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): **November 4, 2024**

NAUTICUS ROBOTICS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**001-40611**	**87-1699753**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

17146 Feathercraft Lane, Suite 450, Webster, TX 77598
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(281) 942-9069**

Not Applicable
(Former name or former address, if changed since last report)

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

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

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

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

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

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock	KITT	The Nasdaq Stock Market LLC
Warrants	KITTW	The Nasdaq Stock Market LLC

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

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement

Second Amendment and Exchange Agreement

On November 4, 2024, Nauticus Robotics, Inc., a Delaware corporation (the "Company"), entered into a Second Amendment and Exchange Agreement (the "Exchange Agreement"), by and among the Company and a certain institutional investor, pursuant to which such investor will exchange (the "Exchange") the remaining portion of the amount outstanding under the 5% original issue discount senior secured convertible debentures (the "Existing Notes") and certain other amounts outstanding with respect thereto, in the aggregate amount of $26,180,415 (the "Outstanding Amount"), into 26,180 of Series A preferred convertible stock (the "Series A Preferred Stock"), subject to adjustment with respect to any change in the Outstanding Amount, whether as a result of any additional amounts that may become outstanding under the Existing Notes or any conversion of all, or any part, of the Existing Notes, as applicable, from and after the date of the Exchange Agreement through the closing date of the Exchange, in reliance on the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act"). The Exchange Agreement further amended the Securities Purchase Agreement dated as of December 16, 2021, as amended, and contained certain covenants of the Company to, among other items, hold one or more stockholder meetings [no later than December 31, 2024 in respect of the shares of the Company's common stock issuable underlying the Series A Preferred Stock upon conversion.

In addition, on November 4, 2024, the Company entered into Exchange Agreements with two other institutional investors on substantially the same terms, pursuant to which such investors will transfer their Existing Notes to the Company in exchange for a number of shares of Series A Preferred Stock in the aggregate principal amount of $1,836,720 and $5,296,159, respectively.

Series A Preferred Stock

On the closing date of the Exchange, the Company will designate 33,312 shares (subject to adjustment with respect to any change in the Outstanding Amount, whether as a result of any additional amounts that may become outstanding under the Existing Notes or any conversion of all, or any part, of the Existing Notes, as applicable, from and after the date of the Exchange Agreement through the closing date of the Exchange) of the Company's authorized and unissued preferred stock as Series A Preferred Stock ("Preferred Shares") and establish the rights, preferences and privileges of the Series A Preferred Stock pursuant to the Certificate of Designations of Rights and Preferences of the Series A Preferred Stock (the "Certificate of Designations"), to be filed with the Secretary of State of the State of Delaware, as summarized below:

General. Each share of Series A Preferred Stock has a stated value of $1,000 per share and, when issued, the Series A Preferred Stock will be fully paid and non-assessable.

Ranking. The Series A Preferred Stock, with respect to the payment of dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company, ranks senior to all capital stock of the Company, unless the Required Holders (as defined in the Certificate of Designations) consent to the creation of other capital stock of the Company that is senior or equal in rank to the Series A Preferred Stock.

Dividends. The holders of Series A Preferred Stock will be entitled to a 5% per annum dividends, on an as-if converted basis, equal to and in the same form as dividends actually paid on shares of Common Stock, when and if actually paid. The dividends are payable to each record holder of the Series A Preferred Stock in shares of Common Stock so long as there has been no Equity Conditions Failure (as defined in the Certificate of Designations), and the Company may, at its option, under certain circumstances, capitalize the dividend by increasing the stated value of each Preferred Shares or elect a combination of the capitalized dividend and a payment in dividend shares.

Purchase Rights. If at any time the Company grants, issues or sells any options, convertible securities, or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "Purchase Rights"), then each holder of Series A Preferred Stock will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Series A Preferred Stock held by such holder immediately prior to the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights at the Alternate Conversion Price (as defined below); subject to certain limitations on beneficial ownership.

Conversion Rights

Conversion at Option of Holder. At any time from and after the first date of issuance of any Preferred Shares (the "Initial Issuance Date"), each holder of Series A Preferred Stock may convert all, or any part, of the outstanding Series A Preferred Stock, at any time at such holder's option, into shares of the Common Stock (which converted shares of Common Stock are referred to as "Conversion Shares" herein) at the fixed "Conversion Price" of $1.23, which is subject to proportional adjustment upon the occurrence of any stock split, stock dividend, stock combination and/or similar transactions. The amounts to be converted include unpaid dividends and other charges for the Preferred Shares.

Voluntary Adjustment Right. Subject to the rules and regulations of the Nasdaq, the Company has the right, at any time, with the written consent of the Required Holders, to lower the fixed conversion price to any amount and for any period of time deemed appropriate by the board of directors of the Company (the "Board").

Alternate Conversion at the Holder's Election. At any time after the Initial Issuance Date, a holder may elect to convert the Series A Preferred Stock held by such holder at the "Alternate Conversion Price" equal to the lesser of:

- the Conversion Price; and
- the greater of:
    - the floor price of $0.246 (the "Floor Price"); and
    - 98% of the lowest volume weighted average price ("VWAP") of the Common Stock during the 10 consecutive trading days immediately prior to such conversion.

Alternate Conversion Upon a Triggering Event. Following the occurrence and during the continuance of a Triggering Event (as defined below), each holder may alternatively elect to convert the Series A Preferred Stock at the "Alternate Conversion Price".

The Certificate of Designations contains standard and customary triggering events (each, a "Triggering Event" including certain Bankruptcy Triggering Event (as defined therein)), including but not limited to: (i) the suspension from trading or the failure to list the Common Stock within certain time periods; (ii) failure to declare or pay any dividend when due; (iii) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $500,000 of Indebtedness (as defined in the Exchange Agreement) of the Company, (iv) the Company's failure to cure a conversion failure of failure to deliver shares of the Common Stock upon conversion, or notice of the Company's intention not to comply with a request for conversion of any Series A Preferred Stock, and (v) bankruptcy or insolvency of the Company.

From and after the occurrence and during the continuance of any Triggering Event, the Dividend Rate in effect shall automatically be increased to the lesser of 18% per annum and the maximum rate permitted under applicable law.

If at the time of a conversion the Alternate Conversion Price is determined to be the Floor Price because such Floor Price is greater than 98% of the lowest VWAP of a share of Common Stock during the ten (10) trading day period ending and including the trading day immediately preceding the delivery or deemed delivery of the applicable conversion notice, then the Conversion Amount (as defined in the Certificates of Designations), shall automatically increase pro rata, by the applicable Alternate Conversion Floor Amount (as defined therein).

Other Adjustments. In connection with the Exchange, the Company has agreed to seek stockholder approval at a special meeting of stockholders to be held not later than December 31, 2024 of the issuance of Conversion Shares at a conversion price below the Conversion Price (the date of such approval, the "Stockholder Approval Date"). If, at any time on or after the date of the Exchange Agreement, the Company issues any shares of Common Stock for a consideration per share (the "New Issuance Price") less than a price equal to the Conversion Price in effect immediately prior to such issuance, the Conversion Price shall be reduced to the New Issuance Price.

If on either of (i) the 30th calendar day after the Initial Issuance Date or (ii) the 60th calendar day after the Initial Issuance Date, as applicable, (each, an "Adjustment Date"), the Conversion Price then in effect is greater than the greater of (A) the Floor Price and (B) the Market Price (as defined therein) then in effect (the "Adjustment Price"), on the Adjustment Date the Conversion Price shall automatically lower to the Adjustment Price.

Bankruptcy Triggering Event Redemption Right. Upon any Bankruptcy Triggering Event, the Company shall immediately redeem in cash all amounts due under the Series A Preferred Stock at a redemption price equal to the greater of (1) 1.25 times the Conversion Amount to be redeemed; and (2) the product of (X) the Conversion Rate (calculated using the lowest Alternate Conversion Price during the period commencing on the 20th Trading Day immediately preceding such public announcement and ending on the date the Company makes the entire redemption payment), multiplied by (Y) 1.25 times the equity value, unless the holder waives such right to receive such payment. The equity value of the Common Stock underlying the Series A Preferred Stock is calculated using the greatest closing sale price of the Common Stock on any

trading day during the period commencing on the trading day immediately preceding such Bankruptcy Triggering Event and ending on the date the Company makes the entire payment required.

Change of Control Exchange. Upon a change of control of the Company, each holder may require the Company to exchange such holder's shares of Series A Preferred Stock for consideration equal to the Change of Control Election Price (as defined in the Certificate of Designations), to be satisfied at the Company's election in either (x) cash or (y) rights convertible into such securities or other assets to which such holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by such holder upon consummation of such corporate event.

Company Optional Redemption. At any time the Company shall have the right to redeem in cash all, but not less than all, the shares of Series A Preferred Stock then outstanding at a 25% redemption premium to the greater of (i) the Conversion Amount being redeemed, and (ii) the product of (1) the Conversion Rate with respect to the Conversion Amount being redeemed, multiplied by (2) the equity value of the Common Stock underlying the Series A Preferred Stock. The equity value of the Common Stock underlying the Series A Preferred Stock is calculated using the greatest closing sale price of the Common Stock on any trading day during the period commencing on the trading day immediately preceding the date the Company notifies the holders of the Company's election to redeem and ending on the trading day immediately prior to the date the Company makes the entire payment required.

Fundamental Transactions. The Certificate of Designations prohibits the Company from entering specified fundamental transactions (including, without limitation, mergers, business combinations and similar transactions) unless the Company (or the Company's successor) assumes in writing all of the Company's obligations under the Certificate of Designations and the other Transaction Documents (as defined in the Certificate of Designations).

Voting Rights. The holders of the Series A Preferred Stock shall have no voting power and no right to vote on any matter at any time, either as a separate series or class or together with any other series or class of share of capital stock, and shall not be entitled to call a meeting of such holders for any purpose nor shall they be entitled to participate in any meeting of the holders of Common Stock, except as provided in the Certificate of Designations (or as otherwise required by applicable law).

Covenants. The Certificate of Designations contains a variety of obligations on the Company's part not to engage in specified activities. In particular, the Company will not, and will cause the Company's subsidiaries to not, redeem, repurchase or declare any dividend or distribution on any of the Company's capital stock (other than as required under the Certificate of Designations) and will not incur any indebtedness other than ordinary course trade payables or, subject to certain exceptions, incur any liens. In addition, the Company will not issue any Preferred Shares (except as contemplated in the Exchange Agreement) or issue any other securities that would cause a breach or default under the Certificate of Designations.

Reservation Requirements. So long as any Series A Preferred Stock remains outstanding, the Company shall at all times reserve at least 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all Series A Preferred Stock then outstanding.

November 2024 Debentures

On November 4, 2024, the Company entered into a Securities Purchase Agreement (the "SPA") with certain accredited investors named therein (the "Debenture Investors"), pursuant to which the Debenture Investors purchased, in a private placement, $1,150,000 in principal amount of debentures, with an option to purchase up to an additional aggregate of $20,000,000 in principal amount of original issue discount senior secured convertible debentures (the "November 2024 Debentures"). The closing of this private placement will occur upon satisfaction of customary closing conditions.

The November 2024 Debentures provide for, among other items: (a) an interest rate of the Prime Rate published in the Wall Street Journal plus 2% per annum, payable quarterly and added to the principal amount of the November 2024 Debentures, and/or in cash, at the Company's option; (b) conversion by the holder into shares of the Company's common stock at any time (subject to limitations on conversion described therein); (c) a conversion price of $1.23 (subject to adjustment as provided therein) with shares of the Company's common stock issuable on conversion determined by dividing 120% of the applicable "conversion amount" (as defined in the November 2024 Debentures) by the conversion price; (d) an alternate conversion price at the lower of (1) $1.23 (subject to adjustment as provided therein) and (2) the greater of a floor price of $0.246 (subject to adjustment as provided therein) and 98% of the lowest VWAP of the Company's shares of common stock during the applicable 10-trading day period (subject to payment in cash if the

applicable VWAP calculation is less than the floor price); (e) a maturity date of September 9, 2026, and (f) an option by the holder to extend the maturity date by an additional year.

In addition, the exercise price of the November 2024 Debentures is subject to customary anti-dilution adjustments, and, in the case of a subsequent equity sale at a per share price below the exercise price, the exercise price will be adjusted to such lower price.

Generally, upon an event of default the outstanding principal, interest, liquidated damages, and other amounts become immediately due and payable in cash (and interest then accrues at the lesser of 18% per annum and the maximum rate permitted under applicable law). The obligations of the Company under the November 2024 Debentures are generally secured by first priority interests, and liens on, all present and after-acquired assets of the Company and its subsidiaries, and are generally guaranteed by the Company's subsidiaries. The November 2024 Debentures include, among other items, representations, warranties, affirmative and negative covenants, certain adjustments (including in respect of stock dividends, stock splits, and subsequent equity sales and rights offerings, pro rata distributions, and fundamental transactions), certain limitations on share issuances (including prior to stockholder approval), optional redemption, liquidated damages, events of default, and remedies, in each case, as further described in the debenture.

Security Documents
As a condition precedent to the closing of the November 2024 Debentures, the following security documents (the "Security Documents") were entered into in connection with the November 2024 Debentures:

- the pledge and security agreement, dated as of November 4, 2024, by and among the Company, Nauticus Robotics Holdings Inc, Nautiworks LLC, Nauticus Robotics Fleet LLC, and Nauticus Robotics USA LLC, (collectively the "Debtors") and ATW Special Situations Management LLC in its capacity as agent for the Debenture Investors(the Collateral Agent") pursuant to which the Debtors agreed to grant a security interest in substantially all of their respective tangible and intangible assets to the Collateral Agent, on behalf of the Debenture Investors;
- the intellectual property security agreement, dated as of November 4, 2024, by and among the Debtors and the Collateral Agent, pursuant to which the Debtors agreed to grant a security interest in certain patents, trademarks, copyrights and other intellectual property to the Collateral Agent, on behalf of the Debenture Investors;
- the subsidiary guarantee, dated as of November 4, 2024, made by the Debtors in favor of the Debenture Investors and the Collateral Agent, and acknowledged and agreed to by the Company;
- the intercreditor agreement, dated as of November 4, 2024, by and among the Collateral Agent and ATW Special Situations Management LLC, in its capacity as agent for certain lenders to the Debtors, and acknowledged and agreed to by the Debtors;
- the intercreditor agreement, dated as of November 4, 2024, by and among the Collateral Agent and Acquiom Agency Services LLC, and acknowledged and agreed to by the Debtors; and
- the intercreditor agreement, dated as of November 4, 2024, by and among the Collateral Agent and ATW Special Situations I LLC, and acknowledged and agreed to by the Debtors.

Each of the Debenture Investors are considered by the Company to have a material relationship with the Company by virtue of each such party's ownership of securities of the Company and involvement in previous financings of the Company, and, in the case of Material Impact, service on the Company's Board of Directors by an affiliate, which relationships are disclosed in further detail in the Company's filings with the SEC.

The foregoing descriptions of each of the transaction documents described in this Item 1.01 do not purport to be complete and are qualified in their entirety by reference to the complete text thereof, copies of which are filed as Exhibits to this Current Report and are incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement

The information set forth under Item 1.01 of this Current Report is incorporated herein by reference.

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 under Item 1.01 of this Current Report is incorporated herein by reference.

Item 3.02. Unregistered Sale of Equity Securities.

The information set forth under Item 1.01 of this Current Report is incorporated herein by reference. The exchange transactions described herein were undertaken in reliance upon the exemptions from registration afforded by Section 3(a)(9) of the Securities Act and Regulation D.

The issuance of the November 2024 Debentures pursuant to the SPA will not be registered under the Securities Act in reliance on the exemption provided by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder, or under any state securities laws. The Company relied on this exemption from registration in entering into the SPA and the Company will rely upon this exemption from registration in issuing such securities based in part on representations made by the Debenture Investors. The securities may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. Neither this Current Report on Form 8-K, nor the exhibits attached hereto, is an offer to sell or the solicitation of an offer to buy the securities described herein.

Item 7.01 Regulation FD Disclosure

On November 5, 2024, the Company issued a press release announcing, among other things, the entry into the transactions described herein. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On November 5, 2024, the Company issued a press release relating to the successful completion of a project in the Gulf of Mexico. A copy of the press release is furnished as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference. The Company continues to explore opportunities for growth including discussions with potential strategic partners and potential merger and acquisition transactions.

The information furnished pursuant to Item 7.01 of this Current Report on Form 8-K and in Exhibits 99.1 and 99.2 shall not be deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is not subject to the liabilities of that section and is not deemed incorporated by reference into any filing of the Company under the Securities Act, as amended or the Exchange Act, except as otherwise expressly stated in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit	Description
10.1*+	Form of Second Amendment and Exchange Agreement dated November 4, 2024 by and among Nauticus Robotics Inc. and each of the signatories thereto.
10.2*+	Form of Securities Purchase Agreement dated November 4, 2024, by and among Nauticus Robotics, Inc. and each of the investors listed on the Schedule of Buyers thereto.
10.3	Form of Original Issue Discount Senior Secured Convertible Debenture Due 2026.
10.4	Pledge and Security Agreement, dated as of November 4, 2024, by and among the Company, Nauticus Robotics Holdings Inc., Nautiworks LLC, Nauticus Robotics Fleet LLC, and Nauticus Robotics USA LLC, as Debtors, and ATW Special Situations Management LLC as the Collateral Agent.
10.5	IP Security Agreement, dated as of November 4, 2024, by and among the Company, Nauticus Robotics Holdings Inc., Nautiworks LLC, Nauticus Robotics Fleet LLC, and Nauticus Robotics USA LLC, as Debtors, in favor of ATW Special Situations Management LLC as the Collateral Agent
10.6	Subsidiary Guarantee, dated as of November 4, 2024, by Nauticus Robotics Holdings, Inc., NautiWorks LLC, Nauticus Robotics Fleet LLC, and Nauticus Robotics USA LLC, in favor of ATW Special Situations Management LLC as Collateral Agent
10.7	Intercreditor agreement, dated as of November 4, 2024, by and among the Collateral Agent and ATW Special Situations Management LLC, in its capacity as agent for certain lenders to the Debtors, and acknowledged and agreed to by the Debtors;
10.8	Intercreditor agreement, dated as of November 4, 2024, by and among the Collateral Agent and Acquiom Agency Services LLC, and acknowledged and agreed to by the Debtors; and
10.9	Intercreditor agreement, dated as of November 4, 2024, by and among the Collateral Agent and ATW Special Situations I LLC and acknowledged and agreed to by the Debtors.
99.1	Press Release dated November 5, 2024
99.2	Press Release dated November 5, 2024

* Schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request.

+ Certain portions of this document that constitute confidential information have been redacted pursuant to Item 601(b)(10) of Regulation S-K.

SIGNATURE

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.

Dated: November 5, 2024

Nauticus Robotics, Inc.

By: /s/ John Symington

Name: John Symington

Title: General Counsel

SECOND AMENDMENT AND EXCHANGE AGREEMENT

This Second Amendment and Exchange Agreement (the "**Agreement**") is entered into as of the date set forth on the signature pages below, by and among Nauticus Robotics, Inc., a Delaware corporation (the "**Company**") and the investor signatory hereto (the "**Holder**"), with reference to the following facts:

A. Prior to the date hereof, the Company and the Holder and/or certain other investors (the "**Other Holders**", and together with the Holder, the "**Holders**") entered into that certain Securities Purchase Agreement, dated December 16, 2021 (as may be amended, modified, restated, restructured or supplemented from time to time, each a "**Securities Purchase Agreement**"), pursuant to which the Holder purchased, among other things, certain 5% original issue discount senior secured convertible debentures (as amended, modified or waived prior to the date hereof, the "**Original Notes**"). Capitalized terms not defined herein shall have the meaning as set forth in the Securities Purchase Agreement.

B. Prior to the date hereof, the Company and the Holder entered into that certain Exchange Agreement, dated January 30, 2024, pursuant to which, among other things, the Holder exchanged the Original Notes into new 5% original issue discount senior secured convertible debentures (as amended, modified or waived prior to the date hereof, the "**Existing Notes**").

C. The Company has authorized a new series of convertible preferred stock of the Company designated as Series A Convertible Preferred Stock, $0.0001 par value, the terms of which are set forth in the certificate of designation for such series of preferred stock (the "**New Certificate of Designations**") in the form attached hereto as **Exhibit A** (together with any convertible preferred shares issued in replacement thereof in accordance with the terms thereof, the "**Series A Preferred Stock**"), which Series A Preferred Stock shall be convertible into shares of Common Stock, in accordance with the terms of the New Certificate of Designations.

D. On the Closing Date (as defined below), the Holder desires to exchange such portion of the amounts outstanding under the Existing Notes as set forth on the signature page of the Holder attached hereto (including principal, interest and other amounts outstanding with respect thereto) (the "**Exchange Note**") into (i) such aggregate number of shares of Series A Preferred Stock as set forth on the signature page of the Holder attached hereto (the "**New Preferred Shares**", and such shares of Common Stock issuable pursuant to the terms of the New Certificate of Designations, including, without limitation, upon conversion or otherwise, collectively, the "**New Conversion Shares**", and together with the New Preferred Shares, the "**New Securities**") in reliance on the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the "**Securities Act**").

E. Each of the Company and the Holder desire to effectuate such exchange on the basis and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. **Exchange**

(a) Exchange of Securities. On the Closing Date, pursuant to Section 3(a)(9) of the Securities Act, the Holder hereby agrees to convey, assign and transfer the Exchange Note to the Company in exchange for which the Company agrees to issue the New Preferred Shares to the Holder (the "**Exchange**"). As soon as commercially practicable following the Closing Date, the Holder shall deliver or cause to be delivered to the Company (or its assignee) the Existing Notes (or affidavit of lost note, in form provided upon request by the Company and reasonably acceptable to the Holder). Immediately following the issuance of the New Preferred Shares to the Holder on the books and records of the Company, the Holder hereby relinquishes all rights, title and interest in the Exchange Note (including any claims the Holder may have against the Company related thereto) and assigns the same to the Company and the Exchange Note shall be cancelled; provided, that the New Preferred Shares shall be immediately convertible by the Holder, in whole or in part, after such issuance, regardless of the date of the Holder's actual receipt of a certificate evidencing the New Preferred Shares.

(b) **Other Documents**. The Company and the Holder shall execute and/or deliver such other documents and agreements as are customary and reasonably necessary to effectuate the Exchange.

2. **The Closing**. Subject to the conditions set forth in Section 3 below, the Exchange shall take place via the electronic exchange of documents, securities and signatures, two Business Days after the initial date such conditions are satisfied or waived by the respective parties (or at such other time and place as the Company and the Holder mutually agree) (the "**Closing**" and such date, the "**Closing Date**").

3. **Closing Conditions to the Closing**.

(a) **Condition's to the Holder's Obligations at the Closing.** The obligation of the Holder to consummate the Exchange is subject to the fulfillment (or waiver, at the sole option of the Holder), to the Holder's reasonable satisfaction, prior to or at the Closing, of each of the following conditions:

(i) Representations and Warranties. Each and every representation and warranty of the Company set forth herein shall be true and correct in all material respects (except where qualified by materiality or material adverse effect, which shall be true and correct in all respect) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing Date. The Holder shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Holder in the form acceptable to the Holder.

(ii) Issuance of Securities. At the Closing, the Company shall issue the New Preferred Shares on the books and records of the Company, with certificates with respect thereto delivered to the Holder no later than five (5) Trading Days after the Closing Date.

(iii) No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

(iv) Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Holder, and the Holder shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the Exchange, including without limitation, those required by the Principal Market (defined hereafter), if any.

(v) No Event of Default. On each Trading Day during the twenty (20) Trading Days immediately preceding the Closing Date and the Closing Date, no Event of Default (as defined in the Existing Notes) or event that with the passage of time or giving of notice would constitute an Event of Default shall have occurred (unless waived in writing by the Holder).

(vi) Eligible Market. On each Trading Day during the twenty (20) Trading Days immediately preceding the Closing Date and the Closing Date, the Common Stock (I) shall be designated for quotation or listed on an Eligible Market (as defined in the New Preferred Shares) and (II) shall not have been suspended.

(vii) Stockholder Approval. The Company shall have obtained the approval of its stockholders to issue all of the New Securities (without regard to any limitations on conversion set forth in the New Certificate of Designations) in compliance with the rules and regulations of the Principal Market.

(viii) Payment of Fees. The Company shall have paid Kelley Drye & Warren LLP the Legal Fee Amount (as defined below).

(b) **Additional Deliverables**

(i) The Holder shall have received the opinion of Norton Rose Fulbright US LLP, the Company's counsel, dated as of the Closing Date, in the form and substance satisfactory to the Holder.

(ii) The Company shall have delivered to the Holder a certificate evidencing the Company's good standing issued by the Secretary of State (or comparable office) of the State of Delaware and a certificate of existence from each jurisdiction in which the Company conducts business and is required to qualify to do business as a foreign corporation, as of a date within ten (10) days of the Closing Date.

(iii) The Company shall have delivered to the Holder a certified copy of the Certificate of Incorporation (as defined below) as certified by the Delaware Secretary of State within ten (10) days of the Closing Date (including evidence of the filing of the New Certificate of Designations).

(iv) The Company shall have delivered to the Holder a certificate, in the form acceptable to the Holder, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 5(b) below as adopted by the Company's board of directors in a form reasonably acceptable to the Holder, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws (as defined below) of the Company, each as in effect at the Closing.

(v) The transfer agent of the Company and the Company shall have duly executed and delivered the irrevocable transfer agent instructions in the form attached hereto as **Exhibit B**.

(c) **Condition's to the Company's Obligations to the Closing**. The obligation of the Company to consummate the Exchange is subject to the fulfillment (or waiver, at the sole option of the Company), to the Company's reasonable satisfaction, prior to or at the Closing in question, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Holder set forth herein shall be true and correct in all material respects (except where qualified by materiality or material adverse effect, which shall be true and correct in all respect) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and the Holder shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Holder at or prior to the Closing Date.

(ii) No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

(iii) Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Company and the Company shall have received all such counterpart originals or certified or other copies of such documents as the Company may reasonably request.

4. **Amendments**

(a) Ratifications. Except as otherwise expressly provided herein, the Securities Purchase Agreement and each other Transaction Document (as defined in the Securities Purchase Agreement), is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Effective Date: (i) all references in the Securities Purchase Agreement to "this Agreement", "hereto", "hereof", "hereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement, and (ii) all references in the other Transaction Documents, to the "Securities Purchase Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement.

(b) Amendments to Transaction Documents. On and after the Effective Date, each of the Transaction Documents (as defined in the Securities Purchase Agreement) are hereby amended as follows:

(i) The defined term "Debentures" is hereby amended to include the "New Preferred Shares" (as defined in each Amendment and Exchange Agreement) and, for the avoidance of doubt, including the New Certificate of Designations relating to the New Preferred Shares.

(ii) The defined term "Conversion Shares" is hereby amended to include the "New Conversion Shares (as defined in each Amendment and Exchange Agreement)".

(iii) The defined term "Amendment and Exchange Agreement" shall mean this Agreement.

(iv) The defined term "Transaction Documents" is hereby amended to include this Agreement.

5. **Representations and Warranties of the Company**. The Company represents and warrants to the Holder, as of the date hereof and as of the Closing Date, as follows:

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its

Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any Subsidiary, individually or taken as a whole, (ii) the transactions contemplated hereby or in any of the other Exchange 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 any of its Subsidiaries to perform any of their respective obligations under any of the Exchange Documents (as defined below). Other than the Persons (as defined below) set forth on Schedule 5(a) the Company has no Subsidiaries. "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (A) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (B) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary**". "**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 or any department or agency thereof.

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations (including, without limitation, the issuance of the New Preferred Shares in accordance with the terms hereof and the reservation and issuance of the New Conversion Shares in accordance with the terms of the New Certificate of Designations) under this Agreement, the New Certificate of Designations and each of the other agreements and certificates entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the "**Exchange Documents**"). The execution and delivery of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the New Preferred Shares, have been duly authorized by the Board of Directors of the Company and, other than such filings required under applicable securities or "Blue Sky" laws of the states of the United States (the "**Required Approvals**") and no further filing, consent, or authorization is required by the Company or of its Board of Directors or its shareholders. This Agreement and the other Exchange Documents have been duly executed and delivered by the Company and constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(c) Issuance of New Preferred Shares. The issuance of the New Preferred Shares are duly authorized and, upon issuance in accordance with the terms of this Agreement, the New Preferred Shares shall be validly issued, fully paid and non-

assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issue thereof. Upon conversion of the New Preferred Shares in accordance with this Agreement, the other Exchange Documents including, without limitation, the New Certificate of Designations, and the rules of the Principal Market, the Common Stock issued to the Holder, upon such conversion of the New Preferred Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Assuming the accuracy of the representations and warranties of the Holder contained herein, the offer and issuance by the Company of the New Preferred Shares is exempt from registration under the 1933 Act. As of the date hereof, the Company shall have reserved from its duly authorized capital stock not less than the Required Reserve Amount (as defined below) for issuances of New Conversion Shares pursuant to the New Certificate of Designations.

(d) Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Holder contained herein, the offer and issuance by the Company of the New Preferred Shares is exempt from registration under the 1933 Act, pursuant to the exemption provided by Section 3(a)(9) thereof, and applicable state securities laws.

(e) No Conflict; Required Filings and Consents.

(i) The execution, delivery and performance of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby will not (i) result in a violation of the Certificate of Incorporation (as defined below) (including, without limitation, any certificate of designation contained therein), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party for which a consent or waiver has not been obtained, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market (the "**Principal Market**") and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected.

(ii) Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the Required Approvals), any Governmental Entity or any regulatory

or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Exchange Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the date hereof, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Exchange Documents. Except as set forth in the SEC Documents, the Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock in the foreseeable future. "**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.

(j) Acknowledgment Regarding Holder's Acquisition of New Securities. The Company acknowledges and agrees that the Holder is acting solely in the capacity of an arm's length purchaser with respect to the Exchange Documents and the transactions contemplated hereby and thereby and that the Holder is not (i) an officer or director of the Company or any of its Subsidiaries, (ii) to its knowledge, an "affiliate" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**")) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that the Holder is not acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Exchange Documents and the transactions contemplated hereby and thereby, and any advice given by the Holder or any of its representatives or agents in connection with the Exchange Documents and the transactions contemplated hereby and thereby is merely incidental to the Holder's purchase of the New Securities. The Company further represents to the Holder that the Company's and each Subsidiary's decision to enter into the Exchange Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(k) No Placement Agent. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the New Securities. The Company shall pay, and hold the Holder harmless against, any

liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such claim.

(l) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the New Securities to require approval of stockholders of the Company under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would cause the offering of any of the New Securities to be integrated with other offerings of securities of the Company.

(m) Dilutive Effect. The Company understands and acknowledges that the number of New Conversion Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the New Conversion Shares upon conversion of the New Preferred Shares in accordance with this Agreement and the New Certificate of Designations is, absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(n) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement), stockholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to the Holder as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the New Securities and the Holder's ownership of the New Securities. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company or any of its Subsidiaries.

(o) SEC Documents; Financial Statements. During the two (2) years prior to the date hereof, the Company has filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the Securities and Exchange Commission (the "**SEC**") pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "**1934 Act**") (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Holders or their respective representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As

of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). The reserves, if any, established by the Company or the lack of reserves, if applicable, are reasonable based upon facts and circumstances known by the Company on the date hereof and there are no loss contingencies that are required to be accrued by the Statement of Financial Accounting Standard No. 5 of the Financial Accounting Standards Board which are not provided for by the Company in its financial statements or otherwise. No other information provided by or on behalf of the Company to any of the Holders which is not included in the SEC Documents (including, without limitation, information in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financial Statements to be in compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(p) Absence of Certain Changes. Except as set forth on Schedule 5(l), since the date of the Company's most recent audited financial statements contained in a Form 10-K, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of

business or (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up.

(q) No Undisclosed Events, Liabilities, Developments or Circumstances. Except as set forth in the SEC Documents, no event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced, (ii) could have a material adverse effect on the Holder's investment hereunder or (iii) could have a Material Adverse Effect.

(r) Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under its Certificate of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any of its Subsidiaries or Bylaws or their organizational charter, certificate of formation, memorandum of association, articles of association, Certificate of Incorporation or certificate of incorporation or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth in the SEC Documents, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. During the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) except as set forth in the SEC Documents, the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of

prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

(s) Foreign Corrupt Practices. Neither the Company, the Company's subsidiary or any director, officer, agent, employee, nor any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act (the "**FCPA**") or any other applicable anti-bribery or anti-corruption laws, nor to Company's knowledge, has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

(t) Sarbanes-Oxley Act. The Company and each Subsidiary is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(u) Transactions With Affiliates. Except as set forth in the SEC Documents, no current or former employee, partner, director, officer or stockholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or stockholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less

than 5% of the common stock of a company whose securities are traded on or quoted through an Eligible Market (as defined in the New Certificate of Designations)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, stockholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, and (iii) for other standard employee benefits made generally available to all employees or executives (including stock option agreements outstanding under any stock option plan approved by the Board of Directors of the Company).

(v) Equity Capitalization.

(iv) Definitions:

(1) "**Common Stock**" means (x) the Company's shares of common stock, $0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(2) "**Preferred Stock**" means (x) the Company's blank check preferred stock, $0.0001 par value per share, the terms of which may be designated by the board of directors of the Company in a certificate of designations and (y) any capital stock into which such preferred stock shall have been changed or any share capital resulting from a reclassification of such preferred stock (other than a conversion of such preferred stock into Common Stock in accordance with the terms of such certificate of designations).

(v) Authorized and Outstanding Capital Stock. Schedule 3(r)(ii) sets forth as of the date hereof, the authorized, issued and outstanding capital stock of the Company as well as all outstanding equity linked securities, including all options, warrants, restricted stock units, Convertible Securities. No shares of Common Stock are held in the treasury of the Company. "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(vi) Valid Issuance; Available Shares; Affiliates . All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. The SEC Documents disclose all securities that are, as of the date hereof, owned by Persons who are

"affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, except as set forth in the SEC Documents, no Person owns 10% or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities (as defined below), whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% stockholder for purposes of federal securities laws).

(vii) Existing Securities; Obligations. Except as set forth in the SEC Documents: (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) except as set forth on Schedule 3(r)(iv), there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the New Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(viii) Organizational Documents. The SEC Documents disclose true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**"), and the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

(w) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries, except as set forth in the SEC Documents or on Schedule 5(s), (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) has any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries; (iv) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that

the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(x) Litigation. Except as set forth in the SEC Documents or on Schedule 5(t), there is no action, suit, arbitration, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, which could result, individually or in the aggregate, in a Material Adverse Effect. No director, officer or employee of the Company or any of its subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. Except as set forth in the SEC Documents, neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(y) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for, and neither the Company nor any such Subsidiary has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(z) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or to the Company' s knowledge employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. No current (or former) executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with

respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(aa) Title.

(i) Real Property. Each of the Company and its Subsidiaries holds good title to all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries (the "**Real Property**") owned by the Company or any of its Subsidiaries (as applicable). The Real Property is free and clear of all Liens and is not subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except for (a) Liens for current taxes not yet due, (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto and (c) liens created in connection with the Transaction Documents. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(ii) Fixtures and Equipment. Each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company or its Subsidiary in connection with the conduct of its business (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to the date hereof. Each of the Company and its Subsidiaries owns all of its Fixtures and Equipment free and clear of all Liens except for (a) liens for current taxes not yet due, (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto and (c) liens created in connection with the Transaction Documents.

(ab) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate 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 ("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted and presently proposed to be conducted. The Company does not have any

knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights. Except as set forth on Schedule 5(x), neither the Company nor any of its Subsidiaries is aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property Rights.

(ac) Environmental Laws. (i) The Company and its Subsidiaries (A) are in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (A), (B) and (C), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(ii) No Hazardous Materials:

(A) have been disposed of or otherwise released from any Real Property of the Company or any of its Subsidiaries in violation of any Environmental Laws; or

(B) are present on, over, beneath, in or upon any Real Property or any portion thereof in quantities that would constitute a violation of any Environmental Laws. No prior use by the Company or any of its Subsidiaries of any Real Property has occurred that violates any Environmental Laws, which violation would have a material adverse effect on the business of the Company or any of its Subsidiaries.

(iii) (iii) Neither the Company nor any of its Subsidiaries knows of any other person who or entity which has stored, treated, recycled, disposed of or otherwise located on any Real Property any Hazardous Materials, including, without limitation, such substances as asbestos and polychlorinated biphenyls.

(iv) (iv) None of the Real Properties are on any federal or state "Superfund" list or Liability Information System ("**CERCLIS**") list or any state environmental agency list of sites under consideration for CERCLIS, nor subject to any environmental related Liens.

(ad) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim. The Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the Code.

(ae) Internal Accounting and Disclosure Controls. Except as set forth in the SEC Documents, the Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in the SEC Documents, the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as set forth in the SEC Documents, neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(af) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(ag) Investment Company Status. The Company is not, and upon consummation of the sale of the New Securities will not be, an "investment company," an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(ah) Acknowledgement Regarding Holder's Trading Activity. It is understood and acknowledged by the Company that (i) following the public disclosure of the transactions contemplated by the Exchange Documents, in accordance with the terms thereof, the Holder has not been asked by the Company or any of its Subsidiaries to agree, nor has the Holder agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the New Securities for any specified term; (ii) the Holder, and counterparties in "derivative" transactions to which any the Holder is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to the Holder's knowledge of the transactions contemplated by the Exchange Documents; (iii) the Holder shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) the Holder may rely on the Company's obligation to timely deliver shares of Common Stock upon conversion, exercise or exchange, as applicable, of the New Securities as and when required pursuant to the Exchange Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Exchange Documents pursuant to the 8-K Filing (as defined below) the Holder may engage in hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times during the period that the New Securities are outstanding, including, without limitation, during the periods that the value and/or number of the New Conversion Shares deliverable with respect to the New Preferred Shares are being determined and such hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the New Certificate of Designations or any other Exchange Document or any of the documents executed in connection herewith or therewith.

(ai) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the New Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the New Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(aj) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the New Preferred Shares are held by any of the Holders, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company and each Subsidiary shall so certify upon the Holder's request.

(ak) Transfer Taxes. On the date hereof, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, exchange and transfer of the New Preferred Shares to be issued to the Holder hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(al) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries or affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(am) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or any other business entity or enterprise with which the Company or any Subsidiary is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(an) Money Laundering. The Company and its Subsidiaries are in compliance with, and have not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, but not limited to, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, without limitation, (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(ao) Management. During the past five year period, no current officer or director of the Company or any of its Subsidiaries has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(ap) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(aq) No Disagreements with Accountants and Lawyers. Except as set forth on Schedule 5(mm), there are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which would be reasonably likely to affect the Company's ability to perform any of its obligations under any of the Exchange Documents. In addition, on or prior to the date hereof, the Company had discussions with its accountants about its financial statements previously filed with the SEC. Based on those discussions, the Company has no reason to believe that it will need to restate any such financial statements or any part thereof.

(ar) No Additional Agreements. The Company does not have any agreement or understanding with the Holder with respect to the transactions contemplated by the Exchange Documents other than as specified in the Exchange Documents.

(as) Public Utility Holding Act None of the Company nor any of its Subsidiaries is a "holding company," or an "affiliate" of a "holding company," as such terms are defined in the Public Utility Holding Act of 2005.

(at) Federal Power Act. None of the Company nor any of its Subsidiaries is subject to regulation as a "public utility" under the Federal Power Act, as amended.

(au) Cybersecurity. The Company and its Subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants that would reasonably be expected to have a Material Adverse Effect on the Company's business. The Company and its Subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA**"); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person or such, nor any incidents under internal review or investigations relating to the same except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Company and its Subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(av) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its Subsidiaries have taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679) (collectively, the "**Privacy Laws**") except in each case, where

such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. The Company further certifies that neither it nor any Subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(aw) No Consideration Paid. No commission or other remuneration has been paid by Company for soliciting the exchange of the Exchange Note for the New Preferred Shares as contemplated hereby.

(ax) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Holders or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Exchange Documents. The Company understands and confirms that each of the Holders will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Holders regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct as of the date furnished and does not contain any untrue statement of a material fact or omit to state any material fact as of the date furnished necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to the Holder pursuant to or in connection with this Agreement and the other Exchange Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by

the Company but which has not been so publicly disclosed. The Company acknowledges and agrees that the Holder has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 4 below.

6. **Representations and Warranties of Holders**. The Holder represents and warrants to the Company, as of the date hereof and as of the Closing Date, as follows:

(a) Organization and Authority. The Holder has the requisite power and authority to enter into and perform its obligations under this Agreement. The execution and delivery of this Agreement by the Holder and the consummation by Holder of the transactions contemplated hereby has been duly authorized by Holder's board of directors or other governing body. This Agreement has been duly executed and delivered by Holder and constitutes the legal, valid and binding obligation of Holder, enforceable against Holder in accordance with its terms.

(b) Ownership of Existing Note. The Holder owns the Existing Note free and clear of any Liens (other than the obligations pursuant to this Agreement, the Transaction Documents and applicable securities laws).

(c) Reliance on Exemptions. The Holder understands that the New Securities are being offered and exchanged in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Holder's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Holder set forