form 10-Q or any respective successor form) that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (excluding any such information, documents or reports, or portions thereof, subject to, or with respect to which the

Company is actively seeking, confidential treatment and any correspondence with the Commission, and giving effect to any grace period provided by Rule 12b-25 under the Exchange Act (or any successor thereto)). Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor system) shall be deemed to be filed with the Trustee for purposes of this **Section 3.19(B)** at the time such documents are filed via the EDGAR system (or such successor). The Trustee shall have no responsibility to determine whether such posting has occurred.

(C) Delivery of the reports, information and documents described in **clause (B)** above to the Trustee is for informational purposes only, and the information and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

(D) If, at any time during the six-month period beginning on, and including, the date that is six months after the Issue Date, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than reports on Form 8-K), or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months immediately preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of (i) 0.25% per annum of the principal amount of the Notes outstanding for each of the first ninety (90) days and (ii) 0.50% per annum of the principal amount of the Notes outstanding for each day from, and including, the ninety-first (91st) day during such period for which the Company's failure to file has occurred and is continuing or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months immediately preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes. As used in this **Section 3.19(D)**, documents or reports that the Company is required to "file" with the Commission pursuant to Section 13 or 15(d) of the Exchange Act does not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act. For purposes of this **Section 3.19(D)**, the phrase "restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes" shall not include, for the avoidance of doubt, the assignment of a restricted CUSIP number, the existence of the Restrictive Notes Legend on Notes in compliance with **Section 2.05(C)** during the six-month period described in this **Section 3.19(D)**.

(E) If, and for so long as, the Restrictive Notes Legend on the Notes specified in **Section 2.05(C)** has not been removed, the Notes are assigned a restricted CUSIP number or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms

of this Indenture or the Notes) as of the 385th day after the Issue Date, the Company shall pay Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding until the Restrictive Notes Legend on the Notes has been removed in accordance with **Section 2.05(C)**, the Notes are assigned an unrestricted CUSIP number and the Notes are freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months immediately preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes.

(F) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(G) Subject to the immediately succeeding sentence, the Additional Interest that is payable in accordance with **Section 3.19(D)** or **Section 3.19(E)** shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to **Section 7.04**. However, in no event shall Additional Interest payable for the Company's failure to comply with its obligations to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than reports on Form 8-K), as set forth in **Section 3.19(D)**, together with any Additional Interest that may accrue at the Company's election as a result of the Company's failure to comply with its reporting obligations pursuant to **Section 7.04**, accrue at a rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

(H) If Additional Interest is payable by the Company pursuant to **Section 3.19(D)** or **Section 3.19(E)**, the Company shall deliver to the Trustee (copied to the Paying Agent) an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable and the Trustee shall not have any duty to verify the Company's calculation of Additional Interest. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Section 3.20. MAINTENANCE OF OFFICE OR AGENCY

The Company will maintain in the United States of America, an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or redemption ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee located in the United States.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America, for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency in the contiguous United States, where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or redemption or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served; provided that the Corporate Trust Office shall not be a place for service of legal process for the Company.

Section 3.21. IMPAIRMENT OF SECURITY INTEREST.

Neither the Company nor any of its Subsidiaries will take or omit to take any action that would adversely affect or impair in any material respect the Liens in favor of the Collateral Agent with respect to the Collateral, except as otherwise permitted or required by the Security Documents or this Indenture. Neither the Company nor any of its Subsidiaries will enter into any agreement that requires the proceeds received from any sale of Collateral to be applied to repay, redeem, defease or otherwise acquire or retire any Indebtedness of any Person, other than the Notes. The Company will, and will cause each Guarantor to, at their sole cost and expense, execute and deliver all such agreements and instruments as the Collateral Agent or the Trustee reasonably requests to more fully or accurately describe the Property intended to be Collateral or the obligations intended to be secured by the Security Documents. The Company will, and will cause each Guarantor to, at their sole cost and expense, file any such notice filings or other agreements or instruments as may be reasonably necessary or desirable under applicable law to perfect the Liens created by the Security Documents.

Article 4. REPURCHASE AND REDEMPTION

Section 4.01. NO MANDATORY REDEMPTION OR SINKING FUND.

No mandatory redemption or sinking fund is required to be provided for the Notes.

Section 4.02. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES UPON A FUNDAMENTAL CHANGE.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change*. Subject to the other terms of this **Article 4**, if a Fundamental Change occurs, then each Holder will have the right ("**Fundamental Change Repurchase Right**") to require the Company to repurchase the Notes (or any portion of the Notes 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 such Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to such Holder the related Fundamental Change Repurchase Notice pursuant to **Section 4.02(C)**; and (y) the effective date of such Fundamental Change.

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

(i) briefly, the events causing such Fundamental Change;

(ii) the expected effective date of such Fundamental Change;

(iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.02**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;

(iv) the Fundamental Change Repurchase Date for such Fundamental Change;

(v) the Fundamental Change Repurchase Price per $1,000 principal amount of Notes for such Fundamental Change (and, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.02(D)**);

(vi) the name and address of the Paying Agent and the Conversion Agent;

(vii) the Conversion Rate in effect on the date of such Fundamental Change Repurchase Notice and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change;

(viii) that Notes for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;

(ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Indenture; and

(x) the CUSIP and ISIN numbers, if any, of the Notes.

Neither the failure to deliver a Fundamental Change Repurchase Notice nor any defect in a Fundamental Change Repurchase Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(D) *Fundamental Change Repurchase Price*. If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion of the principal amount thereof properly surrendered and not validly withdrawn pursuant **Section 4.02(E)(iii)** that is equal to $1,000 or an integral multiple of $1,000, on the Fundamental Change Repurchase Date specified by the Company for a cash amount equal to the greater of (x) one hundred and fifty percent (150%) of the principal amount thereof (or portion thereof) to be repurchased, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date; 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 thereof (or portion thereof) to be repurchased, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date *divided by* $1,000; and (C) the Last Reported Sale Price as of the Trading Day immediately preceding the effective date of such Fundamental Change (the "**Fundamental Change Repurchase Price**"); *provided*, *however*, that if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if such Fundamental Change Repurchase Date is on an Interest Payment Date, then the interest otherwise payable on the Notes (or such portion of the Notes) 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) *Procedures to Exercise the Fundamental Change Repurchase Right*.

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be Repurchased.* To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices.* Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be in Authorized Denominations; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note;

provided, *however*, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depositary Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(E)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice.* A Holder that has delivered a Fundamental Change Repurchase Notice with respect to Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and

(3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination;

provided, *however*, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(E)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in

accordance with **Section 2.08**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depositary Procedures).

(F) *Effect of Repurchase.* If the Notes (or any portion of the Notes) 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, the Notes (or such portion) will cease to be outstanding and interest will cease to accrue on the Notes (or such portion).

(G) *Compliance with Applicable Securities Laws*. To the extent applicable, the Company will comply with all federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in this Indenture.

Section 4.03. [RESERVED].

Section 4.04. RIGHT OF THE COMPANY TO REDEEM THE NOTES.

(A) *Optional Redemption*. The Notes shall not be redeemable by the Company prior to October 15, 2023. On a Redemption Date on or after October 15, 2023, subject to the Equity Conditions being satisfied on both the date of the Notice of Redemption and the Redemption Date, the Company may redeem (an "**Optional Redemption**") for cash all or any part of the Notes, at the Company's option, of the then outstanding principal amount of the Notes (or any portion thereof in an amount equal to at least $4,000,000) at the Redemption Price. For the avoidance of doubt, if such Redemption Date is on an Interest Payment Date, then the interest otherwise payable on the Notes on such Interest Payment Date will be paid as part of the Redemption Price, in satisfaction of the Company's obligation to pay such interest on such Interest Payment Date.

(B) *Notice of Optional Redemption; Selection of Notes*.

(i) In case the Company exercises its Optional Redemption right to redeem all or, as the case may be, any part of the Notes pursuant to **Section 4.04(A)**, it shall fix a date for redemption (each, a "**Redemption Date**") and it shall deliver electronically or mail or cause to be mailed by first-class mail, postage prepaid, notices of such Optional Redemption along with a certification that the Equity Conditions have been satisfied on such date (a "**Notice of Redemption**") (in all cases, the text of such Notice of Redemption shall be prepared by the Company) not less than twenty (20) Trading Days nor more than sixty (60) Trading Days prior to the Redemption Date to each Holder of Notes so to be redeemed in whole or in part; *provided*, *however*, that, if the Company shall give such notice, it shall also give written notice of the Redemption Date to the Trustee, the Paying Agent and the Conversion Agent. In the case of any Optional Redemption in part, Holders of Notes not called for Optional Redemption will not be

entitled to an increased Conversion Rate for such Notes in accordance with **Section 5.07** and **Section 4.04(B)(iii)**. The Redemption Date must be a Business Day.

(ii) The Notice of Redemption, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not a Holder receives such notice. In any case, failure to give such Notice of Redemption or any defect in the Notice of Redemption to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(iii) Each Notice of Redemption shall specify:

(1) the Redemption Date (which must be a Business Day);

(2) the Redemption Price;

(3) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date;

(4) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(5) that Holders may surrender their Notes for conversion at any time prior to the close of business on the second (2nd) Trading Day immediately preceding the Redemption Date;

(6) the procedures a converting Holder must follow to convert its Notes and the forms and amounts of consideration payable by the Company upon conversion;

(7) the Conversion Rate;

(8) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes; and

(9) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and on and after the Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued, which principal amount must be $1,000 or an integral multiple in excess thereof.

A Notice of Redemption shall be irrevocable.

(iv) If fewer than all of the outstanding Notes are to be redeemed and the Notes to be redeemed are Global Notes, the Notes to be redeemed shall be selected by the Depositary in accordance with the applicable rules and procedures of the Depositary. If

fewer than all of the outstanding Notes are to be redeemed and the Notes to be redeemed are not Global Notes, the Trustee shall select the Notes or portions thereof to be redeemed (in principal amounts of $1,000 or integral multiples in excess thereof) by lot, on a pro rata basis or by another method the Trustee considers to be fair and appropriate. If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption, subject, in the case of Notes represented by a Global Note, to the Depositary's applicable procedures. If fewer than all of the outstanding Notes are to be redeemed and the Holder of any Note (or any owner of a beneficial interest in any Global Note) is reasonably not able to determine, before the close of business on the tenth (10th) Scheduled Trading Day immediately before the relevant Redemption Date, whether such Note or beneficial interest, as applicable, is to be redeemed pursuant to such redemption, then such Holder or owner, as applicable, will be entitled to convert such Note or beneficial interest, as applicable, at any time before the close of business on the second (2nd) Trading Day prior to such Redemption Date, unless the Company defaults in the payment of the Redemption Price pursuant to **Section 7.01(A)**, in which case such Holder or owner, as applicable, will be entitled to convert such Note or beneficial interest, as applicable, until the Redemption Price has been paid or duly provided for, and each such conversion will be deemed to be of a Note called for redemption. The Trustee shall not be obligated to make any determination in connection with the foregoing.

(C) *Payment of Notes Called for Redemption.*

(i) If any Notice of Redemption has been given in respect of the Notes in accordance with **Section 4.04(B)**, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Notice of Redemption and at the applicable Redemption Price. On presentation and surrender of the Notes at the place or places stated in the Notice of Redemption, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(ii) Prior to 11:00 a.m. New York City time on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in **Section 2.07** an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

(D) *Restrictions on Redemption.* No Notes may be redeemed on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date

(except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

Article 5. CONVERSION

Section 5.01. RIGHT TO CONVERT.

(A) *Generally.* Subject to the provisions of this **Article 5**, each Holder may, at its option, convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part.* Subject to the terms of this Indenture, Notes may be converted in part, but only in Authorized Denominations. Provisions of this **Article 5** applying to the conversion of a Note in whole will equally apply to conversions of a permitted portion of a Note.

Section 5.02. WHEN NOTES MAY BE CONVERTED.

(A) *Generally.* Subject to the other provisions of this **Article 5**, a Holder may convert its Notes at any time until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date.

(B) *Limitations and Closed Periods.* Notwithstanding anything to the contrary in this **Article 5**, if the Notes (or any portion of the Notes) are to be repurchased upon a Repurchase Upon Fundamental Change pursuant to **Article 4**, then in no event may the Notes (or such portion) be converted after the Close of Business on the Scheduled Trading Day immediately before the related Fundamental Change Repurchase Date.

Section 5.03. CONVERSION PROCEDURES.

(A) *Generally*.

(i) *Global Notes.* To convert a beneficial interest in a Global Note, the owner of such beneficial interest must (1) comply with the Depositary Procedures for converting such beneficial interest (at which time such conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 5.03(C)**.

(ii) *Physical Notes.* To convert all or a portion of a Physical Note, the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the conversion notice attached to such Physical Note or a facsimile or portable document format (.pdf) version of such conversion notice; (2) deliver such Physical Note to the Conversion Agent (at which time such conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.03(C)**.

For the avoidance of doubt, the conversion notice may be delivered by e-mail. 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 the Notes, a 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.

(B) *Holder of Record of Conversion Shares.* The person in whose name any share of Common Stock is issuable upon conversion of any Note will be deemed to become the holder of record of such share 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.

(C) *Taxes and Duties*. If a Holder converts its Notes, 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) *Conversion Agent to Notify Company of Conversions.* If any Note is submitted for conversion to the Conversion Agent or the Conversion Agent receives any notice of conversion with respect to a Note, then the Conversion Agent will promptly notify the Company and the Trustee of such occurrence, together with any other information reasonably requested by the Company, and will cooperate with the Company to determine the Conversion Date for such Note (it being understood that the Company will determine the Conversion Date and the Conversion Agent will have no responsibility to determine the Conversion Date).

Section 5.04. SETTLEMENT UPON CONVERSION.

(A) *Generally*. The consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of the Notes to be converted will consist of the following:

(i) subject to **clause (ii)** below, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion; and

(ii) cash in an amount equal to the aggregate accrued and unpaid interest on the Notes 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 Interest Payment Price (the "**Conversion Consideration Interest Shares**").

(B) *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 any Notes into Conversion Consideration Interest Shares pursuant to **Section 5.04(A)(ii)**, shall deliver to the Holder a written notice (with a copy to the Conversion Agent and the Trustee) 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 (i) 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 or (ii) to the extent the aggregate number of shares of Common Stock at all times issued pursuant to this **Section 5.04(B)** and **Section 2.03(D)** would exceed 23,835,572 such conversion of accrued interest shall instead be paid in cash in accordance with **Section 5.04(A)(ii)**, 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) *Fractional Shares*. The total number of shares of Common Stock due in respect of any conversion of the Notes will be determined on the basis of the total principal amount of the Notes 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.

(D) *Delivery of the Conversion Consideration.* The Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of any Note 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**").

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

(F) *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 the Notes; and (y) a Holder (whether directly or indirectly, including by any broker acting on such 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 such Holder or otherwise), then, without limiting such Holder's right to pursue any other remedy available to it (whether hereunder, under applicable law or otherwise), such Holder will have the right, exercisable by written notice to the Company, to cause the Company to either:

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

(ii) promptly deliver, to the Holder, such Defaulted Shares in accordance with this Indenture and the Notes, 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.

Section 5.05. RESERVE AND STATUS OF COMMON STOCK ISSUED UPON CONVERSION.

(A) *Stock Reserve.* At all times when the Notes are 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 the maximum number of Conversion Shares to provide for the full conversion of the Convertible Notes and any payment of accrued and unpaid interest thereon; *provided* that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 5.05(A)** be reduced other than in connection with any stock combination, reverse stock split or other similar transaction or proportionally in connection with any conversion and/or redemption, as applicable, of the Convertible Notes.

(B) *Status of Conversion Shares; Listing.* Each share of Common Stock delivered upon conversion of the Notes 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 a 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 interdealer quotation system, then the Company will cause each share of Common Stock issued upon conversion of the Notes, when delivered upon such conversion, to be admitted for listing on such exchange or quotation on such system.

(C) *Transferability of Conversion Shares.* Any shares of Common Stock issued upon conversion of the Notes will be issued in the form of book-entries at the facilities of the Depositary, identified therein by an "unrestricted" CUSIP number.

Section 5.06. [RESERVED].

Section 5.07. ADJUSTMENTS TO THE CONVERSION RATE.

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

(i) *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, then the Conversion Rate will be adjusted based on the following formula:

$$CR1 = \frac{CR0 \times OS1}{OS0}$$

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 5.07(A)(i)** 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.

(ii) *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 5.07(A)(iii)** and **5.07(A)(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:

$$CR1 = CR0 \times \frac{OS + X}{OS + Y}$$

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 5.07(A)(ii)**, 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.

(iii) 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 5.07(A)(i)** or **Section 5.07(A)(ii)**;

(w) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required pursuant to **Section 5.07(A)(iii)(c)**;

(x) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 5.07(A)(ii)**;

(y) Spin-Offs for which an adjustment to the Conversion Rate is required pursuant to **Section 5.07(A)(iii)(b)**; and

(z) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 5.10** will apply,

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

$$CR1 = CR0 \times \frac{SP}{SP - FMV}$$

where:

CR0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR1 = 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, a Holder will receive, for each $1,000 principal amount of the Notes held by such 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 5.10** 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:

$$CR1 = CR0 \times \frac{FMV + SP}{SP}$$

where:

CR0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such Spin-Off; *CR1* = 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 5.07(A)(iii)(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 Indenture or the Notes, 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 5.07(A)(iii)(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.

(c) *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:

$$CR1 = CR0 \times \frac{SP}{SP - D}$$

where:

CR0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR1 = 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, a Holder will receive, for each $1,000 principal amount of the Notes held by such 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.

(d) *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:

$$CR1 = CR0 \times \frac{AC + (SP \times OS1)}{SP \times OS0}$$

where:

CR0 = the Conversion Rate in effect immediately before the time (the "**Expiration Time**") such tender or exchange offer expires; *CR1* = 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;

OS0 = 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);

OS1 = 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 5.07(A)(iii)(d)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Rate pursuant to this **Section 5.07(A)(iii)(d)** 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 Indenture or the Notes, 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.

(B) No Adjustments in Certain Cases.

(i) *Where a Holder Participates in the Transaction or Event Without Conversion.* Notwithstanding anything to the contrary in **Section 5.07(A)**, 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 5.07(A)** (other than a stock split or combination of the type set forth in **Section 5.07(A)(i)** or a tender or exchange offer of the type set forth in **Section 5.07(A)(v)**) if a Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder of the Notes, in such transaction or event without having to convert such Notes and as if such 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 the Notes held by such Holder on such date.

(ii) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section 5.07** or **Section 5.08**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(1) except as otherwise provided in Section 5.07, 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;

(2) 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;

(3) 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; 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 5.07(A)(iii)** in connection with the separation of rights under the Company's stockholder rights plan existing, if any, as of the Issue Date);

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

(5) accrued and unpaid interest on the Notes.

(C) *Adjustments Not Yet Effective.* Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Note is to be converted;

(ii) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.07(A)** 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;

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

(iv) 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.

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

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.07(A)**;

(ii) a Note is to be converted;

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

(iv) 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

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.03(A)(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.

(E) *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 the Notes 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 5.07(A)(iii)(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.

(F) *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 5.07** or **Section 5.08** 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.

(G) *Equitable Adjustments to Prices*. Whenever any provision of this Indenture or the Notes 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 5.07(A)** 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.

(H) *Calculation of Number of Outstanding Shares of Common Stock*. For purposes of this **Section 5.07**, 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).

(I) *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).

(J) *Notice of Conversion Rate Adjustments*. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.07(A)**, 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.

Section 5.08. VOLUNTARY ADJUSTMENTS

(A) *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 Holders 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.

(B) *Notice of Voluntary Increases*. If the Board of Directors determines to increase the Conversion Rate pursuant to this **Section 5.08**, then, no later than the first Business Day following such determination, the Company will send notice to the Holders (with a copy to the Conversion Agent and the Trustee) of such increase, the amount thereof and the period during which such increase will be in effect.

Section 5.09. [RESERVED].

Section 5.10. EFFECT OF CERTAIN RECAPITALIZATIONS, RECLASSIFICATIONS, CONSOLIDATIONS, MERGERS AND SALES.

(A) Generally. If there occurs:

(i) 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);

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

(iii) 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

(iv) 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 Indenture or the Notes, 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 5.10** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (y) for purposes of this **Section 5.10(A)**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (z) for purposes of the definition of "Fundamental Change," the term "Common Stock" and "common equity" will be deemed to mean the common equity, if any, forming part of such Reference Property. For these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of "Daily VWAP," substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify the Holders in writing (with a copy to the Conversion Agent and the Trustee) 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 the Notes in the manner set forth in this **Section 5.10**; (y) provides for subsequent adjustments to the Conversion Rate pursuant to **Section 5.07** and **Section 5.08** in a manner consistent with this **Section 5.10**; 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 5.10**. 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.

(B) *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 Holders 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 the Notes.

(C) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 5.10.**

Section 5.11. LIMITATIONS ON CONVERSIONS.

Beneficial Ownership Limitation. Notwithstanding anything to the contrary contained herein, the Company shall not effect the conversion of any portion of the Notes, and the Holders shall not have the right to convert any portion of their Notes, pursuant to the terms and conditions of this Indenture and the Notes 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, any such Holder together with its respective 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 any such Holder and its respective Attribution Parties shall include the number of shares of Common Stock held by such Holder and its Attribution Parties plus the number of shares of Common Stock issuable upon conversion of the Notes 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 the Notes beneficially owned by any such Holder or its respective 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 such Holder or its respective Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 5.11**. For purposes of this **Section 5.11**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Indenture, in determining the number of outstanding shares of Common Stock any Holder may acquire upon the conversion of the Notes without exceeding the Maximum Percentage, such 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 setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a conversion notice from any 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 (i) promptly notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such conversion notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this **Section 5.11**, to exceed the Maximum Percentage, such 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 such Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holders 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 the Notes, by such Holder and its respective Attribution Parties 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 such Holder upon conversion of the Notes results in such Holder and its respective 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 such Holder's and its respective 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 such Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, any such Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; *provided* that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Holder and its respective Attribution Parties and not to any other holder of Notes that is not an Attribution Party of such Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Indenture and the Notes in excess of the Maximum Percentage shall not be deemed to be beneficially owned by any such 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 the Notes 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 5.11** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 5.11** (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 the Notes. Under no circumstances shall the Trustee or the Conversion Agent have any obligation to identify any beneficial owner of the Notes, or otherwise make any determination, monitor or otherwise take any action with respect to the restrictions set forth in this **Section 5.11**. Notwithstanding anything to the contrary contained herein, in no event shall the Company or the Holders modify, waive or otherwise amend the terms and conditions of this **Section 5.11** (with the consent of the Holders or otherwise).

Section 5.12. [RESERVED.

Section 5.13. RESPONSIBILITY OF TRUSTEE AND CONVERSION AGENT.

Neither the Trustee nor any Conversion Agent (A) will at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment to (including any increase in) the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or provided in this Indenture or any supplemental indenture to be employed, in making the same; (B) will be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, Property or cash that may at any time be issued or delivered upon the conversion of any Note; (C) makes any representations with respect to the foregoing; or (D) will be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or Property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this **Article 5**. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent will be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to **Section 5.08** relating either to the kind or amount of shares of stock or securities or Property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in **Section 5.08** or to any adjustment to be made with respect thereto, but may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and will be protected in conclusively relying upon, the Officer's Certificate (which the Company will file with the Trustee prior to the execution of any such supplemental indenture in addition to any other deliverables required under this Indenture in connection with the execution of such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event has occurred that makes the Notes eligible for conversion or no longer eligible therefor. The Trustee and the Conversion Agent may conclusively rely upon any notice with respect to the commencement or termination of such conversion rights, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for herein. Except as otherwise expressly provided herein, neither the Trustee

nor any other agent acting under this Indenture (other than the Company, if acting in such capacity) shall have any obligation to make any calculation or to determine whether the Notes may be surrendered for conversion pursuant to this Indenture, or to notify the Company or the Depositary or any of the Holders if the Notes have become convertible pursuant to the terms of this Indenture.

Article 6. SUCCESSORS

Section 6.01. WHEN THE COMPANY MAY MERGE, ETC.

(A) *Generally*. 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 (a "**Business Combination Event**"), unless:

(i) 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 Trustee, at or before the effective time of such Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)** all of the Company's obligations under this Indenture, the Notes and the Collateral Agreements; and

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

(B) *Delivery of Officer's Certificate and Opinion of Counsel to the Trustee.* Before the effective time of any Business Combination Event, the Company will deliver to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel, each stating that (i) such Business Combination Event (and, if applicable, the related supplemental indenture) comply with **Section 6.01(A)**; and (ii) all conditions precedent to such Business Combination Event provided in this Indenture have been satisfied.

Section 6.02. SUCCESSOR CORPORATION SUBSTITUTED.

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 Indenture and the Notes with the same effect as if such Successor Corporation had been named as the Company in this Indenture, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Indenture and the Notes.

Article 7. DEFAULTS AND REMEDIES

Section 7.01. EVENTS OF DEFAULT.

(A) *Definition of Events of Default*. "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due (including upon an Optional Redemption) of the principal amount or Fundamental Change Repurchase Price of the Notes;

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

(iii) a default in the Company's obligation to convert the Notes in accordance with **Article 5** upon the exercise of the conversion right with respect thereto or upon Forced Conversion;

(iv) a default in (1) the Company's obligation to deliver a Fundamental Change Repurchase Notice pursuant to **Section 4.02(C)** and such default continues for three (3) Business Days or (2) any Guarantors' obligations under **Section 9.04**;

(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, or in any Guarantors' obligations or agreements, under this Indenture, the Notes or the Transaction Documents (in each case, other than a default set forth in **clause (i)**, **(ii)** or **(iii)** of this **Section 7.01(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 Note 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;

Section 7.01(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 Note 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, the Notes or any shares of Common Stock issuable upon conversion of the Notes are not Freely Tradable;

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

(xi) the Company fails to comply with **Section 3.10** of this Indenture;

(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 one million dollars ($1,000,000) (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 7.01(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 one million dollars ($1,000,000) (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 $1,000,000 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 Note Purchase Agreement). For clarity, an Event of Default under this **Section 7.01(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 any Holder upon conversion or exercise (as the case may be) of any Securities (as defined in the Note Purchase Agreement) acquired by such Holder under the Note Purchase Agreement (including the Notes) as and when required by such Securities or the Note 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 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 the Company, the Guarantors or any of their respective Significant Subsidiaries in an involuntary case or proceeding; (2) appoints a custodian of the Company, the Guarantors or any of their respective Significant Subsidiaries, or for any substantial part of the Property of the Company, the Guarantors or any of their respective Significant Subsidiaries; (3) orders the winding up

or liquidation of the Company, the Guarantors or any of their respective Significant Subsidiaries; or (4) grants any similar relief under any foreign Bankruptcy Law;

and, in each case under **clause (A)(xxi)** of this **Section 7.01**, such order or decree remains unstayed and in effect for at least thirty (30) days.

Section 7.02. ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 7.01(A)(xx)** or **7.01(A)(xxi)** occurs with respect to the Company or any Subsidiary, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration*. Subject to **Section 7.03**, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(xx)** or **7.01(A)(xxi)** with respect to the Company or any Subsidiary occurs and is continuing, then the Trustee, by notice to the Company, or Holders of at least twenty-five percent (25%) of the aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately.

(C) *Rescission of Acceleration.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (except the non-payment of principal of, or interest, on, the Notes that has become due solely because of such acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 7.03. 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 each Holder and the Trustee, 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 7.04. ADDITIONAL INTEREST

(A) Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's

failure to comply with its obligations as set forth in **Section 3.19(B)** shall, for the first 365 days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to (x) 0.25% per annum of the principal amount of the Notes outstanding for each day during the first 180 days during which such Event of Default is continuing beginning on, and including, the date on which such Event of Default occurs, and (y) 0.50% per annum of the principal amount of the Notes outstanding from the 181st day to, and including, the 365th day following the occurrence of such Event of Default, as long as such Event of Default is continuing. Subject to the last paragraph of this **Section 7.04**, Additional Interest payable pursuant to this **Section 7.04** shall be in addition to, not in lieu of, any Additional Interest payable pursuant to **Section 3.19(D)** or **Section 3.19(E)**. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 366th day after such Event of Default (if the Event of Default relating to the Company's failure to comply with its obligations as set forth in **Section 3.19(B)** is not cured or waived prior to such 366th day), the Notes shall be immediately subject to acceleration in accordance with **Section 7.02**. The provisions of this paragraph will not affect the rights of Holders in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in **Section 3.19(B)**. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this **Section 7.04** or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in **Section 7.02**.

(B) In order to elect to pay Additional Interest as the sole remedy during the first 365 days after the occurrence of any Event of Default relating to the Company's failure to comply with its obligations as set forth in **Section 3.19(B)** in accordance with the immediately preceding paragraph, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent in writing of such election prior to the beginning of such 365-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in **Section 7.02**.

(C) In no event shall Additional Interest payable at the Company's election for failure to comply with its obligations as set forth in **Section 3.19(B)** as set forth in this **Section 7.04**, together with any Additional Interest that may accrue as a result of the Company's failure to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods under the Exchange Act and other than reports on Form 8-K), pursuant to **Section 3.19(D)**, accrue at a rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest. The Trustee shall have no duty to calculate or verify the calculation of Additional Interest.

Section 7.05. OTHER REMEDIES.

(A) *Trustee and Collateral Agent May Pursue All Remedies.* If an Event of Default occurs and is continuing, then the Trustee and the Collateral Agent may pursue any available

remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of this Indenture, the Notes and the Security Documents.

(B) *Procedural Matters*. The Trustee or the Collateral Agent may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee, the Collateral Agent or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

Section 7.06. WAIVER OF PAST DEFAULTS.

An Event of Default pursuant to **clause (i)**, **(ii)**, **(iii)** or **(vi)** of **Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Holders of a majority in aggregate principal amount of the Notes then outstanding. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

Section 7.07. CONTROL BY MAJORITY.

Subject to the terms of the Collateral Agreements, Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or the Collateral Agent or exercising any trust or power conferred on it. However, the Trustee or the Collateral Agent may refuse to follow any direction that conflicts with law, this Indenture or the Notes, or that, subject to **Section 12.01**, the Trustee or the Collateral Agent, as applicable, determines may be unduly prejudicial to the rights of other Holders (it being understood that neither the Trustee nor the Collateral Agent has an affirmative duty to ascertain whether or not such direction is unduly prejudicial to such Holders) or may involve the Trustee or the Collateral Agent, as applicable, in liability. Prior to taking any action hereunder, the Trustee or the Collateral Agent, as applicable, will be entitled to security and indemnity satisfactory to the Trustee or the Collateral Agent, as applicable, against any loss, liability or expense to the Trustee or the Collateral Agent, as applicable, that may result from the following such direction.

Section 7.08. LIMITATIONS ON SUITS.

No Holder may pursue any remedy with respect to this Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Redemption Price, Fundamental Change Repurchase Price for, or interest on, any Notes; or (y) the Company's obligations to convert any Notes pursuant to **Article 5**), unless:

(A) such Holder has previously delivered to the Trustee or the Collateral Agent, as applicable, written notice that an Event of Default is continuing;

(B) Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding deliver a written request to the Trustee or the Collateral Agent, as applicable, to pursue such remedy;

(C) such Holder or Holders offer and, if requested, provide to the Trustee or the Collateral Agent, as applicable, security and indemnity satisfactory to the Trustee or the Collateral Agent, as applicable, against any loss, liability or expense to the Trustee or the Collateral Agent, as applicable, that may result from the following such request;

(D) the Trustee or the Collateral Agent, as applicable, does not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and

(E) during such sixty (60) calendar day period, Holders of a majority in aggregate principal amount of the Notes then outstanding do not deliver to the Trustee or the Collateral Agent, as applicable, a written direction that is inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. Neither the Trustee nor the Collateral Agent will have any duty to determine whether any Holder's use of this Indenture complies with the preceding sentence.

Section 7.09. ABSOLUTE RIGHT OF HOLDERS TO INSTITUTE SUIT FOR THE ENFORCEMENT OF THE RIGHT TO RECEIVE PAYMENT AND CONVERSION CONSIDERATION.

Notwithstanding anything to the contrary in this Indenture or the Notes, but subject to the parenthetical in **Section 8.02(A)(ii)**, the right of each Holder of a Note to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or the Redemption Price, Fundamental Change Repurchase Price for, or any interest on, or the Conversion Consideration due pursuant to **Article 5** upon conversion of, such Note on or after the respective due dates therefor provided in this Indenture and the Notes, will not be impaired or affected without the consent of such Holder.

Section 7.10. COLLECTION SUIT BY TRUSTEE AND COLLATERAL AGENT.

Each of the Trustee and the Collateral Agent will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i)**, **(ii)** or **(iii)** of **Section 7.01(A)**, to recover judgment in its own name and, in the case of the Trustee, as trustee of an express trust, in each case against the Company and the Guarantors for the total unpaid or undelivered principal of, or Redemption Price, Fundamental Change Repurchase Price for, or interest on, or Conversion Consideration due pursuant to **Article 5** upon conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such

further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in **Section 12.06**.

Section 7.11. TRUSTEE AND COLLATERAL AGENT MAY FILE PROOFS OF CLAIM.

Each of the Trustee and the Collateral Agent has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, the Collateral Agent and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or Property and (B) collect, receive and distribute any money or other Property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee or the Collateral Agent, and, if the Trustee or the Collateral Agent, as applicable, consents to the making of such payments directly to the Holders, to pay to the Trustee or the Collateral Agent, as applicable any amount due to the Trustee or the Collateral Agent, as applicable, for the reasonable compensation, expenses, disbursements and advances of the Trustee or the Collateral Agent, as applicable, and its agents and counsel, and any other amounts payable to the Trustee or the Collateral Agent, as applicable pursuant to **Section 12.06**. To the extent that the payment of any such compensation, expenses, disbursements, advances and other amounts out of the estate in such proceeding, is denied for any reason, payment of the same will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other Properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in this Indenture will be deemed to authorize the Trustee or the Collateral Agent to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee or the Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.

Section 7.12. PRIORITIES.

The Trustee or the Collateral Agent, as applicable, will pay or deliver in the following order any money or other Property that it collects pursuant to this **Article 7**:

First: to the Trustee and the Collateral Agent, and their respective agents and attorneys, for amounts due under **Sections 10.09** or **12.06** or any Collateral Agreements, including payment of all fees, compensation, expenses and liabilities incurred, and all advances made, by the Trustee or the Collateral Agent and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other Property due on the Notes, including the principal of, or the Redemption Price, Fundamental Change Repurchase Price for, or any interest on, or any Conversion Consideration due upon conversion of, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other Property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.12**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder and the Trustee a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

Section 7.13. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or the Notes or in any suit against the Trustee or the Collateral Agent for any action taken or omitted by it as Trustee or Collateral Agent, as applicable, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit, and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided*, *however*, that this **Section 7.13** does not apply to any suit by the Trustee or the Collateral Agent, any suit by a Holder pursuant to **Section 7.09** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

Article 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01. WITHOUT THE CONSENT OF HOLDERS.

Notwithstanding anything to the contrary in **Section 8.02**, the Company, the Guarantors, the Trustee and the Collateral Agent may amend or supplement this Indenture, the Notes or the Collateral Agreements without the consent of any Holder to:

(A) cure any ambiguity or correct any omission, defect or inconsistency in this Indenture, the Notes or the Collateral Agreements;

(B) add guarantees with respect to the Company's obligations under this Indenture or the Notes;

(C) add Collateral to secure the Notes or any Guarantees;

(D) add to the Company's or any Guarantors' covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company or any Guarantor;

(E) provide for the assumption of the Company's or any Guarantors' obligations under this Indenture and the Notes pursuant to, and in compliance with, **Article 6** or **Section 9.04**, as applicable;

(F) enter into supplemental indentures pursuant to, and in accordance with, **Section 5.10** in connection with a Common Stock Change Event;

(G) evidence or provide for the acceptance of the appointment, under this Indenture, of a successor Trustee or Collateral Agent;

(H) provide for the addition or release of Collateral or the amendment of any Collateral Agreement permitted under the terms of this Indenture or the Collateral Agreements;

(I) comply with any requirement of the Commission in connection with any qualification of this Indenture or any supplemental indenture under the Trust Indenture Act, as then in effect; or

(J) make any other change to this Indenture, the Notes or the Collateral Agreements that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders, as such, in any material respect.

Section 8.02. WITH THE CONSENT OF HOLDERS.

(A) *Generally*. Subject to **Sections 7.06**, **7.09** and **8.01** and the immediately following sentence, the Company, the Guarantors, the Trustee and the Collateral Agent may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, amend or supplement this Indenture, the Notes and the Collateral Agreements or waive compliance with any provision of this Indenture, the Notes or the Collateral Agreements. Notwithstanding anything to the contrary in the foregoing sentence, without the consent of each affected Holder, no amendment or supplement to this Indenture, the Notes or any Collateral Agreement, or waiver of any provision of this Indenture, the Notes or any Collateral Agreement, may:

(i) reduce the principal, or extend the stated maturity, of any Note;

(ii) reduce the Redemption Price or Fundamental Change Repurchase Price for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company pursuant to a Redemption or in connection with a Fundamental Change (it being understood that an amendment or supplement that changes the times at which, or the circumstances under which, the Notes may or will be repurchased by the Company pursuant to **Section 4.02** may be effected in accordance with the first sentence of this **Section 8.02(A)**);

(iii) reduce the rate, or extend the time for the payment, of interest on any Note;

(iv) make any change that adversely affects the conversion rights of any Note;

(v) impair the rights of any Holder set forth in **Section 7.09** (as such section is in effect on the Issue Date);

(vi) change the ranking of the Notes and the Guarantees;

(vii) modify or amend the terms and conditions of the obligations of the Guarantors, as guarantors of the Notes, in any manner that is adverse to the rights of the Holders, as such, except as expressly provided in this Indenture;

(viii) make any note payable in money, or at a place of payment, other than that stated in this Indenture or the Note;

(ix) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or

(x) make any direct or indirect change to any amendment, supplement, waiver or modification provision of this Indenture, the Notes or the Collateral Agreements that requires the consent of each affected Holder.

In addition, any amendment or supplement to, or waiver of any provision of, this Indenture, the Notes or any Security Document that has the effect of releasing the Liens on all or substantially all of the Collateral securing the Notes, other than in accordance with this Indenture and the Security Documents, will require the consent of the Holders of not less than two thirds (2/3) of the principal amount of the Notes then outstanding.

For the avoidance of doubt, pursuant to **clauses (i)**, **(ii)**, **(iii)** and **(iv)** of this **Section 8.02(A)**, no amendment or supplement to this Indenture, the Notes or the Collateral Agreements, or waiver of any provision of this Indenture, the Notes or the Collateral Agreements, may change the amount or type of consideration due on any Note on an Interest Payment Date, Redemption Date, Fundamental Change Repurchase Date or the Maturity Date or upon conversion, or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder, subject to the parenthetical in **Section 8.02(A)(ii)**.

(B) *Approval of Any Form of Amendment*. A consent of any Holder pursuant to this **Section 8.02** shall include approval of the form and the substance of the proposed amendment, supplement or waiver.

Section 8.03. NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.

Promptly after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders, the Trustee and the Collateral Agent written notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.04. REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC.

(A) *Revocation and Effect of Consents*. The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates.* The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided*, *however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents*. For the avoidance of doubt, each reference in this Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes, regardless of whether all holders of Notes are entitled to participate in such offer or transaction.

(D) *Effectiveness and Binding Effect*. Each amendment, supplement or waiver pursuant to this **Article 8** will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

Section 8.05. NOTATIONS AND EXCHANGES.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.04**, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.06. TRUSTEE AND COLLATERAL AGENT TO EXECUTE SUPPLEMENTAL INDENTURES.

Each of the Trustee and the Collateral Agent will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided*, *however*, that neither the

Trustee nor the Collateral Agent need (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that adversely affects the rights, duties, benefits, privileges, protections, liabilities, indemnities or immunities of the Trustee or the Collateral Agent, as applicable. In executing any amendment or supplemental indenture, each of the Trustee and the Collateral Agent will be entitled to receive, and (subject to **Sections 12.01** and **12.02**) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by this Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company in accordance with its terms.

Article 9. GUARANTEES

Section 9.01. GUARANTEES.

(A) *Generally*. By execution of this Indenture or any amendment or supplement to this Indenture pursuant to **Section 8.01(B)**, each Guarantor (x) acknowledges and agrees that it receives substantial benefits from the Company and that such Guarantor is providing its Guarantee for good and valuable consideration, including such substantial benefits; and (y) subject to this **Article 9**, jointly and severally, fully and unconditionally guarantees, to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee, the Collateral Agent and their respective successors and assigns, regardless of the validity or enforceability of this Indenture the Security Agreement, the Notes or the obligations of the Company under this Indenture, the Notes or the Security Agreement, that:

(i) the principal of, any interest on, and any Conversion Consideration for, the Notes will be promptly paid in full when due, whether at maturity, by acceleration, on a Fundamental Change Repurchase Date, upon Redemption or otherwise, and interest on the overdue principal of, any interest on, or any Conversion Consideration for, the Notes, if lawful, and all other obligations of the Company to the Holders, the Trustee or the Collateral Agent under this Indenture or the Notes, will be promptly paid or delivered in full or performed, as applicable, in each case in accordance with this Indenture and the Notes; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, on a Fundamental Change Repurchase Date, upon Redemption or otherwise,

(collectively, the "**Guaranteed Obligations**"), in each case subject to **Section 9.02**.

Upon the failure of any payment when due of any amount so guaranteed, and upon the failure of any performance so guaranteed, for whatever reason, the Guarantors will be jointly and severally obligated to pay or perform, as applicable, the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(B) *Guarantee Is Unconditional; Waiver of Diligence, Presentment, Etc.* Each Guarantor agrees that its Guarantee of the Guaranteed Obligations is unconditional, regardless of the validity or enforceability of this Indenture, the Notes or the obligations of the Company under this Indenture or the Notes, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions of this Indenture or the Notes, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance that might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever, and covenants that this Guarantee will not be discharged except by complete performance of the obligations contained in this Indenture and the Notes.

(C) *Reinstatement of Guarantee Upon Return of Payments*. If any Holder, the Trustee or the Collateral Agent is required by any court or otherwise to return, to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to the Company or the Guarantors, any consideration paid or delivered by the Company or the Guarantors to such Holder, the Trustee or the Collateral Agent, then each Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(D) *Subrogation*. Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed by it under a Guarantee until payment in full of all Guaranteed Obligations. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the Guaranteed Obligations may be accelerated as provided in **Article 7**, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations; and (ii) if any Guaranteed Obligations are accelerated pursuant to **Article 7**, then such Guaranteed Obligations will, whether or not due and payable, immediately become due and payable by the Guarantors. Each Guarantor will have the right to seek contribution from any non-paying Guarantor, but only if the exercise of such right does not impair the rights of the Holders under any Guarantee.

Section 9.02. LIMITATION ON GUARANTOR LIABILITY.

Each Guarantor, and, by its acceptance of any Note, each Holder, confirms that each Guarantor and the Holders intend that the Guarantee of each Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. Each of the Trustee, the Collateral Agent, the Holders and each Guarantor irrevocably agrees that the obligations of each Guarantor under its Guarantee will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor

under its Guarantee, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent transfer or conveyance.

Section 9.03. EXECUTION AND DELIVERY OF GUARANTEE.

The execution by each Guarantor of this Indenture or an amendment or supplement to this Indenture pursuant to **Section 8.01(B)** evidences the Guarantee of such Guarantor, and the delivery of any Note by the Trustee after its authentication constitutes due delivery of each Guarantee on behalf of each Guarantor. A Guarantee's validity will not be affected by the failure of any officer of a Guarantor executing any such amendment or supplement to this Indenture on such Guarantor's behalf to hold, at the time any Note is authenticated, the same or any other office at such Guarantor, and each Guarantee will be valid and enforceable even if no notation, certificate or other instrument is set upon or attached to, or otherwise executed and delivered to the Holder of, any Note.

Section 9.04. WHEN THE GUARANTORS MAY MERGE, ETC.

(A) *Generally*. No Guarantor will consolidate with or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of such Guarantor and its Subsidiaries, taken as a whole, to another Person (a "**Guarantor Business Combination Event**"), unless the Guarantee of such Guarantor will be released in connection with such transaction pursuant to **Section 9.07** or:

(i) the resulting, surviving or transferee Person is either (x) such Guarantor or (y) if not such Guarantor, a Person (the "**Successor Guarantor Corporation**") that expressly assumes (by executing and delivering to the Trustee and the Collateral Agent, at or before the effective time of such Guarantor Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)**) all of such Guarantor's obligations under this Indenture and the Notes; and

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

(B) *Delivery of Officer's Certificate and Opinion of Counsel to the Trustee and the Collateral Agent.* Before the effective time of any Guarantor Business Combination Event, the Company will deliver to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel, each stating that (i) such Guarantor Business Combination Event (and, if applicable, the related supplemental indenture) comply with **Section 9.04(A)**; and (ii) all conditions precedent to such Guarantor Business Combination Event provided in this Indenture have been satisfied.

(C) *Successor Corporation Substituted*. At the effective time of any Guarantor Business Combination Event that complies with **Section 9.04(A)** and **Section 9.04(B)**, the Successor Guarantor Corporation (if not the applicable Guarantor) will succeed to, and may exercise every right and power of, such Guarantor under this Indenture and the Notes with the same effect as if such Successor Guarantor Corporation had been named as a Guarantor in this

Indenture and the Notes, and, except in the case of a lease, the predecessor Guarantor will be discharged from its obligations under this Indenture and the Notes.

Section 9.05. FUTURE GUARANTORS.

If the Company or any of its Subsidiaries acquires or creates another Subsidiary after the Issue Date, then, such Subsidiary will become a Guarantor by executing a supplemental indenture to this Indenture (substantially in the form set forth in **Exhibit B**) pursuant to **Section 8.01(B)** (and, to the extent such Subsidiary holds assets required to be Collateral, one or more Security Agreements or supplements or amendments thereto needed to grant to the Collateral Agent the Liens required to be granted pursuant to this Indenture) and deliver such supplemental indenture (and, if applicable, Security Agreement(s) or supplement(s) or amendment(s)) to the Trustee and the Collateral Agent within twenty (20) Business Days of the date on which such Subsidiary was acquired or created or guaranteed Indebtedness of the Company, as applicable. The Company or the Guarantor, as applicable, will provide one or more Opinions of Counsel and Officer's Certificates with respect to the foregoing.

Section 9.06. APPLICATION OF CERTAIN PROVISIONS TO THE GUARANTORS.

(A) *Officer's Certificates and Opinions of Counsel*. Upon any request or application by any Guarantor to the Trustee or the Collateral Agent to take any action under this Indenture, the Trustee or the Collateral Agent, as applicable, will be entitled to receive an Officer's Certificate and an Opinion of Counsel pursuant to **Section 13.02** with the same effect as if each reference to the Company in **Section 13.02** or in the definitions of "Officer," "Officer's Certificate" or "Opinion of Counsel" were instead a reference to such Guarantor.

(B) *Company Order.* A Company Order may be given by any Guarantor with the same effect as if each reference to the Company in the definitions of "Company Order" or "Officer" were instead a reference to such Guarantor.

Section 9.07. RELEASE OF GUARANTEES.

The Guarantee of a Guarantor, and the Lien on a Guarantor's Collateral, will be released automatically:

(A) in connection with such Guarantor's consolidation with or merger with or into, or sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of such Guarantor and its Subsidiaries, taken as a whole, to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company;

(B) in connection with any sale or other disposition of all of the Capital Stock of such Guarantor to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company such that such Guarantor is no longer a Subsidiary of the Company; or

(C) upon defeasance or discharge pursuant to **Article 11**.

Article 10. COLLATERAL

Section 10.01. GRANT OF SECURITY INTEREST

(A) *Generally*. To secure the due and punctual payment of the principal of, premium, if any, and interest on the Notes and amounts due hereunder and under the Guarantees when and as the same become due and payable, whether on an Interest Payment Date, at maturity, by acceleration, purchase, repurchase, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest (to the extent permitted by law), if any, on the Notes and the performance of all other Obligations of the Company and the Guarantors to the Holders, the Collateral Agent or the Trustee under this Indenture, the Security Documents, the Guarantees and the Notes, the Company will, on the Issue Date, cause the Security Documents to be executed and delivered, granting to the Collateral Agent Liens (which are subject to Permitted Liens) on all Collateral other than Excluded Collateral. On the Issue Date, the Company will deliver standard closing opinions to the Collateral Agent and the Trustee in respect of the Security Documents.

(B) *Acceptance by the Holders; Further Acts*. Each Holder, by its acceptance of a Note, consents and agrees to the terms of each Security Document to be executed by the Company or any Guarantor on or after the Issue Date, as the same may be amended from time to time in accordance with their respective terms, and authorizes and directs the Collateral Agent to enter into this Indenture and the Security Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. The Company will, and will cause each of its Subsidiaries to, do or cause to be done, at its sole cost and expense, all such actions and things as may be required by the provisions of the Security Documents, to assure and confirm to the Collateral Agent the security interests in the Collateral contemplated by the Security Documents, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes and Guarantees secured thereby, according to the intent and purpose herein and therein expressed, including taking all commercially reasonable actions required to cause the Security Documents to create and maintain, as security for the Obligations contained in this Indenture, the Notes, the Security Document and the Guarantees valid and enforceable, perfected (to the extent required therein) security interests in and on all the Collateral, in favor of the Collateral Agent, superior to and prior to the rights of all third Persons and subject to no other Liens (other than Permitted Liens), in each case, except as expressly provided in this Indenture or therein. If required for the purpose of meeting the legal requirements of any jurisdiction in which any of the Collateral may at the time be located, the Company, the Trustee and the Collateral Agent will have the power to appoint, and will take all reasonable action to appoint, one or more Persons reasonably acceptable to the Company to act as co-Collateral Agent with respect to any such Collateral, with such rights and powers limited to those deemed necessary for the Company, the Trustee or the Collateral Agent to comply with any such legal requirements with respect to such Collateral, and which rights and powers will not be inconsistent with the provisions of this Indenture, the Notes or the Guarantees. The Company will from time to time promptly pay all reasonable financing and continuation statement and mortgage recording and/or filing fees, charges and taxes relating to this Indenture, the Security

Documents and any amendments hereto or thereto and any other instruments of further assurance required pursuant hereto or thereto.

Section 10.02. RECORDING.

On or after the Issue Date, each of the Company and the Guarantors will execute and file financing statements and other lien perfection instruments in its jurisdiction of organization and in any other relevant jurisdictions describing itself as debtor, the Collateral Agent as secured party, and the collateral covered by such financing statements as "All assets of Debtor, all proceeds thereof, and all rights and privileges with respect thereto, other than Excluded Collateral" (or substantially similar words). The Company and the Guarantors, and each of them, authorize (but do not obligate) the Collateral Agent to file the foregoing financing statements and other lien perfection instruments from time to time on their behalf in all relevant jurisdictions and to file amendments and continuation statements from time to time with respect thereto.

Section 10.03. LIENS ON ADDITIONAL PROPERTY.

With respect to any Property, including real property owned in fee simple, on the Issue Date or acquired after the Issue Date by the Company or any Guarantor as to which the Collateral Agent, for the benefit of the Holders, the Trustee and the Collateral Agent, does not have an Acceptable Security Interest on the Issue Date and which does not constitute an "Excluded Asset" under the Security Agreement with respect to Properties, including real property owned in fee, execute and deliver to the Collateral Agent such Collateral Agreements or amendments to Collateral Agreements and take all actions, including the filing of any financing statements or Mortgages necessary or advisable to grant to the Collateral Agent, for the benefit of the Holders, the Trustee and the Collateral Agent, an Acceptable Security Interest in such Property promptly, and in any event within thirty (30) days, or in the case of real property, sixty (60) days), following the earlier of (1) the end of the calendar month in which the Property is received by the Company or any Guarantor, as applicable; and (2) the date such Property is acquired.

The Company will, or will cause the applicable Guarantor to, within sixty (60) days after the Issue Date, or if Property is subsequently acquired, the date of such acquisition, execute and deliver to the Collateral Agent: (i) such executed mortgages or amendments or supplements to prior mortgages naming the Collateral Agent, as mortgagee or beneficiary; (ii) satisfactory evidence of the completion of all recordings and filings of such mortgages, amendments or supplements in the proper recorders' offices or appropriate public records (and payment of any taxes or fees in connection therewith); (iii) a loan policy of title insurance with customary endorsements and coverage levels, (iv) flood insurance if required by applicable law; and (v) local counsel opinion or opinions (each, subject to customary assumptions and qualifications) to the effect that the Collateral Agent has a valid and perfected first-priority Lien with respect to the real property that is subject to the applicable Mortgage.

Section 10.04. RELEASE OF COLLATERAL.

(A) *Generally*. The Collateral Agent will not at any time release Collateral from the security interests created by the Security Documents unless such release is in accordance with the provisions of this Indenture and the applicable Security Documents.

(B) *Effect of Permitted Release.* The release of any Collateral from the terms of the Security Documents will not be deemed to impair the security under this Indenture in contravention of the provisions of this Indenture if and to the extent the Collateral is released pursuant to this Indenture and the Security Documents.

(C) *Special Provisions for Release of Certain Collateral*. Notwithstanding anything to the contrary in any Security Document, Collateral comprised of accounts receivable, inventory or (prior to the occurrence and during the continuance of an Event of Default) the proceeds of the foregoing will be subject to release upon sales of such inventory and collection of the proceeds of such accounts receivable in the ordinary course of business and, as and when requested by the Company, the Collateral Agent is authorized to execute and deliver UCC financing statement amendments or releases that delete such released Collateral or any Excluded Collateral from any previously filed financing statements that included such released Collateral or any Excluded Collateral in the description of the assets covered thereby. If requested in writing by the Company, the Trustee will instruct the Collateral Agent to execute and deliver such documents, instruments or statements and to take such other action as the Company may reasonably request to evidence or confirm that the Collateral falling under this **Section 10.04** has been released from the Liens of each of the Security Documents. The Collateral Agent will execute and deliver such documents, instruments and statements and will take all such actions promptly upon receipt of such instructions from the Trustee.

(D) *When Release Is Permitted; Officer's Certificate*. Subject to the foregoing, Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents or as provided hereby.

(i) Upon the request of the Company pursuant to an Officer's Certificate certifying that all conditions precedent hereunder have been met and without the consent of any Holder, the Company and the Guarantors will be entitled to releases of assets included in the Collateral from the Liens securing the Indenture Documents if any Subsidiary that is a Guarantor is released from its Guarantee, that Subsidiary's assets will also be released from the Liens securing the Notes; or

(ii) The Liens on all Collateral that secures the Indenture Documents also will be released: upon satisfaction and discharge of this Indenture or payment in full of the principal of, and premium, if any, and accrued and unpaid interest on, the Notes and all other Obligations that are then due and payable;

Upon receipt of such Officer's Certificate and an Opinion of Counsel and any necessary or proper instruments of termination, satisfaction or release prepared by the Company, the Collateral Agent will execute, deliver or acknowledge such instruments or releases to evidence

the release of any Collateral permitted to be released pursuant to this Indenture or the Security Documents.

Section 10.05. FORM AND SUFFICIENCY OR RELEASE

In the event that the Company or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral that may be sold, exchanged or otherwise disposed of by the Company or such Guarantor, and the Company or such Guarantor requests the Trustee or the Collateral Agent to furnish a written disclaimer, release or quit-claim of any interest in such Property under this Indenture and the Security Documents, the Collateral Agent and the Trustee, as applicable, will execute, acknowledge and deliver to the Company or such Guarantor (in proper form) such an instrument promptly after satisfaction of the conditions set forth herein for delivery of any such release. Notwithstanding anything to the contrary in the immediately preceding sentence, all purchasers and grantees of any Property or rights purporting to be released herefrom will be entitled to rely upon any release executed by the Collateral Agent hereunder as sufficient for the purpose of this Indenture and as constituting a good and valid release of the Property therein described from the Lien of this Indenture or of the Security Documents.

Section 10.06. PURCHASE PROTECTED

No purchaser or grantee of any Property or rights purporting to be released herefrom will be bound to ascertain the authority of the Trustee or the Collateral Agent to execute the release or to inquire as to the existence of any conditions herein prescribed for the exercise of such authority; nor will any purchaser or grantee of any Property or rights permitted by this Indenture to be sold or otherwise disposed of by the Company be under any obligation to ascertain or inquire into the authority of the Company to make such sale or other disposition.

Section 10.07. ACTIONS TO BE TAKEN BY THE COLLATERAL AGENT.

Subject to the provisions of the applicable Security Documents:

(A) the Collateral Agent will execute and deliver the Security Documents and act in accordance with the terms thereof;

(B) the Collateral Agent may, but shall not be obligated, in its sole discretion and without the consent of the Trustee or the Holders, take all actions it deems necessary or appropriate in order to:

(i) enforce any of the terms of the Security Documents, and

(ii) collect and receive any and all amounts payable in respect of the Obligations of the Company and the Guarantors hereunder and under the Notes, the Guarantees, the Security Documents; and

(iii) the Collateral Agent will have power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by

any act that may be unlawful or in violation of the Security Documents or this Indenture, and suits and proceedings as the Collateral Agent may deem expedient to preserve or protect its interests and the interests of the Trustee and the Holders in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest thereunder or be prejudicial to the interests of the Holders, the Trustee or the Collateral Agent).

Notwithstanding anything to the contrary in any of the Indenture Documents, no Holder will have any right individually to realize upon any of the Collateral. All powers, rights and remedies of the Collateral Agent hereunder and under the Security Documents may be exercised solely by the Collateral Agent.

Notwithstanding anything to the contrary in this **Section 10.07**, the Collateral Agent may, at the expense of the Company, request the direction of the Holders with respect to any such actions and upon receipt of the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Notes, will take such actions.

Section 10.08. RECEIPT OF FUNDS BY THE COLLATERAL AGENT.

The Collateral Agent is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Security Documents for turnover to the Trustee to make further distributions of such funds to itself, the Collateral Agent and the Holders in accordance with the provisions of **Section 7.11** and the other provisions of this Indenture.

Section 10.09. COLLATERAL AGENT RIGHTS, PROTECTIONS AND DUTIES AND RELATED PROVISIONS.

(A) Each Holder, by acceptance of the Notes, designates and appoints the Collateral Agent as its agent under this Indenture and the Security Documents, and each Holder, by acceptance of the Notes, irrevocably authorizes the Collateral Agent to take such action on its behalf under the provisions of this Indenture and the Security Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Indenture and the Security Documents and consents and agrees to the terms of each Security Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms. The Collateral Agent agrees to act as such on the express conditions contained in this **Section 10.09**. The provisions of this **Section 10.09** are solely for the benefit of the Collateral Agent, and none of the Trustee, any Holder, the Company or any Guarantor will have any rights as a third party beneficiary of any of the provisions of this **Section 10.09**. Each Holder agrees that any action taken by the Collateral Agent in accordance with this Indenture and the Security Documents, and the exercise by the Collateral Agent of any rights or remedies set forth in this Indenture or therein, will be authorized and binding on all Holders. Notwithstanding anything to the contrary in this Indenture or the Security Documents, the duties of the Collateral Agent will be ministerial

and administrative in nature, and the Collateral Agent will not have any duties or responsibilities, except those expressly set forth in this Indenture or the Security Documents to which the Collateral Agent is a party, nor will the Collateral Agent have any trust or other fiduciary relationship with the Trustee, any Holder, the Company or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities will be read into this Indenture or any Security Document or will otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Collateral Agent is not intended to connote any fiduciary or other express or implied obligations arising under agency doctrine of any applicable law. Instead, such term is used in such context merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

(B) The Collateral Agent will be fully justified in failing or refusing to take any action under this Indenture or any Security Document unless it first receives such advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes then outstanding as it determines and, if it so requests, it will first be indemnified to its satisfaction by the Holders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent will in all cases be fully protected in acting, or in refraining from acting, under this Indenture or any Security Document, in accordance with a request, direction, instruction or consent of the Trustee or the Holders of a majority in aggregate principal amount of the then-outstanding Notes, and such request and any action taken or failure to act pursuant thereto will be binding upon all of the Holders.

(C) The Collateral Agent will not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Responsible Officer of the Collateral Agent has received written notice from the Trustee or the Company, referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." The Collateral Agent will take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with **Article 7** or the Holders of a majority in aggregate principal amount of the Notes then outstanding (subject to this **Section 10.09**).

(D) Neither the Collateral Agent nor any of its officers, directors, employees will be liable to the Company, any Guarantor, the Holders or the Trustee for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so, and neither of them will be under any obligation to sell or otherwise dispose of any Collateral at the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. Neither the Collateral Agent nor any of its officers, directors, employees, attorneys, representatives or agents will be responsible for any act or failure to act under this Indenture, except to the extent such act is found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct.

(E) The Collateral Agent is authorized and directed to (i) enter into the Security Documents to which it is party, whether executed on or after the Issue Date; (ii) bind the Holders on the terms as set forth in the Security Documents; and (iii) perform and observe its obligations under the Security Documents.

(F) The Collateral Agent will have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by the Company or any Guarantor or is cared for, protected or insured or has been encumbered, or that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the Company's or any Guarantors' property constituting collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities or powers granted or available to the Collateral Agent pursuant to this Indenture or any Security Document, other than pursuant to the instructions of the Trustee or the Holders of a majority in aggregate principal amount of the Notes then outstanding or as otherwise provided in the Security Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent will have no other duty or liability whatsoever to the Trustee or any Holder as to any of the foregoing.

(G) No provision of this Indenture or any Security Document will require the Collateral Agent or the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or of the Trustee, in the case of the Collateral Agent) unless the Collateral Agent has received indemnity or security satisfactory to the Collateral Agent against potential costs and liabilities incurred by the Collateral Agent relating thereto. Notwithstanding anything to the contrary in this Indenture or the Security Documents, if the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, then the Collateral Agent will not be required to commence such action or exercise such remedy or inspect or conduct any studies of any property under the mortgages or take any other action if the Collateral Agent determines that it may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property of any hazardous substances unless the Collateral Agent has received security or indemnity from the Holders in an amount and in a form all satisfactory to the Collateral Agent in its sole discretion, protecting the Collateral Agent from all such liability. The Collateral Agent will always be entitled to cease taking any action set forth above if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(H) The Collateral Agent does not assume any responsibility for any failure or delay in performance or any breach by the Company or any Guarantor under this Indenture or any Security Document. The Collateral Agent will not be responsible to any Holder or Person for (i) any recitals, statements, information, representations or warranties contained in this Indenture or any Security Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Indenture or any Security Document; (ii) the execution, validity, genuineness, effectiveness or enforceability of any Security Document of any other party thereto; (iii) the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity,

effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein; (iv) the validity, enforceability or collectability of any Obligations; (v) the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any obligor; or (vi) any failure of any obligor to perform its Obligations under this Indenture or any Security Document. The Collateral Agent has no obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture or any Security Document, or the satisfaction of any conditions precedent contained in this Indenture or any Security Document. The Collateral Agent will not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture or any Security Document unless expressly set forth under this Indenture or thereunder. The Collateral Agent will have the right to seek instructions from the Holders with respect to the administration of this Indenture and the Security Documents.

(I) The parties to this Indenture and the Holders agree and acknowledge that the Collateral Agent will not assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses or costs (including any remediation, corrective action, response, removal or remedial action, any or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture or any Security Document, or for any actions taken pursuant to this Indenture or thereto. The parties to this Indenture and the Holders agree and acknowledge that, in the exercise of rights under this Indenture or any Security Document, the Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Agent in the Collateral, including the properties under the real property that constitute Collateral, and that any actions taken by the Collateral Agent will not be construed as or otherwise constitute any participation in the management of such Collateral, including the real properties that constitute Collateral, as those terms are defined in Section 101(20)(E) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq*., as amended.

(J) Upon receipt by the Collateral Agent of a Company Order (a "**Security Document Order**"), the Collateral Agent is authorized to execute and enter into, and will execute and enter into, without the further consent of any Holder or the Trustee, any Security Document to be executed after the Issue Date. Such Security Document Order will (i) state that it is being delivered to the Collateral Agent pursuant to, and is a Security Document Order referred to in, this **Section 10.09(J)**; and (ii) instruct the Collateral Agent to execute and enter into such Security Document. Any such execution of a Security Document will be at the direction and expense of the Company, upon delivery to the Collateral Agent of an Officer's Certificate and Opinion of Counsel stating that all conditions precedent to the execution and delivery of the Security Document have been satisfied. The Holders, by their acceptance of the Notes, authorize and direct the Collateral Agent to execute such Security Documents.

(K) Notwithstanding anything to the contrary in this Indenture or any Security Document, the Collateral Agent will not be responsible for, or have any duty or obligation with

respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or any Security Document (including the filing or continuation of any UCC financing or continuation statements or similar documents or instruments), and the Collateral Agent will not be responsible for, and the Collateral Agent makes no representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or Liens intended to be created thereby.

(L) Before the Collateral Agent acts or refrains from acting at the request or direction of the Company or any Guarantor, or in connection with any Security Document, it may require an Officer's Certificate and an Opinion of Counsel. The Collateral Agent will not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(M) The Collateral Agent, in its capacity as such, will be entitled to the same rights and protections afforded to the Trustee by **Sections 12.02**, **12.03**, **12.04** and **12.06**, will be subject to replacement in the same manner as the Trustee pursuant to **Section 12.07**, and will be subject to **Section 12.08**, in each case as if references to the Trustee in such Sections were instead references to the Collateral Agent, *mutatis mutandis*. Each reference in this Indenture to any Section, clause or other part of **Article 12** with respect to the Collateral Agent will be deemed to be a reference to such Section, clause or part as modified by this **Section 10.09**.

Article11. SATISFACTION AND DISCHARGE; DEFEASANCE OF RESTRICTIVE COVENANTS

Section 11.01. TERMINATION OF COMPANY'S OBLIGATIONS.

This Indenture will be discharged, and will cease to be of further effect as to all Notes issued under this Indenture, and all Liens created pursuant to the Collateral Agreements will be released, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to **Section 2.06**) have (A) been delivered to the Trustee for cancellation; or (B) become due and payable for an amount of cash or Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent (or, with respect to Conversion Consideration, the Conversion Agent), or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be converted, Conversion Consideration) sufficient to satisfy all amounts or other Property due on all Notes then outstanding (other than Notes replaced pursuant to **Section 2.06**);

(C) the Company has paid all other amounts payable by it under this Indenture; and

(D) the Company has delivered to the Trustee and the Collateral Agent an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of this Indenture have been satisfied;

provided, *however*, that **Article 12** and **Sections 10.09** and **13.01** will survive such discharge and, until no Notes remain outstanding, **Section 2.08** and the obligations of the Trustee, the Collateral Agent, the Paying Agent and the Conversion Agent with respect to money or other Property deposited with them will survive such discharge.

At the Company's written request, each of the Trustee and the Collateral Agent will acknowledge the satisfaction and discharge of this Indenture.

Section 11.02. REPAYMENT TO COMPANY.

Subject to applicable unclaimed property law, the Trustee, the Collateral Agent, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's request, promptly deliver to the Company) any cash, Conversion Consideration or other Property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee, the Collateral Agent, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other Property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other Property must look to the Company for payment as a general creditor of the Company.

Section 11.03. REINSTATEMENT.

If the Trustee, the Collateral Agent, the Paying Agent or the Conversion Agent is unable to apply any cash or other Property deposited with it pursuant to **Section 11.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of this Indenture pursuant to **Section 11.01** will be rescinded; *provided*, *however*, that if the Company thereafter pays or delivers any cash or other Property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other Property from the cash or other Property, if any, held by the Trustee, the Collateral Agent, the Paying Agent or the Conversion Agent, as applicable.

Section 11.04. DEFEASANCE OF RESTRICTIVE COVENANTS.

If the following conditions have been satisfied:

(A) the Company has caused there to be irrevocably deposited, with the Trustee or the Paying Agent for the benefit of the Holders, cash in an aggregate amount equal to the sum of (i) the remaining scheduled interest payments on each Note outstanding as of the time of such deposit (assuming, for these purposes, that Additional Interest would accrue on such Note at their respective maximum rates per annum provided in **Sections 3.19** and **7.04**; and (ii) one hundred and one percent (101%) of the principal amount of the Notes outstanding as of the time of such deposit;

(B) with respect to each Note, if any, for which a Conversion Date has occurred, but the Conversion Consideration due in respect of such Note has not been fully paid or delivered, as of the time of the deposit referred to in **clause (A)** above, the Company has caused there to be irrevocably deposited, with the Trustee or the Conversion Agent for the benefit of the Holders, the maximum kind and amount of Conversion Consideration due in respect of such Note;

(C) the Company irrevocably instructs the Trustee, the Paying Agent or the Conversion Agent, as applicable, to pay or deliver cash or other Property due on the Notes from the cash or other Property deposited pursuant **clauses (A)** and **(B)** above as the same becomes due;

(D) as of the time of the deposits referred into **clauses (A)** and **(B)** above, (i) no Default in the payment or delivery of any amount or Property (including Conversion Consideration) on any Note has occurred and is continuing; and (ii) there are no Notes that have been called for Redemption, but that have not been redeemed, as of the time of such deposits;

(E) the Company has delivered to the Trustee an Opinion of Counsel confirming that the Holders of the Notes will not recognize any income, gain or loss for federal income tax purposes as a result of the Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times, as would have been the case if the Covenant Defeasance had not occurred;

(F) the Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture, but solely in connection with the incurrence of any Indebtedness to finance the Covenant Defeasance) to which the Company or any of the Guarantors is a party or by which the Company or any of the Guarantors is bound;

(G) the Company has delivered to the Trustee an Officer's Certificate stating that the deposits referred into **clauses (A)** and **(B)** above were not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(H) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Covenant Defeasance have been complied with, then, notwithstanding anything to the contrary in this Indenture or the Notes:

(i) each of **Sections 3.04**, **3.05, 3.06, 3.07, 3.08, 3.10, 3.12, 3.13, 3.14, 3.15, 3.16** and **3.19**, and the obligations of the Company or the Guarantors under **Article 10**, will thereafter cease to be of any force or effect, and, for the avoidance of doubt, any omission to comply with any of such Sections (whether directly or indirectly, by reason of any reference elsewhere in this Indenture to any of such Sections or by reason of any reference in any such Section to any other provision of this Indenture or in any other document) will not in itself constitute a Default or Event of Default;

(ii) all Liens created pursuant to the Collateral Agreements will be released and all Collateral Agreements will be terminated; and

(iii) each Guarantor will be discharged from its obligations under this Indenture and the Notes.

For the avoidance of doubt, the remainder of this Indenture and the Notes will be unaffected by and Covenant Defeasance and will continue to be in full force and effect.

Each of the Trustee, the Paying Agent and the Conversion Agent will return to the Company any cash or other Property deposited with it pursuant to **clause (A)** or **(B)** above that remains on deposit after (x) all Notes have been paid in full and none remain outstanding; and (y) the Company has paid all other amounts payable by it under this Indenture.

Article 12. TRUSTEE

Section 12.01. DUTIES OF THE TRUSTEE.

(A) The Trustee, prior to the occurrence of an Event of Default with respect to the Notes and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

(i) the duties of the Trustee will be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officer's Certificates or Opinions of Counsel that are provided to the Trustee and conform to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but will not be required to verify any mathematical calculations or factual statements contained therein).

(C) The Trustee may not be relieved from liabilities for its negligence or willful misconduct, except that:

(i) this paragraph will not limit the effect of **Section 12.01(B)**;

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to **Section 7.06**.

(D) Each provision of this Indenture that in any way relates to the Trustee is subject to paragraphs **(A)**, **(B)** and **(C)** of this **Section 12.01**, regardless of whether such provision so expressly provides.

(E) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability.

(F) The Trustee will not be liable for interest on any money received by it, except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds, except to the extent required by law.

(G) The Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent (except in its capacity as Paying Agent pursuant to the terms of this Indenture) or any records maintained by any co-Note Registrar with respect to the Notes.

(H) If any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event.

(I) Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Notes.

Section 12.02. RIGHTS OF THE TRUSTEE.

(A) The Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document (whether in original or facsimile form) that is believes to be genuine and signed or presented by the proper Person, and the Trustee need not investigate any fact or matter stated in such document.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate, an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel; and the advice of such counsel, or any Opinion of Counsel, will constitute full and complete authorization of the Trustee to take or omit to take any action in good faith in reliance thereon without liability.

(C) The Trustee may act through its attorneys, agents, nominees or custodians and will not be responsible for the misconduct or negligence of any such agent appointed with due care.

(D) The Trustee will not be liable for any action it takes or omits to take in good faith and that it believes to be authorized or within the rights or powers vested in it by this Indenture.

(E) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(F) The Trustee need not exercise any rights or powers vested in it by this Indenture at the request or direction of any Holder unless such Holder has offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense that it may incur in complying with such request or direction.

(G) The Trustee will not be deemed to have knowledge of any Default or Event of Default unless (i) a Responsible Officer has actual knowledge of such Default or Event of Default; or (ii) written notice of any event that is in fact such a Default or Event of Default is received by the Trustee in accordance with **Section 13.01**, and such notice references the Notes and this Indenture.

(H) The permissive rights of the Trustee to act under this Indenture are not a duties.

(I) Neither the Trustee, the Paying Agent or the Conversion Agent will be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including loss of profit), regardless of whether the Trustee, the Paying Agent or the Conversion Agent has been advised of the likelihood of such loss or damage or the form of action.

(J) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and titles of officers authorized at such times to take specified actions pursuant to this Indenture.

(K) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities under this Indenture, and each agent, custodian and other Person employed to act under this Indenture.

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

(M) Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of their respective directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall not be responsible for any inaccuracy in the information obtained

from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness.

(N) None of the Trustee, the Conversion Agent, the Note Registrar or any Paying Agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

Section 12.03. INDIVIDUAL RIGHTS OF THE TRUSTEE.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of any Note and may otherwise deal with the Company, any Guarantor or any Affiliate of the Company with the same rights that it would have if it were not Trustee; *provided*, *however*, that if the Trustee acquires a "conflicting interest" (within the meaning of Section 310(b) of the Trust Indenture Act), then it must eliminate such conflict within ninety (90) days, apply to the Commission for permission to continue as Trustee (if this Indenture has been qualified under the Trust Indenture Act) or resign as Trustee. Each of the Paying Agent and the Conversion Agent will have that same rights and duties as the trustee under this **Section 12.03**.

Section 12.04. TRUSTEE'S DISCLAIMER.

The Trustee will not be (A) responsible for, and makes no representation as to, the validity or adequacy of this Indenture or the Notes; (B) accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture; (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee; and (D) responsible for any statement or recital in this Indenture, the Notes or any other document relating to the sale of the Notes or this Indenture, other than the Trustee's certificate of authentication.

Section 12.05. NOTICE OF DEFAULTS.

If a Default or Event of Default occurs and is continuing and is actually known to the Trustee, then the Trustee will send Holders a notice of such Default or Event of Default within ninety (90) days after it occurs or, if it is not actually known to the Trustee at such time, promptly (and in any event within twenty (20) Business Days) after it becomes actually known to the Trustee (as provided in **Section 12.02(G)**); *provided*, *however*, that except in the case of a Default or Event of Default in the payment of the principal of, or interest on, any Note, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders.

Section 12.06. COMPENSATION AND INDEMNITY.

(A) The Company will, from time to time, pay the Trustee reasonable compensation for its acceptance of this Indenture and services under this Indenture as the parties agree in writing. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. In addition to the compensation for the Trustee's services, the Company will

reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(B) The Company and the Guarantors will, jointly and severally, indemnify, defend, protect and hold the Trustee harmless from and against any and all losses, liabilities, damages, costs or expenses suffered or incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company and the Guarantors (including this **Section 12.06**) and defending itself against any claim (whether asserted by the Company any Guarantor, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties under this Indenture, except to the extent any such loss, liability or expense may be attributable to its gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The Trustee will promptly notify the Company and the Guarantors of any claim for which it may seek indemnity, but the Trustee's failure to so notify the Company or the Guarantors will not relieve the Company or the Guarantors of their obligations under this **Section 12.06(B)**. The Company and the Guarantors will defend such claim, and the Trustee will cooperate in such defense. If the Trustee is advised by counsel that it may have defenses available to it that are in conflict with the defenses available to the Company, or that there is an actual or potential conflict of interest, then the Trustee may retain separate counsel, and the Company and the Guarantors will pay the reasonable fees and expenses of such counsel (including the reasonable fees and expenses of counsel to the Trustee incurred in evaluating whether such a conflict exists). The Company and the Guarantors need not pay for any settlement of any such claim made without their consent, which consent will not be unreasonably withheld.

(C) The obligations of the Company and the Guarantors under this **Section 12.06** will survive the resignation or removal of the Trustee and the discharge of this Indenture.

(D) To secure the Company's and the Guarantors' payment obligations in this **Section 12.06**, the Trustee will have a lien prior to the Notes on all money or Property held or collected by the Trustee, except that held in trust to pay principal of, or interest on, particular Notes, which lien will survive the discharge of this Indenture.

(E) If the Trustee incurs expenses or renders services after an Event of Default pursuant to **clause (xx)** or **(xxi)** of **Section 7.01(A)** occurs, then such expenses and the compensation for such services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 12.07. REPLACEMENT OF THE TRUSTEE.

(A) Notwithstanding anything to the contrary in this **Section 12.07**, a resignation or removal of the Trustee, and the appointment of a successor Trustee, will become effective only upon such successor Trustee's acceptance of appointment as provided in this **Section 12.07**.

(B) The Trustee may resign at any time and be discharged from the trust created by this Indenture by so notifying the Company. The Holders of a majority in aggregate principal amount of the Notes then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing at least thirty (30) days in advance of such removal. The Company may remove the Trustee if:

(i) the Trustee fails to comply with **Section 12.09**;

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

(iii) a custodian or public officer takes charge of the Trustee or its Property; or

(iv) the Trustee becomes incapable of acting.

(C) If the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee for any reason, then (i) the Company will promptly appoint a successor Trustee; and (ii) at any time within one (1) year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the Notes then outstanding may appoint a successor Trustee to replace such successor Trustee appointed by the Company.

(D) If a successor Trustee does not take office within thirty (30) days after the retiring Trustee resigns or is removed, then the retiring Trustee, the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the Notes then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(E) If the Trustee, after written request by a Holder of at least six (6) months, fails to comply with **Section 12.09**, then such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(F) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company, upon which notice the resignation or removal of the retiring Trustee will become effective and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will send notice of its succession to Holders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all Property held by it as Trustee to the successor Trustee, which Property will, for the avoidance of doubt, be subject to the lien provided for in **Section 12.06(D)**. Notwithstanding any replacement of the Trustee pursuant to this **Section 12.07**, the Company's and the Guarantors' obligations under **Section 12.06** will continue for the benefit of the retiring Trustee.

Section 12.08. SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, then such corporation will become the successor Trustee without any further act.

Section 12.09. ELIGIBILITY; DISQUALIFICATION..

There will at all times be a Trustee under this Indenture that is a corporation organized and doing business under the laws of the United States of America or of any state thereof, that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50.0 million as set forth in its most recent published annual report of condition.

Article 13. MISCELLANEOUS

Section 13.01. NOTICES.

Any notice or communication by the Company, and Guarantor, the Trustee or the Collateral Agent to the other 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 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:

If to the Company or any Guarantor:

Workhorse Group Inc.
100 Commerce Drive
Loveland, Ohio 45140
Attention: Steve Schrader, Chief Financial Officer
Email address: steve.schrader@workhorse.com

with a copy (which will not constitute notice) to:

Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Attention: Arthur McMahon, III and David A. Zimmerman
Email addresses: amcmahon@taftlaw.com and dzimmerman@taftlaw.com

If to the Trustee or the Collateral Agent:

U.S. Bank National Association
Global Corporate Trust
425 Walnut Street
CN-OH-W6CT
Cincinnati, OH 45202
Attention: Workhorse Group Notes Administrator
Email: Daniel.Boyers@usbank.com

The Company, any Guarantor, the Trustee and the Collateral Agent, by notice to the others, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt acknowledged, if transmitted by facsimile, electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery, *provided* that any notice or communication delivered to the Trustee or the Collateral Agent will be deemed effective upon actual receipt thereof.

All notices or communications required to be made to a Holder pursuant to this Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Note Register; *provided*, *however*, that a notice or communication to a Holder of a Global Note may, but need not, instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If a notice or communication is mailed or sent 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.

Notwithstanding anything to the contrary in this Indenture or the Notes, whenever any provision of this Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities.

Section 13.02. DELIVERY OF OFFICER'S CERTIFICATE AND OPINION OF LEGAL COUNSEL AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee or the Collateral Agent to take or refrain from taking any action under this Indenture, the Company will furnish to the Trustee or the Collateral Agent, as applicable

(A) an Officer’s Certificate in form and substance reasonably satisfactory to the Trustee or the Collateral Agent, as applicable, that complies with **Section 13.03** and states that, in the opinion of the signatory thereto, all conditions precedent and covenants, if any, provided for in this Indenture relating to such action have been satisfied; and

(B) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee or the Collateral Agent, as applicable, that complies with **Section 13.03** and states that, in the opinion of such counsel, all such conditions precedent and covenants, if any, have been satisfied.

Section 13.03. STATEMENTS REQUIRED IN OFFICER'S CERTIFICATE AND OPINION OF COUNSEL.

Each Officer's Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture will include:

(A) a statement that the signatory thereto has read such covenant or condition;

(B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained therein are based;

(C) a statement that, in the opinion of such signatory, he, she or it has made such examination or investigation as is necessary to enable him, her or it to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(D) a statement as to whether, in the opinion of such signatory, such covenant or condition has been satisfied.

Section 13.04. RULES BY THE TRUSTEE, THE NOTE REGISTRAR AND THE PAYING AGENT.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Note Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.05. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor under this Indenture, the Notes or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

Section 13.06. GOVERNING LAW; WAIVER OF JURY TRIAL.

THIS INDENTURE, THE GUARANTEES AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE, THE GUARANTEES OR THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY, EACH GUARANTOR, THE TRUSTEE AND THE COLLATERAL AGENT 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 INDENTURE, THE NOTES, THE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED BY THIS INDENTURE, THE NOTES OR THE GUARANTEES.

Section 13.07. SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated by this Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party's address set forth in **Section 13.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, each Guarantor, the Trustee, the Collateral Agent and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

Section 13.08. No ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

Neither this Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret this Indenture or the Notes.

Section 13.09. SUCCESSORS.

All agreements of the Company and the Guarantors in this Indenture and the Notes will bind its respective successors. All agreements of the Trustee or the Collateral Agent in this Indenture will bind its successors.

Section 13.10. FORCE MAJEURE.

The Trustee, the Collateral Agent, the Paying Agent and the Conversion Agent will not be responsible for and will not incur any liability for any failure or delay in performing any act or fulfilling any duty, obligation or responsibility under this Indenture or the Notes by reason of any occurrence beyond its control (including any act or provision of any present or future law or regulation or governmental authority, strikes, work stoppages, epidemics, pandemics, accidents, act of God or war, civil unrest, local or national disturbance or disaster, act of terrorism, unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility or interruptions or loss or malfunctions of utilities, communications or computer (software and hardware) services).

Section 13.11. U.S.A. PATRIOT ACT.

The Company acknowledges that, in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee and the Collateral Agent, like all financial institutions, in order to help fight the funding of terrorism and money laundering, are required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with

the Trustee or the Collateral Agent. The Company agrees to provide the Trustee and the Collateral Agent with such information as it may request to enable the Trustee and the Collateral Agent to comply with the U.S.A. Patriot Act.

Section 13.12. CALCULATIONS.

Except as otherwise provided in this Indenture, the Company will be responsible for making all calculations called for under this Indenture or the Notes, including determinations of the Last Reported Sale Price, accrued interest, Defaulted Amount and Additional Interest, if any, on the Notes and the Conversion Rate.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee, the Collateral Agent and the Conversion Agent, and each of the Trustee, the Collateral Agent and the Conversion Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. Each of the Trustee and the Collateral Agent will promptly forward a copy of each such schedule to a Holder upon its written request therefor. None of the Trustee, the Collateral Agent or the Conversion Agent will (A) have any liability or responsibility or obligation in connection with any calculation or information relating to any calculation; or (B) responsibility or obligation to determine when or whether any Notes may be converted at any time.

Section 13.13. SEVERABILITY.

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

Section 13.14. COUNTERPARTS.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

Section 13.15. TABLE OF CONTENTS, HEADINGS, ETC.

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

Section 13.16. WITHHOLDING TAXES.

Each Holder of a Note agrees, and each beneficial owner of an interest in a Global Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of such Holder or beneficial owner as a result of an adjustment to the Conversion Rate, then the Company or such

withholding agent, as applicable, may, at its option, set off such payments against payments of cash or the delivery of other Conversion Consideration on such Note, any payments on the Common Stock or sales proceeds received by, or other funds or assets of, such Holder or the beneficial owner of such Note; *provided*, that the Company shall use commercially reasonable efforts to provide each Holder and each beneficial owner of an interest in a Global Note with a written notice of the Company's intention to withhold at least five (5) Business Days prior to any such withholding and shall cooperate with the applicable payee to minimize any such withholding.

Section 13.17. AUTHENTICATING AGENT

The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to **Section 12.09**.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this **Section 13.17**, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

If an authenticating agent is appointed pursuant to this **Section 13.17**, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

_____,

as Authenticating Agent, certifies that this is one of the Notes described in the within-named Indenture.

By: _____

Authorized Signatory

Section 13.18. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT; CERTIFICATES AND OPINIONS OF COUNSEL TO TRUSTEE

Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate and an Opinion of Counsel stating that such action is permitted by the terms of this Indenture.

Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and that all conditions precedent to such action have been complied with; *provided* that no Opinion of Counsel shall be required to be delivered in connection with (1) the original issuance of Notes on the date hereof under this Indenture, (2) the mandatory exchange of the restricted CUSIP of the Restricted Securities to an unrestricted CUSIP pursuant to the applicable procedures of the Depositary upon the Notes becoming freely tradable by non-Affiliates of the Company under Rule 144 and the removal of the restrictive legends in connection therewith unless a new Note is to be authenticated, or (3) a request by the Company that the Trustee deliver a notice to Holders under the Indenture where the Trustee receives an Officer's Certificate with respect to such notice. With respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Notwithstanding anything to the contrary in this **Section 13.18**, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to such Opinion of Counsel.

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

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

WORKHORSE GROUP INC.

By: __Name:
Title:

[*Signature Page to Indenture*]

WORKHORSE TECHNOLOGIES INC.

By: __Name:
Title:

[*Signature Page to Indenture*]

WORKHORSE MOTOR WORKS INC.

By: __Name:
Title:

[*Signature Page to Indenture*]

WORKHORSE PROPERTIES INC.

By: __Name:
Title:

[*Signature Page to Indenture*]

WORKHORSE HOLDINGS LLC

By: __Name:
Title:

[*Signature Page to Indenture*]

US BANK NATIONAL ASSOCIATION,
as Trustee and Collateral Agent

By: __Name:
Title:

[*Signature Page to Indenture*]

EXHIBIT A

FORM OF NOTE

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (THE "DEPOSITARY"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF Workhorse Group Inc. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF WORKHORSE GROUP INC. OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF WORKHORSE GROUP INC. DURING THE PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.[1]

[1] The Restrictive Legend shall be deemed removed from the face of this Note without further action by the Company, Trustee or the Holders of this Note at such time and in the manner provided under Section 2.05 of the Indenture.

WORKHORSE GROUP INC.

4.00% Senior Secured Convertible Notes due 2024

No. [_____] Initially $200,000,000

CUSIP No.

Workhorse Group Inc., a Nevada corporation, for value received, promises to pay to Cede & Co., or its registered assigns, the principal sum as set forth in the "Schedule of Exchanges of Notes" attached hereto on October 15, 2024, and to pay interest thereon, as provided in this Note, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates:	January 15, April 15, July 15 and October 15 of each year, commencing on January 15, 2021.
Regular Record Dates:	January 1, April 1, July 1 and October 1.

Additional provisions of the Notes are set forth on the other side of the Notes.

[*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: By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank National Association, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: By:_____
Authorized Signatory

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

The Notes are one of a duly authorized issue of notes of Workhorse Group Inc., a Nevada corporation (the "**Company**"), designated as its Convertible Notes due 2024 (the "**Notes**"), all issued or to be issued pursuant to an indenture, dated as of October 14, 2020 (as the same may be amended from time to time, the "**Indenture**"), among the Company, the Guarantors and U.S. Bank National Association, as trustee and collateral agent. Capitalized terms used in the Notes without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Guarantors, the Trustee, the Collateral Agent and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in the Notes, to the extent that any provision of the Notes conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest**. The Notes will accrue interest at a rate of 4.00% per annum; *provided* that in the event that the Company receives a USPS Minimum Firm Order, the Stated Interest shall be 2.75% beginning on the Interest Payment Date following receipt of such USPS Minimum Firm Order, certified to the Trustee in an Officer's Certificate, until the Maturity Date (the "**Stated Interest**"). 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.

2. Maturity. The Notes will mature on October 15, 2024, unless earlier repurchased, redeemed or converted.

3. Guarantees. The Company's obligations under the Indenture and the Notes are fully and unconditionally guaranteed by the Guarantors as provided in Article 9 of the Indenture.

4. Method of Payment. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds no later than the time the same is due as provided in this Indenture.

5. Persons Deemed Owners. The Holder of the Notes will be treated as the owner of the Notes for all purposes.

6. Denominations; Transfers and Exchanges. All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of the Notes may transfer or exchange the Notes by presenting it to the Note Registrar and delivering any required documentation or other materials.

7. **Right of Holders to Require the Company to Repurchase**. Each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Indenture.

8. **Right of the Company to Redeem the Notes**. The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.04 of the Indenture.

9. **Conversion**. The Holder of the Notes may convert the Notes into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Indenture.

10. **When the Company May Merge, Etc**. Article 6 of the Indenture places limited restrictions on the Company's ability to be a party to a Business Combination Event.

11. **Security**. The Notes will be secured in the manner, and subject to the terms, set forth in the Indenture and the Collateral Agreements.

12. **Defaults and Remedies**. If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Indenture.

13. **Amendments, Supplements and Waivers**. The Company, the Guarantors, the Trustee and the Collateral Agent may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Article 8 of the Indenture.

14. **No Personal Liability of Directors, Officers, Employees and Stockholders**. No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor under the Indenture, the Notes or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

15. **Authentication**. No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

16. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

17. Governing Law. THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Workhorse Group Inc.
100 Commerce Drive
Loveland, Ohio 45140
Attention: Chief Financial Officer

[FORM OF NOTICE OF CONVERSION]

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to convert (check one):

☐ the entire principal amount of

☐ $ * aggregate principal amount of

the Note identified by CUSIP No. and Certificate No.

The undersigned acknowledges that if the Conversion Date of a Note to be converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple in excess thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

* Must be an Authorized Denomination.

Date:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

FUNDAMENTAL CHANGE REPURCHASE NOTICE

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ $ * aggregate principal amount of

the Note identified by CUSIP No. and Certificate No.

The undersigned acknowledges that the Notes, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

Subject to the terms of the Indenture, the undersigned Holder of the within Note assigns to:

Name: _____

Address: _____

_____

_____

Social security or tax identification number: _____

the within Note and all rights thereunder irrevocably appoints:

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature Guarantee Medallion Program

By: _____

Authorized Signatory

TRANSFEROR ACKNOWLEDGEMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

1. ☐ Such Transfer is being made to the Company or a Subsidiary of the Company.

2. ☐ Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer.

3. ☐ Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page.**

4. ☐ Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated:

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
(Participant in a Recognized Signature
Guarantee Medallion Program)

By: _____
Authorized Signatory

TRANSFEREE ACKNOWLEDGEMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that and the undersigned and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: $[ ]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee

* Insert for Global Notes only.

EXHIBIT B

FORM OF SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**"), dated as of [*date*], among [*legal name of Guarantor*] (the "**New Guarantor**"), a subsidiary of Workhorse Group Inc. (or its successor) (the "**Company**"), and [●], as trustee under the indenture referred to below (the "**Trustee**").

W I T N E S S E T H:

WHEREAS the Company, each Guarantor party thereto and the Trustee have heretofore executed an indenture, dated as of October 14, 2020 (as amended, supplemented or otherwise modified, the "**Indenture**"), providing for the issuance of the Company's Senior Secured Convertible Notes due 2024 (the "**Notes**");

WHEREAS Section 9.05 of the Indenture requires the Company to cause the New Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantor will fully and unconditionally guarantee the Guaranteed Obligations on the terms and conditions set forth in this Supplemental Indenture and the Indenture; and

WHEREAS pursuant to Section 8.01(B) of the Indenture, the Trustee and the Company are authorized to execute and deliver this Supplemental Indenture.

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

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital to this Supplemental Indenture are used in this Supplemental Indenture as therein defined, except that the term "**holders**" in this Supplemental Indenture refers to the term "Holders" as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such Holders. The words "herein," "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular Section hereof.

2. Agreement to Guarantee. The New Guarantor agrees, jointly and severally with all existing Guarantors, to fully and unconditionally guarantee the Guaranteed Obligations under the Securities and the Indenture on the terms and subject to the conditions set forth in Article 9 of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes and to perform all of the obligations and agreements of a Guarantor under the Indenture.

3. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended by this Supplemental Indenture, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof will remain in full force and effect. This Supplemental Indenture will form a part of the Indenture for all purposes,

and every holder of Notes heretofore or hereafter authenticated and delivered will be bound by this Supplemental Indenture.

4. **Trustee Makes No Representation**. The Trustee makes no representation as to the validity, enforceability or sufficiency of this Supplemental Indenture or as to the statements made in the recitals, all of which are statements of the Company and the Guarantors.

5. **Miscellaneous**. Sections 13.01, 13.05, 13.06, 13.07, 13.13, 13.14 and 13.15 of the Indenture will apply to this Supplemental Indenture as if the same were reproduced in this Supplemental Indenture, *mutatis mutandis*.

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

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

WORKHORSE GROUP INC.

By:_____
Name:
Title:

[LEGAL NAME OF GUARANTOR], as Guarantor

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee and Collateral Agent

By: _____
Name:
Title:

FACE OF NOTE

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (THE "DEPOSITARY"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF Workhorse Group Inc. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER

AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF WORKHORSE GROUP INC. OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF WORKHORSE GROUP INC. DURING THE PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.[1]

[1] The Restrictive Legend shall be deemed removed from the face of this Note without further action by the Company, Trustee or the Holders of this Note at such time and in the manner provided under Section 2.05 of the Indenture.

WORKHORSE GROUP INC.

4.00% Senior Secured Convertible Notes due 2024

No. R-1 Initially $200,000,000

CUSIP No. 98138JAA5

Workhorse Group Inc., a Nevada corporation, for value received, promises to pay to Cede & Co., or its registered assigns, the principal sum as set forth in the "Schedule of Exchanges of Notes" attached hereto on October 15, 2024, and to pay interest thereon, as provided in this Note, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates:	January 15, April 15, July 15 and October 15 of each year, commencing on January 15, 2021.
Regular Record Dates:	January 1, April 1, July 1 and October 1.

Additional provisions of the Notes are set forth on the other side of the Notes.

[*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: By: _____
Name:
Title:

[*Signature Page to Global Note*]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank National Association, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: By: _____
Authorized Signatory

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

The Notes are one of a duly authorized issue of notes of Workhorse Group Inc., a Nevada corporation (the " **Company**"), designated as its Convertible Notes due 2024 (the "**Notes**"), all issued or to be issued pursuant to an indenture, dated as of October 14, 2020 (as the same may be amended from time to time, the "**Indenture**"), among the Company, the Guarantors and U.S. Bank National Association, as trustee and collateral agent. Capitalized terms used in the Notes without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Guarantors, the Trustee, the Collateral Agent and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in the Notes, to the extent that any provision of the Notes conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest**. The Notes will accrue interest at a rate of 4.00% per annum (the "**Stated Interest**"). 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.

2. **Maturity**. The Notes will mature on October 15, 2024, unless earlier repurchased, redeemed or converted.

3. **Guarantees**. The Company's obligations under the Indenture and the Notes are fully and unconditionally guaranteed by the Guarantors as provided in Article 9 of the Indenture.

4. **Method of Payment**. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds no later than the time the same is due as provided in this Indenture.

5. **Persons Deemed Owners**. The Holder of the Notes will be treated as the owner of the Notes for all purposes.

6. **Denominations; Transfers and Exchanges**. All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of the Notes may transfer or exchange the Notes by presenting it to the Note Registrar and delivering any required documentation or other materials.

7. **Right of Holders to Require the Company to Repurchase**. Each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Indenture.

8. **Right of the Company to Redeem the Notes**. The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.04 of the Indenture.

9. **Conversion**. The Holder of the Notes may convert the Notes into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Indenture.

10. **When the Company May Merge, Etc**. Article 6 of the Indenture places limited restrictions on the Company's ability to be a party to a Business Combination Event.

11. **Security**. The Notes will be secured in the manner, and subject to the terms, set forth in the Indenture and the Collateral Agreements.

12. **Defaults and Remedies**. If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Indenture.

13. **Amendments, Supplements and Waivers**. The Company, the Guarantors, the Trustee and the Collateral Agent may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Article 8 of the Indenture.

14. **No Personal Liability of Directors, Officers, Employees and Stockholders**. No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor under the Indenture, the Notes or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

15. **Authentication**. No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

16. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

17. **Governing Law**. THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Workhorse Group Inc.
100 Commerce Drive

Loveland, Ohio 45140
Attention: Chief Financial Officer

[FORM OF NOTICE OF CONVERSION]

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to convert (check one):

☐ the entire principal amount of

☐ $ * aggregate principal amount of

the Note identified by CUSIP No. and Certificate No.

The undersigned acknowledges that if the Conversion Date of a Note to be converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple in excess thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Date:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ $ * aggregate principal amount of

the Note identified by CUSIP No. and Certificate No. .

The undersigned acknowledges that the Notes, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

WORKHORSE GROUP INC.

Senior Secured Convertible Notes due 2024

Subject to the terms of the Indenture, the undersigned Holder of the within Note assigns to:

Name: _____
Address: _____
_____
_____
_____
_____

Social security or tax
identification number: _____

the within Note and all rights thereunder irrevocably appoints:

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____
(Legal Name of Holder)

By: _____
Name:
Title:
Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

TRANSFEROR ACKNOWLEDGEMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

☐ Such Transfer is being made to the Company or a Subsidiary of the Company.

☐ Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer.

☐ Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page**.

☐ Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

_____

(Participant in a Recognized Signature Guarantee Medallion Program)

By: _____

Authorized Signatory

TRANSFEREE ACKNOWLEDGEMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that and the undersigned and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated:

_____

(Legal Name of Holder)

By: _____

Name:

Title:

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE *

INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: $[ ]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee

* Insert for Global Notes only.

SECURITY AGREEMENT

THIS **SECURITY AGREEMENT** (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") dated as of October 14, 2020 among Workhorse Group Inc., a Nevada corporation (the "**Company**") and each of its Subsidiaries signatory hereto (together with any other entity that may become a party hereto as provided herein, collectively without differentiation, and each individually, a "**Grantor**"), and U.S. Bank National Association, 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**"). The obligations of each Grantor hereunder are joint and several.

W I T N E S S E T H:

WHEREAS, the Company, as issuer, and each of the other Grantors party hereto from time to time as Guarantors, have entered into that certain Indenture, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "**Indenture**"), with U.S. Bank National Association, as trustee, the Secured Party and each other party thereto, pursuant to which, among other things, the Grantor will issue, subject to the terms set forth therein, the Notes (as defined in the Indenture);

AND WHEREAS, it is a condition precedent to the closing under the Indenture 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 Indenture 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 Company 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.

"**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 Indenture), 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, including the LMC Blocked Account.

"**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 Indenture.

"**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, collectively, each Holder under and as defined in any Note.

"**Indenture**" has the meaning set forth in the recitals 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 Indenture).

"**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, goods and materials in transit 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; consigned goods, 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 and shall include any LMC Blocked Account that is a securities account or otherwise constitutes investment property.

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

"**LMC**" means Lordstown Motor Corp., a Delaware corporation.

"**LMC Blocked Account**" means an escrow established at Secured Party that includes control provisions in favor the Secured Party as Collateral Agent that immediately prohibits any withdrawal from such account except upon the written instruction of the Collateral Agent.

"**LMC Deposit**" means the net proceeds of the sale of the Notes pursuant to the Indenture in the approximate amount of $195,000,000 in immediately available United States Dollars deposited into the LMC Blocked Account on the Issue Date.

"**LMC Investment**" means all equity interests issued by LMC to Company and held by the Company or any subsidiary thereof on the Issue Date, and any equity interests or other investment property that LMC or any successor thereto issues to Company or any subsidiary thereof on account of the equity interests in LMC held by the Company or any subsidiary thereof on the Issue Date (including, without limitation, common stock of Diamond Peak Holdings Corp. to be issued upon the closing of the merger under the LMC Merger Agreement), and the proceeds and profits of any of the foregoing.

"**LMC Merger Agreement**" means Agreement and Plan of Merger, dated as of August 1, 2020 entered into by and among Diamond Peak Holdings Corp., a Delaware corporation, DPL Merger Sub Corp., a Delaware corporation, and LMC.

"**LMC SPV**" means Workhorse Holdings LLC, a newly formed wholly owned Delaware limited liability company subsidiary of the Company that is subject to typical non-consolidation and two independent director /bankruptcy remote provisions in its limited liability company agreement that is formed solely for the purpose of holding the LMC Investment free and clear of liens (other than restrictions under the Amended and Restated Registration Rights and Lockup Agreement among Company, DiamondPeak Holdings Corp. and others dated August 1, 2020, and/or the Subscription Agreement between the Company and LMC dated November 7, 2019) until the six month anniversary of its receipt of publicly registered shares of LMC or any successor thereto, and thereafter subject only to the lien of this Agreement. Antara Capital, L.P. shall designate one independent director and the second independent director shall be an employee of a national corporate service company. The LMC SPV shall be a Guarantor and execute the Indenture on the Issue Date.

"**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,

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 Indenture, the Notes, 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.

"**NPA**" means the Note Purchase Agreement dated as of October [12], 2020 entered into by and among the Grantors, on the one hand, and Antara Capital, LP and the other Buyers party thereto, on the other hand.

"**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 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 Indenture), 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 each Grantor other than the Company, other 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 or Excluded 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 or any Excluded Collateral by any Governmental Entity (or any person acting under color of a Governmental Entity), and (c) any and all other amounts or non-cash consideration from time to time paid or payable under, received, exchanged, redeemed or otherwise delivered in respect of or in connection with, on account of, or in exchange for, any of the Collateral or any Excluded 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.

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

"**Secured Party**" has the meaning set forth in the preamble 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.

"**the Grantor**" means each Grantor, any Grantor and/or, the Grantors, as the context may require, and applies equally and without distinction to the Company and each of the other Grantors from time to time party to this Agreement.

"**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, proprietary processes or know-how.

"**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 Indenture).

"**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 Indenture, 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 depositary 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 information with respect to such account to the Secured Party. In addition, all of the Grantor's depositary, security, brokerage and other accounts including, without limitation, Deposit Accounts (other than Excluded Accounts) shall be subject to the provisions of Section 4.5 hereof.

(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), at the Grantor's sole cost and expense, including legal fees and expenses of counsel to the Secured Party and each "Buyer" under and as defined in the NPA, 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. To the extent required by the Indenture, within 60 days of the Issuer Date or after the Grantor acquires any additional real property interest after the Issue Date with a fair market value in excess of $500,000 such real property 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. At the Grantor's sole cost and expense, including legal fees and expenses of counsel to the Secured Party and each "Buyer" under and as defined in the NPA, 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. At the Grantor's sole cost and expense, including legal fees and expenses of counsel to the Secured Party and each "Buyer" under and as defined in the NPA, the Grantor shall cause a title insurance company 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 not to exceed 120% of the then fair market value of the property as determined by Grantor in good faith; (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 Secured Party, for the benefit of the Holders, as the insured thereunder; (4) be in the form of ALTA Loan Policy; and (5) contain such customary endorsements and affirmative coverage as the Grantor determines in good faith.

(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, including Securities Accounts;

(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) the LMC Investment, until the earlier of (i) the Company's receipt of consent from LMC to grant a lien on the LMC Investment pursuant to this Agreement or the six month anniversary of the LMC SPV's receipt of publicly registered shares of LMC or any successor thereto (in each case following which the LMC Investment shall not be Excluded Collateral and the LMC SPV will join this Agreement as Grantor, 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 automatically 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. The LMC SPV shall be a Guarantor and execute the Indenture on the Issue Date.

(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) LMC Investment Provisions.

(i) LMC Blocked Account. The LMC Blocked Account shall be subject to immediate block on withdrawals under the LMC Blocked Account Agreement, except as explicitly permitted in the LMC Blocked Account Agreement. Company shall on the Issue Date deposit the LMC Deposit into the LMC Blocked Account to be held in such LMC Blocked Account in cash. The LMC Deposit shall remain on deposit in the LMC Blocked Account until the earlier of (A) free and clear title to the LMC Investment (other than restrictions under the Amended and Restated Registration Rights and Lockup Agreement among Company, DiamondPeak Holdings Corp. and others dated August 1, 2020, and/or the Subscription Agreement between the Company and LMC dated November 7, 2019) is contributed to the LMC SPV, or (B) (i) LMC consents to the granting by Company of a Lien on the LMC Investment pursuant to this Agreement and (ii) either (x) prior to the date that is 30 days after the Issue Date, a lien perfected by "control" under Uniform Commercial Code Section 8-106 has actually attached to the LMC Investment or (y) 120 days has passed following the date that a lien that is perfected by "control" under Uniform Commercial Code Section 8-106 has actually attached to the LMC Investment. In order to confirm complete satisfaction of either clause (A) or clause (B) of the previous sentence, the Company shall deliver to the Trustee an officer's certificate from the Company's Chief Financial Officer or General Counsel certifying such satisfaction. Upon delivery to the Trustee of such an officer's

certificate as described in the precedent sentence, the LMC Deposit will be released from the LMC Blocked Account and delivered to the Company for deposit into a Deposit Account upon which Secured Party has a perfected lien.

(ii) Efforts to Obtain Consent. Company shall use its commercially reasonable efforts to obtain the consent of LMC to the granting by Company of a Lien on the LMC Investment pursuant to this Agreement unless the LMC Investment has first been contributed to the LMC SPV.

(iii) Release of Lien on LMC Investment to Permit Merger to Occur. If a Lien is granted on the LMC Investment prior to its contribution to LMC SPV, then upon delivery of a certificate of an officer of Company to the Collateral Agent certifying that the merger under the LMC Merger Agreement is to occur within three Business Days thereafter, the Secured Party will authorize the filing of a UCC -3 Amendment in form and substance acceptable to the Secured Party that releases only the LMC Investment from the lien and security interest thereon granted pursuant to this Agreement, with such Liens continuing in any Proceeds thereof.

(iv) Holding of the LMC Investment by the LMC SPV. Not later that the date of completion of the merger under the LMC Merger Agreement, Company shall contribute the LMC Investment into the LMC SPV. Until the date that is six (6) months after the LMC Investment is contributed to the LMC SPV, the LMC SPV shall hold the LMC Investment free and clear of liens (other than restrictions under the Amended and Restated Registration Rights and Lockup Agreement among Company, DiamondPeak Holdings Corp. and others dated August 1, 2020 and/or the Subscription Agreement between the Company and LMC dated November 7, 2019) and the LMC SPV shall not have any liabilities or own any assets other than the LMC Investment and/or the Proceeds of the LMC Investment. The LMC SPV agrees that automatically and without need for further action by any person on the date that is six (6) months after date of consummation of the merger under the LMC Merger Agreement, the LMC SPV shall grant to the Secured Party a lien on and security interest pursuant to this Agreement and such lien and security interest shall attach to the LMC Investment pursuant to this Agreement, and LMC SPV shall immediately take all steps requested by Secured Party to perfect by “control” under Uniform Commercial Code Section 8-106 such lien at the sole cost and expense of the Company. When 120 days has passed following the date that a lien that is perfected by “control” under Uniform Commercial Code Section 8-106 has actually attached to the LMC Investment pursuant to this Agreement, and provided that no Event of Default has occurred and is continuing under the Indenture, the independent directors /bankruptcy remote provisions in the LMC SPV limited liability company agreement and related restrictions shall be removed. The LMC SPV shall execute this Agreement on the Issue Date, provided that the grant by the LMC SPV of liens and security interests hereunder shall not be effective, and no assets of the LMC SPV shall be Collateral, until the date that is six (6) months after the date of consummation of the merger under the LMC Merger Agreement.

(v) Margin Stock. No part of the proceeds of the sale of Notes will be used directly or indirectly for any purpose that violates, or that would require the Holders to make any filings in accordance with, the provisions of, Regulation T, U or X of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect and in particular will not be used to "purchase" or "carry" "margin stock". The Company (a) is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" "margin stock" within the respective meanings of each of such terms under Regulation U and (b) does not own "margin stock" and will not own "margin stock" except as identified in the perfection certificate delivered by the Company prior to the Issue Date and the aggregate value of all "margin stock" owned by the Company does not exceed 25% of the value of its assets on the Issue Date.

(vi) LMC SPV is a Bankruptcy Remote Entity. The governing documents of LMC SPV shall at all times include customary "bankruptcy remote" provisions, including separateness covenants and a requirement for an independent director designated by Antara Capital, L.P. and a second independent director provided by a national corporate service company whose votes are necessary to approve major matters, including in the case of the Antara designee approval of incurrence of debt or liens other than in favor of Secured Party and in the case of both independent directors, approval of commencement of any insolvency procedure for LMC SPV, including without limitation the commencement of or acquiescence in a bankruptcy case for LMC SPV under Title 11 of the United States Code, until the date that is 120 days following the date that a lien that is perfected by "control" under Uniform Commercial Code Section 8-106 actually attached to the LMC Investment pursuant to this Agreement, provided that if on such date and thereafter an Event of Default has occurred and is continuing under the Indenture then the "bankruptcy remote" provisions shall remain in full force and effect. For the avoidance of doubt, the vote of the independent director designated by Antara shall not be required for sales of the LMC Investment that are expressly permitted under the Indenture and actions by the LMC SPV necessary in connection with such sales.

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 written 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 U.S. Bank, National Association, 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 necessary 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, but does not obligate, 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. Notwithstanding anything to the contrary contained herein or in any other Notes Document or Security Document, the Secured Party shall not have any responsibility for the preparing, recording, filing, rerecording, or refiling of any financing statements (amendments or continuations) or other instruments in any public office.

(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. Motor Vehicles held by the Grantor for sale or lease by Grantor are agreed to constitute Inventory.

(e) Notice to Account Debtors; Verification. (i) Upon the occurrence and during the continuance of any Event of Default, upon request of the Secured Party or its Representative, 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.

(f) 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. The Grantor represents that all Intellectual Property license agreements pursuant to which the Grantor is a licensee or licensor are written.

(g) 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.

(h) Investment Property. The Grantor will take any and all actions required, 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 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 that it will comply with entitlement orders originated by the Secured Party without further consent by the Grantor. On the Issue Date, (i) the LMC SPV shall have been formed and (ii) the LMC SPV shall be a Guarantor and execute the Indenture on the Issue Date. The LMC SPV and the Company shall comply with all of their obligations under Section 3(c) of this Agreement.

(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 including the reasonable attorney's fees and costs of counsel to the Secured Party and each "Buyer" under and as defined in the NPA.

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 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; LMC Investment. 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. With respect to all Deposit Accounts in existence on the Issue Date that are not Excluded Accounts, Grantor shall take all steps necessary to, at the expense of Grantor (including the reasonable attorney's fees and costs of counsel to the Secured Party and each "Buyer" under and as defined in the NPA,), enter into customary control agreements with the depository bank or securities intermediary acceptable to the Secured Party within thirty (30) days following the Issue Date. 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, at the expense of Grantor (including the reasonable attorney's fees and costs of counsel to the Secured Party and each "Buyer" under and as defined in the NPA), 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. The Company shall pay all reasonable expenses of the Secured Party incurred in administering or enforcing the terms of Section 3(c) of this Agreement, including the reasonable attorney's fees and costs of counsel to the Secured Party and each "Buyer" under and as defined in the NPA.

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

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

(b) to ask, demand, collect, receive and give acquittance and receipts for any and all moneys due and to become due under any Collateral and, in the name of 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 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 in writing 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 (upon receipt by the Secured Party of the documents required by Section 10.05 of the Indenture), at Grantor's expense, execute and deliver or otherwise authorize the filing of such documents as the Grantor shall reasonably request in writing, 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 including the reasonable attorney's fees and costs of counsel to the Secured Party and each "Buyer" under and as defined in the NPA, 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 necessary to perfect Secured Party's security interest in such additional certificates. 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. Within 30 days following the Issue Date (which may be extended one time for an additional 30 days upon delivery to the Collateral Agent of a certificate of an officer of the Company certifying that the Company used best efforts to obtain the consent in the initial 30 day period), Grantor shall cause Moog, Inc. to consent to the pledge of the Certus Pledged Interests.

(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 Indenture; 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 except as permitted by this Agreement or the Indenture. The Secured Party, in its capacity as the Collateral Agent (as defined in the Indenture), 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 as Agent.

(a) The Company has, pursuant to Article 10 of the Indenture, designated and appointed the Secured Party as the collateral agent of the Holders under this Agreement and the other Security Documents and Notes Documents. The actions of the Secured Party hereunder are subject to the provisions of the Indenture, including the rights, protections, privileges, benefits, indemnities and immunities of the Collateral Agent (as defined in the Indenture), which are incorporated herein *mutatis mutandis*, as if a part hereof.

(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 or Notes 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 Indenture and the Security 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.

(d) The Secured Party shall at all times be the same Person that is the Collateral Agent under the Indenture. Written notice of resignation by the Collateral Agent pursuant to Section 12.07 of the Indenture shall also constitute notice of resignation as the Secured Party under this Agreement; removal of the Collateral Agent shall also constitute removal of the Secured Party under this Agreement; and appointment of a Collateral Agent pursuant to Section 12.07 of the Indenture shall also constitute appointment of a successor Secured Party under this Agreement. Upon the acceptance of any appointment as Collateral Agent under Section 12.07 of the Indenture by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Secured Party under this Agreement, and the retiring or removed Secured Party under this Agreement shall promptly (i) transfer to such successor Secured Party all sums, securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Secured Party under this Agreement and (ii) execute and deliver to such successor Secured Party or otherwise authorize the filing of such amendments to financing statements and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Secured Party of the security interests created hereunder, whereupon such retiring or removed Secured Party shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Secured Party's resignation or removal hereunder as Secured Party, the provisions of this

Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Secured Party hereunder.

(e) Neither the Collateral Agent nor its Representatives nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be liable to any party for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Security Document or Notes Document (except for its or such other Person's own gross negligence or willful misconduct, as determined in a final non-appealable judgment of a court of competent jurisdiction).

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 of equal priority with the liens securing any such Traditional Working Capital Facility 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**"), (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, and

(iii) in all cases the proceeds of any such exercise of a right or remedy shall be ratably shared between the Secured Party and the provider of such Traditional Working Capital Facility. 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 [Reserved].

5.17 Joint and Several Obligations of Each Grantor. This Agreement is a primary obligation of each Grantor, made on a joint and several basis and each Grantor acknowledges that it is a party to the Indenture and is receiving substantial benefit from the sale of Notes provided for thereunder. Each Grantor hereby further acknowledges and agrees that it is granting liens and security interests under this Agreement to jointly and severally secure the full payment and performance of all obligations of all of the Grantors under the Indenture.

[*Signature Pages Follow*]

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

GRANTORS:

WORKHORSE GROUP INC.

By: __
Name:
Title:

WORKHORSE TECHNOLOGIES INC.

By: __
Name:
Title:

WORKHORSE PROPERTIES INC.

By:__
Name:
Title:

WORKHORSE MOTOR WORKS INC.

By:__
Name:
Title:

WORKHORSE HOLDINGS LLC

By:__
Name:
Title:

[Signature Page to Security Agreement]

SECURED PARTY:

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

By:_____
Name:
Title:

[Signature Page to Security Agreement]

Schedule I

A. Organizational Information

Exact Legal Name	Jurisdiction of Formation and Registration	Country / State / Provincial Entity Registration / ID No.	Federal employer identification number	Date of Formation	Chief executive offices	Principal mailing addresses
Workhorse Group Inc.	Nevada	E0780542007-8	26-1394771	November 13, 2007	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Technologies Inc.	Ohio	1679236	20-8529895	February 20, 2007	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Motor Works Inc.	Indiana	2013011400560	38-3900022	January 11, 2013	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Properties Inc.	Ohio	3943690	32-0553760	September 23, 2016	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140
Workhorse Holdings LLC	Delaware	[TBD}	[TBD]	October 12, 2020	100 Commerce Drive, Loveland, Ohio 45140	100 Commerce Drive, Loveland, Ohio 45140

B. Location of Equipment, Inventory and Goods

Grantor Name	Location of Equipment, Inventory and Goods
Workhorse Group Inc.	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.

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

Schedule II

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

Former names listed below:

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

Workhorse Technologies Inc. (f/k/a AMP Technologies Inc.)

Workhorse Motor Works Inc. (f/k/a AMP Truck 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	11
	Project Plan 3	6
	Office 365 Apps for Business	15
	Office 365 Business Standard	107
	Visio Plan 2	2
	Windows 10 Pro	125
	SQL Server 2014	2
	Microsoft 365 Audio Conferencing	1
Meraki	MX84-3Yr Firewall	1
	MX64-3Yr Firewall	2
	MR36-1Yr Wireless AP	8
	MS350-1Yr Network Switch	4
Luxion	KeyShot	1
Adobe	CreativeCloud	3
	Acrobat Pro DC	5
	Illustrator	1
	Framemaker	1
Altaro	VM Backup	9
Webroot	Secure Anywhere	100
Dessault	Solidworks Premium	8
	Solidworks Standard	19
	Solidworks Electrical Schematic 2D	8
	Solidworks Electrical 3D	6
	Solidworks Flow Simulation	1

	Solidworks Simulation	2
	Solidworks PDM Pro CAD Editor	21
	Solidworks PDM Pro Viewer 5 Pack	5
	Solidworks Composer 2019	1
Autodesk	CFD	1
ASQiT	vendor bank approval	1
Lanham Associates	e-receive\e-ship	1

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 to attempt to revive.		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.
WOR08-00022	Canada	19663	07/03/2020				TRUCK	Workhorse Group Inc.
WOR08-00023	China	20203035494243	07/06/2020				TRUCK	Workhorse Group Inc.
WOR08-00024	European Union	WIPO96104	07/05/2020				TRUCK	Workhorse Group Inc.
WOR08-00025	Japan	2020-013722	07/06/2020				TRUCK	Workhorse Group Inc.
WOR08-00026	Mexico	50792	07/06/2020				TRUCK	Workhorse Group Inc.
WOR08-00027	United States	16/934,906	07/21/2020				UAV DELIVERY CONTROL SYSTEM FOR UAV DELIVERY OF PACKAGES	Workhorse Group Inc.

Schedule VI

List of Trademarks and Trademark Applications

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	Workhorse Motor Works 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	Workhorse Motor Works 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	Workhorse Motor Works Inc.	1,328,215	12/14/2006	757,840	01/26/2010	12	Chassis and bodies for recreational vehicles
WOR08 00307	WORKHORSE	Canada	Workhorse Motor Works 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 00313	WORKHORSE	Mexico	Workhorse Group Inc.	2418508	09/09/2020			12	Vehicles and drones being part of package delivery systems, vehicles, drones, helicopters, trucks, vans, and aircrafts.
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 00206	WORKHORSE	United States	Workhorse Group Inc.	88/943,288	06/02/2020			12	Package delivery systems comprised of vehicles, drones, remote controllers for drones and related operational software, all sold as a unit; drones; helicopters; trucks; vans; aircrafts.
WOR08 00205		United States	Workhorse Group Inc.	88/943,281	06/02/2020			12	Package delivery systems comprised of vehicles, drones, remote controllers for drones and related operational software, all sold as a unit; drones; helicopters; trucks; vans; aircrafts.
WOR08 00200	HORSEFLY	United States	Workhorse Group Inc.	87/770,725	01/25/2018	6,037,625	04/21/2020	12	Package delivery systems consisting primarily of civilian drones.
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
WOR08 00304	HORSEFLY	Mexico	Workhorse Group Inc.	2075312	07/16/2018	1983272	03/26/2019	12	Vehicle leasing services; leasing of land vehicles (delivery trucks); leasing of drones Package delivery systems consisting primarily of civilian drones

Schedule VII

Depositary Accounts

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
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

Schedule VIII

List of Commercial Tort Claims

None.

Schedule IX

List of Interests in Real Property

Complete Street and Mailing Address, including County and Zip Code	Interest	Company/Subsidiary
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.

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

Workhorse Properties Inc. owns the 100 Commerce Dr. property

Schedule X

List of Titled Equipment

Year	Make	Model	Vehicle ID#
2011	Chevrolet Silverado	C3500	1GC5CZCG2BZ132623
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

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of October 14, 2020, is entered into by and between Workhorse Group Inc., a Nevada corporation (the "Company"), and Antara Capital LP, a Delaware limited partnership (the "Initial Holder").

R E C I T A L S

WHEREAS, on or about the date hereof, the Company issued to the Initial Holder senior secured convertible notes due 2024 (the "Convertible Notes"), which are convertible into shares of the Company's common stock, par value $0.001 per share (together with any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock, the "Common Stock") (such underlying shares of Common Stock issuable pursuant to the terms of the Convertible Notes, including, without limitation, upon conversion, redemption, payment of interest or otherwise, collectively, the "Conversion Shares"); and

WHEREAS, the Company has agreed to provide the Initial Holder with the registration rights specified in this Agreement with respect to Registrable Securities (as defined herein), on the terms and subject to the conditions set forth herein.

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

ARTICLE 1
DEFINITIONS

1.1 Definitions. The following terms shall have the meanings set forth in this Section 1.1:

"Advice" has the meaning given such term in Section 2.6 herein.

"Affiliate" means with respect to a party hereto, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party. For purposes of this definition, "control" and, with correlative meanings, the terms "controlled by" and "under common control with" as used with respect to a Person means (a) the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such Person, whether through the ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise, or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of a Person.

"Agreement" has the meaning given such term in the introductory paragraph of this Agreement.

"Block Sale" means the sale of shares of Common Stock to one of several purchasers in a registered transaction by means of a bought deal, a block trade or a direct sale.

"Business Days" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York City.

"Company" has the meaning given such term in the introductory paragraph of this Agreement and includes the Company's successors by merger, acquisition, reorganization or otherwise.

"Common Stock" has the meaning given such term in the recitals of this Agreement.

"Company Indemnified Person" has the meaning given such term in Section 2.8.2 herein.

"Conversion Shares" has the meaning given such term in the recitals of this Agreement.

"Convertible Notes" has the meaning given such term in the recitals of this Agreement.

"Demand Registration" has the meaning given such term in Section 2.2.1(a) herein.

"Demand Request" has the meaning given such term in Section 2.2.1(a) herein.

"Demanding Shareholders" has the meaning given such term in Section 2.2.1(a) herein.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations promulgated by the SEC thereunder.

"Excluded Registration" means a registration under the Securities Act (i) of Registrable Securities pursuant to one or more Demand Registrations pursuant to Section 2 hereof, (ii) of equity securities issuable in connection with the Company's stock option or other employee benefit plans registered on Form S-8 or any similar successor form, (iii) of equity securities registered to effect the acquisition of, or combination with, another Person on Form S-4 or any similar successor form, (iv) relating solely to the sale of non-convertible debt instruments and (v) of securities registered in connection with any dividend reinvestment plan.

"Existing Registration Rights Holders" refer to those Persons possessing registration rights prior to the date hereof, which consist of the parties to the Registration Rights Agreement, dated as of December 31, 2018, among the Company and Marathon Structured Product Strategies Fund, LP, Marathon Blue Grass Credit Fund, LP, Marathon Centre Street Partnership, L.P. and TRS Credit Fund, LP.

"FINRA" has the meaning given such term in Section 2.5(xvi) herein.

"Holder" means (i) the Initial Holder and (ii) any direct or indirect transferee of the Initial Holder who shall become a party to this Agreement in accordance with Section 2.9 and has agreed in writing to be bound by the terms of this Agreement.

"Initial Holder" has the meaning given such term in the introductory paragraph of this Agreement.

"Inspectors" has the meaning given such term in Section 2.5(xii) herein.

"Losses" has the meaning given such term in Section 2.8.1 herein.

"Marketed Underwritten Offering" has the meaning given such term in Section 2.1.3 herein.

"Permitted Transferee" has the meaning given such term in Section 2.9 herein.

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

"Piggyback Registration" has the meaning given such term in Section 2.3.1 herein.

"Records" has the meaning given such term in Section 2.5(xii) herein.

"register," "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement under the Securities Act (to the extent such declaration or order is required in order for such registration statement to become effective).

"Registrable Securities" means any Conversion Shares issuable or issued upon the conversion of Convertible Notes or as payment of interest pursuant to the terms of the Convertible Notes; provided, however, that Registrable Securities shall not include shares of Common Stock (a) when a registration statement with respect to the sale of such shares of Common Stock has become effective under the Securities Act and such shares of Common Stock have been disposed of in accordance with such registration statement; (b) that have been sold to the public pursuant to Rule 144 or other exemption from registration under the Securities Act; (c) that have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of them shall not require registration or qualification of them under the Securities Act or any similar state law then in force; (d) as to which the Company has delivered an opinion of counsel reasonably satisfactory to the transfer agent for the Common Stock to the effect that such Registrable Securities are able to be sold by the Holders without restriction as to volume or manner of sale pursuant to Rule 144; (e) that are otherwise sold or transferred by a Holder in a transaction where its rights under this Agreement are not assigned; or (f) that have ceased to be outstanding.

"Requesting Holders" shall mean any Holder(s) requesting to have its (their) Registrable Securities included in any Demand Registration or Shelf Registration.

"Required Filing Date" has the meaning given such term in Section 2.2.1(b) herein.

"Required Registration Amount" means the maximum number of Registrable Securities to provide for the full conversion of the Convertible Notes and any payment of accrued and unpaid interest thereon.

"Rule 144" means Rule 144 under the Securities Act or any successor rule thereto.

"SEC" means the United States Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations promulgated by the SEC thereunder.

"Seller Affiliates" has the meaning given such term in Section 2.8.1 herein.

"Shelf Registration Statement" has the meaning given such term in Section 2.1.1 herein.

"Shelf Takedown" has the meaning given such term in Section 2.2.2(b) herein.

"Suspension Notice" has the meaning given such term in Section 2.6 herein.

"Underwritten Offering" shall mean an offering registered under the Securities Act in which securities of the Company are sold to one or more underwriters on a firm-commitment basis for reoffering to the public.

1.2 Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) "or" is not exclusive;

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

(4) whenever the masculine is used in this Agreement, the same shall include the feminine and whenever the feminine is used herein, the same shall include the masculine, where appropriate;

(5) provisions apply to successive events and transactions; and

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

ARTICLE 2
REGISTRATION RIGHTS

2.1 Shelf Registration.

2.1.1 Registration Requirement. The Company shall prepare and file a resale registration statement on Form S-3 under the Securities Act (it being agreed that such registration statement shall be a registration statement filed for an offering to be made on a delayed or continuous basis pursuant to Rule 415 (or any successor rule), including any post-effective amendment thereto, if then available to the Company, and if such Form S-3 is not then available to the Company, such resale registration statement shall be on Form S-1 or any similar or successor to such form under the Securities Act (the registration statement filed pursuant to this Section 2.1.1 being referred to as a "Shelf Registration Statement")) for the resale of all or part of its or their Registrable Securities as promptly as practicable after the date hereof, but in no event more than ten (10) Business Days after the date hereof.

2.1.2 Effectiveness of the Registration Statement. The Company shall use its best efforts to cause the Shelf Registration Statement to be declared effective by the SEC staff as promptly as possible, but in no event later than ninety (90) days after the date hereof. Thereafter, the Company shall use its best efforts to keep such Shelf Registration Statement continuously effective, including by filing any necessary post-effective amendments to such Shelf Registration Statement or a new Shelf Registration Statement, until the earlier of (x) the date on which all Registrable Securities have been sold pursuant to such Shelf Registration Statement or another Shelf Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder) and (y) such time as the Registrable Securities are no longer outstanding or otherwise no longer constitute Registrable Securities. A Holder shall provide notice to the Company prior to any use of the Shelf Registration Statement by such Holder, and shall provide the information required by, and comply with the obligations under, Section 2.6 following the receipt of a Suspension Notice. Further, each Holder agrees to complete and execute all questionnaires and other documents reasonably required by the Company in order to prepare and file any Shelf Registration Statement.

2.1.3 Shelf Takedowns.

(a) Subject to the provisions of Section 2.1.3(b) hereof, any Holder or Holders of Registrable Securities shall be entitled, at any time and from time to time when a Shelf Registration Statement is effective, to sell such Registrable Securities held by such Holder or Holders as are then registered pursuant to a Shelf Registration Statement (each, a "Shelf Takedown"). The number of Shelf Takedowns that such Holder or Holders may effect pursuant to this Section 2.1.3 shall not be limited, provided, that the number of offerings where the plan of distribution contemplates a customary "road show" (including an "electronic road show") or other substantial marketing effort of by the Company and the underwriters (any such Underwritten Offering, a "Marketed Underwritten Offering") that may be effected hereunder shall be limited to a total of three (less any Demand Requests pursuant to Section 2.2.1), and such other restriction as may be set forth in Section 2.1.3(b) are complied with. Any such Shelf Takedown may be made in the United States by and pursuant to any method or combination of methods legally available to any Holder or Holders of Registrable Securities (including, but not limited to, an Underwritten Offering, a direct sale to purchasers, a sale to or through brokers, dealers or agents, a sale over the internet, Block Sales, derivative transactions with third parties,

sales in connection with short sales and other hedging transactions). The Company shall comply with the applicable provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by the Shelf Registration Statement in accordance with the intended methods of disposition by the Holder or Holders of Registrable Securities. If any Holder intends to sell any Registrable Securities pursuant to a Shelf Takedown, such Holder shall give the Company written notice of the consummation of each Shelf Takedown (whether or not such Shelf Takedown constitutes an Underwritten Offering) reasonably promptly after the consummation thereof.

(b) Upon receipt of prior written notice by any Holder or Holders of Registrable Securities that it intends to effect a Shelf Takedown, the Company shall use its reasonable best efforts to cooperate in such Shelf Takedown, whether or not such Shelf Takedown constitutes an Underwritten Offering, by amending or supplementing the prospectus related to such Shelf Registration Statement as may be reasonably requested by such Holder or Holders for so long as such Holder or Holders holds Registrable Securities; provided, that the Company shall not be obligated to cooperate in an Underwritten Offering to be effected by means of a Block Sale if notice of such Underwritten Offering has not been delivered to the Company at least five Business Days prior to the intended launch of such Block Sale.

2.1.4 Selection of Underwriters. At the request of a majority of the Holders, the offering of Registrable Securities pursuant to a Shelf Takedown, shall be in the form of a "firm commitment" Underwritten Offering. In the case of an Underwritten Offering, a majority of such Holders shall select the investment banking firm or firms to manage the Underwritten Offering; provided, that such selection shall be subject to the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. No Holder may participate in any such Underwritten Offering unless such Holder (x) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements described above and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder's representations and warranties in connection with any such registration shall be substantially consistent in substance and scope with those that are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder's Registrable Securities pursuant to such Underwritten Offering.

2.1.5 Form S-3. The Company shall use its reasonable best efforts to cause the Shelf Registration Statement to be registered on Form S-3 (or any successor form), and if the Company is not then eligible under the Securities Act to use Form S-3, such Shelf Registration Statement shall be registered on the form for which the Company then qualifies.

2.1.6 Sufficient Number of Shares Registered. In the event the number of shares available under a registration statement filed pursuant to this Agreement is insufficient to cover the Required Registration Amount of Registrable Securities required to be covered by such registration statement, the Company shall amend the applicable registration statement, or file a new registration statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises. The Company shall use its commercially reasonable efforts to cause such amendment and/or new registration statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under a registration statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the registration statement is less than the Required Registration Amount.

2.2 Demand Registration.

2.2.1 Request for Registration.

(a) If the Company is unable to file, cause to become effective or maintain the effectiveness of a Shelf Registration Statement as required under Section 2.1, the Holder shall have the right to require the Company to, pursuant to the terms of this Agreement, register under and in accordance with the provisions of the Securities Act all or part of its or their Registrable Securities (a "Demand Registration"), by delivering to the Company written notice stating that such right is being exercised, naming, if applicable, the Holders whose Registrable Securities are to be included in such registration (collectively, the "Demanding Shareholders"), specifying the number of each such Demanding Shareholder's Registrable Securities to be included in such registration and, subject to Section 2.2.3 hereof, describing the intended method of distribution thereof (a "Demand Request").

(b) Subject to this Section 2.2.1 and Section 2.2.5, the Company shall file a registration statement in respect of a Demand Registration as soon as reasonably practicable and, in any event, within ten (10) Business Days after receiving a Demand Request (the "Required Filing Date") and shall use reasonable best efforts to cause the same to be declared effective by the SEC as promptly as reasonably practicable after such filing; provided, however, that the Company shall not be obligated to effect:

(i) a Demand Registration pursuant to Section 2.2.1(a) within 90 days after the effective date of a previous Demand Registration or any previous registration statement in which the Holder or Holders of Registrable Securities was given piggyback rights pursuant to Section 2.3 in which there was no reduction in the number of Registrable Securities to be included, and in each case in which the sale of Registered Securities was consummated; and

(ii) any Demand Registration if a Shelf Registration Statement is then effective, and such Shelf Registration Statement may be utilized by the Holder or Holders of Registrable Securities for the resale of Registrable

Securities, including through an Underwritten Offering, without a requirement under the SEC's rules and regulations for a post-effective amendment thereto.

Notwithstanding the foregoing, the Company shall not be obligated to effect, in total, more than four Demand Registrations (less the number of any Shelf Takedowns constituting an Underwritten Offering), which may consist of (a) no more than three Demand Registrations where the plan of distribution contemplates a Marketed Underwritten Offering, less the number of any Shelf Takedowns constituting a Marketed Underwritten Offering and (b) no more than two Demand Registrations (less the number of any Shelf Takedowns constituting an Underwritten Offering) during any 12-month period.

(c) Each Holder requesting a Demand Registration agrees to complete and execute all questionnaires and other documents reasonably required by the Company in order to prepare and file any Shelf Registration Statement.

2.2.2 Selection of Underwriters. At the request of a majority of the Requesting Holders, the offering of Registrable Securities pursuant to a Demand Registration, shall be in the form of a "firm commitment" Underwritten Offering. In the case of an Underwritten Offering, a majority of the Requesting Holders shall select the investment banking firm or firms to manage the Underwritten Offering; provided, that such selection shall be subject to the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. No Holder may participate in any such Underwritten Offering unless such Holder (x) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements described above and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder's representations and warranties in connection with any such registration shall be substantially consistent in substance and scope with those that are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder's Registrable Securities pursuant to such Underwritten Offering.

2.2.3 Rights of Nonrequesting Holders. Upon receipt of any Demand Request, the Company shall promptly (but in any event within 10 days) give written notice of such proposed Demand Registration to all other Holders (if any), who shall have the right, exercisable by written notice to the Company within 15 days of their receipt of the Company's notice, to elect to include in such Demand Registration such portion of their Registrable Securities as they may request. All Holders requesting to have their Registrable Securities included in a Demand Registration in accordance with the preceding sentence shall be deemed to be "Requesting Holders" for purposes of this Section 2.2.

2.2.4 Form S-3. The Company shall use its reasonable best efforts to cause Demand Registrations to be registered on Form S-3 (or any successor form), and if the Company

is not then eligible under the Securities Act to use Form S-3, Demand Registrations shall be registered on the form for which the Company then qualifies.

2.3 Piggyback Registrations.

2.3.1 Right to Piggyback. Each time the Company proposes to register any of its equity securities (other than pursuant to an Excluded Registration) under the Securities Act for sale to the public (whether for the account of the Company or the account of any securityholder of the Company) (a "Piggyback Registration"), the Company shall give prompt written notice to each Holder of Registrable Securities (which notice shall be given not less than 10 days prior to the anticipated filing date of the Company's registration statement), which notice shall offer each such Holder the opportunity to include any or all of such Holder's Registrable Securities in such registration statement on the same terms and conditions as the same class of securities otherwise being sold pursuant to such registration statement, subject to the limitations contained in Section 2.3.2 hereof. Each Holder who desires to have such Holder's Registrable Securities included in such registration statement shall so advise the Company in writing (stating the number of shares desired to be registered) within five days after the date of such notice from the Company. Any Holder shall have the right to withdraw such Holder's request for inclusion of such Holder's Registrable Securities in any registration statement pursuant to this Section 2.3.1 by giving written notice to the Company of such withdrawal on or before the fifth day prior to the planned effective date of such Piggyback Registration. Subject to Section 2.3.2 below, the Company shall include in such registration statement all such Registrable Securities so requested to be included therein; provided, however, that the Company may at any time, in its sole discretion and without the consent of the Holders, delay, withdraw or cease proceeding with any such registration if it shall at the same time withdraw or cease proceeding with the registration of all other equity securities originally proposed to be registered and will have no liability to the Holder in connection with such termination or withdrawal, except for the obligation to pay any registration expenses pursuant to Section 2.7.2.

2.3.2 Priority on Piggyback Registrations.

(a) If a Piggyback Registration is an Underwritten Offering and was initiated by the Company, and if the managing underwriter (or in the case of a Piggyback Registration that is not an Underwritten Offering, the Company, in good faith) advises the Company that the inclusion of Registrable Securities requested to be included in the Registration Statement would not adversely affect the price or success of the offering, the Company shall include in such registration statement (i) first, the securities the Company proposes to sell, (ii) second, the securities of the Existing Registration Rights Holders requested to be included in such registration, (iii) third, Registrable Securities of any Holder requested to be included in such registration, *pro rata* among the Holders of such Registrable Securities on the basis of the number of Registrable Securities owned by each such Holder and (iv) fourth, any other securities requested to be included in such registration; provided, that if such other securities have been requested to be included pursuant to a registration rights agreement, then such securities would be included as set forth in (ii) above as if they were Registrable Securities of a Holder. If, as a result of the provisions of this Section 2.3.2(a), any Holder shall not be entitled to include all

Registrable Securities in a registration that such Holder has requested to be so included, such Holder may withdraw such Holder's request to include Registrable Securities in such registration statement on or before the fifth day prior to the planned effective date of such Piggyback Registration.

(b) If a Piggyback Registration is an Underwritten Offering and was initiated by a securityholder of the Company, and if the managing underwriter (or in the case of a Piggyback Registration that is not an Underwritten Offering, the Company, in good faith) advises the Company that the inclusion of Registrable Securities requested to be included in the Registration Statement would not adversely affect the price or success of the offering, the Company shall include in such registration statement (i) first, the securities requested to be included therein by the securityholders requesting such registration, (ii) second, the securities of the Existing Registration Rights Holders requested to be included in such registration, (iii) third, the Registrable Securities requested to be included in such registration by any Holder, *pro rata* among the Holders on the basis of the number of Registrable Securities owned by each such Holder and (iv) fourth, any other securities requested to be included in such registration (including securities to be sold for the account of the Company). If, as a result of the provisions of this Section 2.3.2(b), any Holder shall not be entitled to include all Registrable Securities in a registration that such Holder has requested to be so included, such Holder may withdraw such Holder's request to include Registrable Securities in such registration statement on or before the fifth day prior to the planned effective date of such Piggyback Registration.

(c) No Holder may participate in any registration statement in respect of a Piggyback Registration hereunder unless such Holder (x) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Company, in the case of an Underwritten Offering and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents, each in customary form, reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder's representations and warranties in connection with any such registration shall be of a substance and scope as are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder's Registrable Securities pursuant to such registration.

2.4 Holdback Agreements.

(a) In the case of any Underwritten Offering by any Holder hereunder, the Company shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the seven days prior to and during the 90-day period beginning on the effective date of any registration statement filed in connection with such Underwritten Offering or, in the case of an Underwritten Offering pursuant to a Shelf Takedown, the filing of any prospectus relating to the offer and sale

of Registrable Securities (or, in either case, such shorter period that any lock-up period with respect to such Underwritten Offering is in effect), except (i) pursuant to any registrations on Form S-4 or Form S-8 or any successor form, (ii) pursuant to any registrations filed in connection with an exchange offer or any employee benefit or dividend reinvestment plan or (iii) unless the underwriters managing any such Underwritten Offering otherwise agree. The underwriters in connection with such Underwritten Offering are intended third-party beneficiaries of this Section 2.4(a) and shall have the right and power to enforce the provisions hereof as though they were a party thereto.

(b) Each Holder agrees, in the event of an Underwritten Offering by the Company (whether for the account of the Company or otherwise), not to offer, sell, contract to sell or otherwise dispose of any Registrable Securities, or any securities convertible into or exchangeable or exercisable for such securities, including any sale pursuant to Rule 144 (except as part of such Underwritten Offering), during the seven days prior to, and during the 90-day period beginning on, the effective date of the registration statement for such Underwritten Offering (or, in the case of an offering pursuant to an effective shelf registration statement pursuant to Rule 415, the pricing date for such Underwritten Offering) (or, in either case, such shorter period that any lock-up period with respect to such Underwritten Offering is in effect). The underwriters in connection with such Underwritten Offering are intended third-party beneficiaries of this Section 2.4(b) and shall have the right and power to enforce the provisions hereof as though they were a party thereto.

2.5 Registration Procedures. If and whenever any Holder has requested that any Registrable Securities be registered pursuant to this Agreement, the Company will use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as promptly as is reasonably practicable, and pursuant thereto the Company will as expeditiously as possible:

(i) prepare and file with the SEC, pursuant to Section 2.2.1(b) with respect to any Demand Registration, a registration statement on any appropriate form under the Securities Act with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective; provided, that as far in advance as practicable before filing such registration statement or any amendment thereto, the Company will furnish to the selling Holders copies of reasonably complete drafts of all such documents prepared to be filed (including exhibits), and any such Holder shall have the opportunity to review and reasonably object, as promptly as is reasonably practicable, to any information contained therein and the Company will make corrections reasonably requested by such Holder with respect to such information prior to filing any such registration statement or amendment; provided, that the Company shall not have any obligation to modify any information if the Company reasonably believes in good faith that so doing would cause (i) the registration statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the prospectus to contain an untrue statement of a

material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(ii) except in the case of a Shelf Registration Statement, prepare and file with the SEC such amendments, post-effective amendments, and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than 180 days (or such lesser period as is necessary for the underwriters in an underwritten offering to sell unsold allotments) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(iii) in the case of a Shelf Registration Statement, prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities subject thereto for a period ending on the earlier of (x) 24 months after the effective date of such registration statement, (y) the date when all restrictive legends on the Registrable Securities have been removed or (z) the date on which all the Registrable Securities held by any Holder cease to be Registrable Securities;

(iv) furnish to each seller of Registrable Securities and the underwriters of any Underwritten Offering, such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus), any prospectus supplement, any documents incorporated by reference therein and such other documents as such seller or underwriters may reasonably request for purposes of permitting such seller's or underwriters' review in order to facilitate the disposition of the Registrable Securities owned by such seller or the sale of such securities by such underwriters (it being understood that, subject to Section 2.6 and the requirements of the Securities Act and applicable state securities laws, the Company consents to the use of the prospectus and any amendment or supplement thereto by each seller and the underwriters in connection with any Underwritten Offering covered by the registration statement of which such prospectus, amendment or supplement is a part);

(v) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions in the United States as the managing underwriter reasonably requests (or, in the event the registration statement does not relate to an Underwritten

Offering, as the holders of a majority of such Registrable Securities may reasonably request); use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the period in which such registration statement is required to be kept effective and to take any other action that may be reasonably necessary or advisable to enable each seller to consummate the disposition of the Registrable Securities owned by such seller in such jurisdictions (provided, however, that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (B) subject itself to taxation in any jurisdiction wherein it is not so subject or (C) take any action that would subject it to general service of process in any jurisdiction where it is not then so subject);

(vi) promptly notify each seller and each underwriter of any Underwritten Offering and (if requested by any such Person) confirm such notice in writing (A) when a prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to a registration statement or any posteffective amendment, when the same has become effective, (B) of the issuance by any state securities or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or "blue sky" laws or the initiation of any proceedings for that purpose, and (C) of the happening of any event which makes any material statement made in a registration statement or related prospectus untrue or which requires the making of any material changes in such registration statement, prospectus or documents so that they will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and, as promptly as practicable thereafter, prepare and file with the SEC and furnish a supplement or amendment to such prospectus so that, as thereafter deliverable to the purchasers of such Registrable Securities, such prospectus will not contain any untrue statement of a material fact or omit a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(vii) permit any selling Holder, which in such Holder's judgment, based on the advice of counsel, might reasonably be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement, to the extent necessary, and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such Holder and its counsel should be included; provided, that the Company shall not have any obligation to include such information if the Company reasonably believes in good faith that so doing would cause (i) the registration statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the prospectus to

contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(viii) in the case of any Underwritten Offering, make reasonably available members of management of the Company, as selected by the Holders of a majority of the Registrable Securities included in such registration, for assistance in the selling effort relating to the Registrable Securities covered by such registration, including, but not limited to, the participation of such members of the Company's management in road show presentations as the underwriters reasonably request; provided, that the underwriter shall take into account the reasonable business requirements of the Company in determining the scheduling and duration of any road show;

(ix) otherwise use its reasonable best efforts to comply with the Securities Act, the Exchange Act and all other applicable rules and regulations of the SEC, and make generally available to the Company's securityholders an earnings statement satisfying the provisions of Section 11(a) of the Securities Act no later than 45 days after the end of the 12-month period beginning with the first day of the Company's first fiscal quarter commencing after the effective date of a registration statement, which earnings statement shall cover said 12-month period, and which requirement will be deemed to be satisfied if the Company timely files complete and accurate information on Forms 10-Q, 10-K and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

(x) if requested by the managing underwriter of any Underwritten Offering or any seller, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or such seller reasonably requests to be included therein, including, without limitation, with respect to the Registrable Securities being sold by such seller, the purchase price being paid therefor by the underwriters and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering, and promptly make all required filings of such prospectus supplement or post-effective amendment;

(xi) cooperate with the seller and the managing underwriter of any Underwritten Offering to facilitate the timely preparation and delivery of certificates (which shall not bear any restrictive legends unless required under applicable law) representing securities sold under any registration statement, and enable such securities to be in such denominations and registered in such names as the managing underwriter or such sellers may request as promptly as reasonably practicable prior to any sale of Registrable Securities and keep available and make available to the Company's transfer agent prior to the effectiveness of such registration statement a supply of such certificates;

(xii) in the case of an Underwritten Offering, upon reasonable notice and during normal business hours, make reasonably available for inspection by any seller, any underwriter participating in any disposition pursuant to any registration statement, and any attorney, accountant or other agent or representative retained by any such seller or underwriter (collectively, the "Inspectors"), relevant financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply information reasonably requested by any such Inspector in connection with such registration statement; provided, however, that, unless the disclosure of such Records is necessary to avoid or correct a misstatement or omission in the registration statement or the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, the Company shall not be required to provide any information under this subparagraph (xii) if (A) the Company believes, after consultation with counsel for the Company, that either (1) the requested Records constitute confidential commercial and/or supervisory information within the meaning of 5 U.S.C. § 552(b)(4) and (8), respectively, or (2) to do so would cause the Company to forfeit an attorney-client privilege that was applicable to such information, or (B) if the Company has requested and been granted from the SEC confidential treatment of such information contained in any filing with the SEC or documents provided supplementally or otherwise; provided, further, however, that any Records and other information provided under this Section 2.5(xii) that is not generally publicly available shall be subject to such confidential treatment as is customary for underwriters' due diligence reviews;

(xiii) in the case of any Underwritten Offering, use its reasonable best efforts to furnish to each seller and the underwriter a signed counterpart of (A) an opinion or opinions of counsel to the Company (and/or internal counsel if acceptable to the managing underwriters and the sellers), and (B) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the type customarily covered by opinions or comfort letters, as the case may be, as the seller or managing underwriter reasonably requests;

(xiv) use its reasonable best efforts to cause the Registrable Securities covered by any registration statement to be listed on the primary national securities exchange, if any, on which similar securities issued by the Company are then listed;

(xv) provide a transfer agent and registrar for all Registrable Securities registered hereunder;

(xvi) reasonably cooperate with each seller and each underwriter of any Underwritten Offering participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the Financial Industry Regulatory Authority, Inc. ("FINRA");

(xvii) during the period when the prospectus is required to be delivered under the Securities Act, promptly file all documents required to be filed with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act;

(xviii) notify each seller of Registrable Securities promptly of any request by the SEC for the amending or supplementing of any registration statement or prospectus relating to such seller's Registrable Securities;

(xix) enter into such agreements (including underwriting agreements) as are customary in connection with an Underwritten Offering; and

(xx) advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of a registration statement relating to the such seller's Registrable Securities or the initiation or threatening of any proceeding for such purpose and promptly use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal as soon as practicable if such stop order should be issued.

The Company may, from time to time, require any Holder of Registrable Securities as to which any registration is being effected to furnish to the Company in writing such information as the Company reasonably determines, based on the advice of counsel, is required or advised to be included in connection with such registration regarding such Holder and the distribution of such Registrable Securities, and the Company may exclude from such registration the Registrable Securities of such Holder if such Holder fails to furnish such information within 15 days of receiving such request.

2.6 Suspension of Dispositions. Each Holder agrees by acquisition of any Registrable Securities that, upon receipt of any notice (a "Suspension Notice") from the Company of the happening of any event of the kind described in Section 2.5(vi)(C), such Holder will forthwith discontinue disposition of Registrable Securities until such Holder's receipt of the copies of the supplemented or amended prospectus, or until it is advised in writing (the "Advice") by the Company that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings which are incorporated by reference in the prospectus, and, if so directed by the Company, such Holder will deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the time period regarding the effectiveness of registration statements set forth in Section 2.5(ii) and Section 2.5(iii) hereof shall be extended by the number of days during the period from and including the date of the giving of the Suspension Notice to

and including the date when each seller of Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus or the Advice. The Company shall use its reasonable best efforts and take such actions as are reasonably necessary to render the Advice as promptly as reasonably practicable. In any event, the Company shall not be entitled to deliver more than two Suspension Notices in any one year.

2.7 Registration Expenses.

2.7.1 Demand Registrations. The Company shall be responsible for all reasonable and documented, out-of-pocket fees and expenses incident to any Demand Registration including, without limitation, the Company's performance of or compliance with this Article 2, all registration and filing fees, all fees and expenses associated with filings required to be made with FINRA (including, if applicable, the reasonable fees and expenses of any "qualified independent underwriter" as such term is defined in FINRA Rule 5121, and of its counsel), as may be required by the rules and regulations of FINRA, fees and expenses of compliance with securities or "blue sky" laws (including reasonable fees and disbursements of counsel in connection with "blue sky" qualifications of the Registrable Securities), rating agency fees, printing expenses (including expenses of printing certificates for the Registrable Securities and of printing prospectuses if the printing of prospectuses is requested by any Holder of Registrable Securities), messenger and delivery expenses, the fees and expenses incurred in connection with any listing or quotation of the Registrable Securities, and the fees and expenses of counsel for the Company and its independent certified public accountants (including the expenses of any special audit or "comfort letters" required by or incident to such performance). The Holders shall be responsible for (i) any underwriting discounts, commissions, or fees attributable to the sale of the Registrable Securities, on a *pro rata* basis on the basis of the number of shares so sold whether or not any registration statement becomes effective, and (ii) any applicable transfer taxes. The Company shall be responsible for the fees and expenses of one firm of attorneys retained by all of the Holders in the aggregate in connection with the sale of Registrable Securities in a Demand Registration. Notwithstanding the foregoing, the Company shall not be responsible for the fees and expenses of any additional counsel, or any of the accountants, agents or experts retained by the Holders in connection with the sale of Registrable Securities in a Demand Registration. The Company will also be responsible for its internal expenses in any Demand Registration (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties, the expense of any annual audit and the expense of any liability insurance).

2.7.2 Piggyback Registrations. All fees and expenses incident to any Piggyback Registration including, without limitation, the Company's performance of or compliance with this Article 2, all registration and filing fees, all fees and expenses associated with filings required to be made with FINRA (including, if applicable, the reasonable and documented fees and expenses of any "qualified independent underwriter" as such term is defined in FINRA Rule 5121, and of its counsel), as may be required by the rules and regulations of FINRA, fees and expenses of compliance with securities or "blue sky" laws (including reasonable fees and disbursements of counsel in connection with "blue sky" qualifications of the Registrable Securities), rating agency fees, printing expenses (including expenses of printing certificates for

the Registrable Securities and of printing prospectuses), messenger and delivery expenses, the fees and expenses incurred in connection with any listing or quotation of the Registrable Securities, fees and expenses of counsel for the Company and its independent certified public accountants (including the expenses of any special audit or "comfort letters" required by or incident to such performance) and the fees and expenses of other persons retained by the Company, will be borne by the Company (unless paid by a securityholder that is not a Holder for whose account the registration is being effected) whether or not any registration statement becomes effective; provided, however, that any underwriting discounts, commissions, or fees attributable to the sale of the Registrable Securities will be borne by the Holders *pro rata* on the basis of the number of shares so sold and the fees and expenses of any counsel, accountants, or other persons retained or employed by any Holder and any applicable transfer taxes will be borne by such Holder.

2.8 Indemnification.

2.8.1 The Company agrees to indemnify and reimburse, to the fullest extent permitted by law, each seller of Registrable Securities, and each of its employees, advisors, agents, representatives, partners, officers, and directors and each Person who controls such seller (within the meaning of the Securities Act) and any agent or investment advisor thereof (collectively, the "Seller Affiliates") (A) against any and all losses, claims, damages, liabilities, and expenses, joint or several (including, without limitation, reasonable attorneys' fees and disbursements except as limited by Section 2.8.3) (collectively, "Losses") based upon, arising out of, related to or resulting from any untrue or alleged untrue statement of a material fact contained in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) against any and all Losses, as incurred, to the extent of the aggregate amount reasonably paid in settlement of any litigation or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission made by the Company in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto; provided, that such settlement is effected with the consent of the Company (such consent not to be unreasonably withheld); and (C) against any Losses as may be reasonably incurred in investigating, preparing, or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission, or such violation of the Securities Act, the Exchange Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder, to the extent that any such expense or cost is not paid under subparagraph (A) or (B) above; provided, that the Company will have no obligation to provide any indemnification or reimbursement hereunder to the extent that any such Losses (or actions or proceedings in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto, in reliance upon and in substantial conformity with information furnished in writing to the

Company by such seller or any of its Seller Affiliates (or on such seller's or Seller Affiliate's behalf) for use therein.

2.8.2 In connection with any registration statement in which a seller of Registrable Securities is participating, each such seller will furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the fullest extent permitted by law, each such seller will indemnify and reimburse, to the fullest extent permitted by law, the Company and each of its employees, advisors, agents, representatives, partners, officers and directors and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) and any agent or investment advisor ("Company Indemnified Persons") thereof against any and all Losses resulting from any untrue statement or alleged untrue statement of a material fact contained in the registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission is contained in any information or affidavit so furnished in writing to the Company by such seller or any Seller Affiliates (or on such seller's or Seller Affiliate's behalf) specifically for inclusion in the registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto and the Holders agree to reimburse the Company Indemnified Persons for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such action or claim as such expenses are incurred; provided, that the obligation to indemnify will be several, not joint and several, among such sellers of Registrable Securities, and the liability of each such seller of Registrable Securities will be in proportion and limited to the net amount received by such seller from the sale of Registrable Securities pursuant to such registration statement; provided, however, that such seller of Registrable Securities shall not be liable in any such case to the extent that prior to the filing of any such registration statement or prospectus or amendment thereof or supplement thereto, such seller has furnished in writing to the Company information expressly for use in such registration statement or prospectus or any amendment thereof or supplement thereto which corrected or made not misleading information previously furnished to the Company.

2.8.3 Any Person entitled to indemnification hereunder will (A) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided, that the failure to give such notice shall not limit the rights of such Person) and (B) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the reasonable and documented fees and expenses of such counsel shall be at the expense of such person unless (x) the indemnifying party has agreed to pay such fees or expenses or (y) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person. If such defense is not assumed by the indemnifying party as permitted hereunder, the indemnifying party will not be subject to

any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). If such defense is assumed by the indemnifying party pursuant to the provisions hereof, such indemnifying party shall not settle or otherwise compromise the applicable claim unless (1) such settlement or compromise contains a full and unconditional release of the indemnified party or (2) the indemnified party otherwise consents in writing. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party, a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the reasonable fees and disbursements of such additional counsel or counsels.

2.8.4 Each party hereto agrees that, if for any reason the indemnification provisions contemplated by Section 2.8.1 or Section 2.8.2 are unavailable to or insufficient to hold harmless an indemnified party in respect of any Losses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such Losses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party in connection with the actions which resulted in the losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 2.8.4 were determined by *pro rata* allocation (even if the Holders or any underwriters or all of them were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 2.8.4. The amount paid or payable by an indemnified party as a result of Losses (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or, except as provided in Section 2.8.3, defending any such action or claim. Notwithstanding the provisions of this Section 2.8.4, no Holder shall be required to contribute an amount greater than the dollar amount by which the net proceeds received by such Holder with respect to the sale of any Registrable Securities exceeds the amount of damages which such Holder has otherwise been required to pay by reason of any and all untrue or alleged untrue statements of material fact or omissions or alleged omissions of material fact made in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto related to such sale of Registrable Securities. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Holders' obligations in this Section 2.8.4 to contribute shall be several in proportion to the amount of Registrable Securities registered by it and not joint.

If indemnification is available under this Section 2.8, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Section 2.8.1 and Section 2.8.2 without regard to the relative fault of said indemnifying party or indemnified party or any other equitable consideration provided for in this Section 2.8.4 subject, in the case of any Holder, to the limited dollar amounts set forth in Section 2.8.2.

2.8.5 The indemnification and contribution provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director, or controlling Person of such indemnified party and will survive the transfer of securities.

2.9 Transfer of Registration Rights. The rights of each Holder under this Agreement may be assigned or transferred to (i) any Affiliate of the Holder or (ii) third-party transferees of the Registrable Securities that are not Affiliates of one another and that each acquire, or agree to acquire, an amount of Registrable Securities, and, in the case of both (i) and (ii), such Affiliate of the Holder or transferee enters into a Joinder Agreement, substantially in the form of Exhibit A hereto (collectively, a "Permitted Transferee").

ARTICLE 3

3.1 Rule 144. The Company will file the reports required to be filed by it under the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, will, upon the request of the Holders, make publicly available other information so long as necessary to permit sales of Registrable Securities pursuant to Rule 144) and will take such further action as the Holders may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemption provided by Rule 144 or any similar rule or regulation hereafter adopted by the SEC. Upon the reasonable request of any Holder, the Company will deliver to such parties a written statement as to whether it has complied with such requirements. If the Initial Holder seeks to sell Common Stock under Rule 144, any legal opinion reasonably required by the transfer agent to effect such sale shall be provided by, or at the expense of, the Company.

3.2 Preservation of Rights. The Company will not (i) grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder or (ii) enter into any agreement, take any action or permit any change to occur, with respect to its securities that violates or subordinates the rights expressly granted to the Holders.

ARTICLE 4
TERMINATION

4.1 Termination. This Agreement shall terminate and be of no further force and effect at the earliest to occur of (i) its termination by the written agreement of all parties or their respective successors in interest, (ii) with respect to any Holder, the date on which all Common Stock held by such Holder have ceased to be Registrable Securities, (iii) with respect to the

Company, the date on which all Common Stock has ceased to be Registrable Securities and (iv) the dissolution, liquidation or winding up of the Company.

ARTICLE 5

MISCELLANEOUS

5.1 **Notices**. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 5.1):

If to the Company:

Workhorse Group Inc.
100 Commerce Drive
Loveland, Ohio 45140
Attention: Steve Schrader, CFO
Email: steve.schrader@workhorse.com

with a copy to (which shall not constitute notice):

Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202
Attention: David A. Zimmerman
Facsimile: (513) 381-0205
Email: dzimmerman@taftlaw.com

If to the Initial Holder:

Antara Capital LP
500 Fifth Avenue, Suite 2320
New York, NY 10110
Attention: Lance Kravitz
Email: Operations@antaracapital.com

with a copy to (which shall not constitute notice):

Milbank LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Facsimile: (212) 751-4864

Attention: Casey T. Fleck
Email: CFleck@milbank.com

Any notice or communication hereunder shall be deemed to have been given or made as of the date so delivered if personally delivered and five calendar days after mailing if sent by registered or certified mail (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee). If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

5.2 **Authority**. Each of the parties hereto represents to the other that (i) it has the corporate power and authority to execute, deliver and perform this Agreement, (ii) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate action and no such further action is required, (iii) it has duly and validly executed and delivered this Agreement and (iv) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

5.3 **Governing Law**. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York irrespective of the choice of laws principles of the State of New York. Each party hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York sitting in the County of New York or the United States District Court for the Southern District of New York and the appellate courts having jurisdiction of appeals in such courts to resolve any dispute, controversy or claim arising out of, or relating to, the transactions contemplated by this Agreement, or the validity, interpretation, breach or termination of any provision of this Agreement.

5.4 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.4.

5.5 **Successors and Assigns**. The rights of a Holder may only be assigned in accordance with Section 2.9 to a Permitted Transferee. A Permitted Transferee to whom rights are transferred pursuant to Section 2.9 may not again transfer those rights to any other Permitted Transferee, other than as provided in Section 2.9. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and any and all successors to the Company and each Holder and their respective assigns.

5.6 **No Third-Party Beneficiaries**. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement; provided, however, the parties hereto hereby acknowledge that the Persons set forth in Section 2.4(b) are express third-party beneficiaries in accordance with Section 2.4(b).

5.7 **Headings**. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

5.8 **Severability**. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

5.9 **Waivers**. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term, but such waiver shall be effective only if it is in a writing signed by the party against whom the existence of such waiver is asserted. Unless otherwise expressly provided in this Agreement, no delay or omission on the part of any party in exercising any right or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right or privilege under this Agreement operate as a waiver of any other right or privilege under this Agreement nor shall any single or partial exercise of any right or privilege preclude any other or further exercise thereof or the exercise of any other right or privilege under this Agreement. No failure by either party to take any action or assert any right or privilege hereunder shall be deemed to be a waiver of such right or privilege in the event of the continuation or repetition of the circumstances giving rise to such right unless expressly waived in writing by the party against whom the existence of such waiver is asserted.

5.10 **Entire Agreement**. This Agreement, together with any related exhibits and schedules thereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

5.11 **Amendment**. This Agreement may not be amended or modified in any respect except by a written agreement signed by the Company and the Holders of a majority of the then-outstanding Registrable Securities.

5.12 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when each party hereto shall have received counterparts hereof signed by each of the other parties hereto. If any signature is delivered by facsimile transmission or by PDF, such signature shall create a

valid and binding obligation of the party executing (or on whose behalf the signature is executed) with the same force and effect as if such facsimile or PDF signature were an original thereof.

5.13 **Further Assurances**. Each of the parties to this Agreement shall, and shall cause their Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and to give effect to the transactions contemplated hereby.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

WORKHORSE GROUP INC.

By: _____
Name:
Title:

ANTARA CAPITAL LP

By: _____
Name: Himanshu Gulati
Title: Chief Investment Officer (CIO)

Exhibit A

JOINDER AGREEMENT

Reference is made to the Registration Rights Agreement, dated as of [●], 2020 (as amended from time to time, the "Registration Rights Agreement"), by and among Workhorse Group Inc., a Nevada corporation, Antara Capital LP, a Delaware limited partnership, and the other parties thereto, if any. The undersigned agrees, by execution hereof, to become a party to, and to be subject to the rights and obligations under the Registration Rights Agreement.

[NAME]

By: _____
Name:
Title:

Date:

Address: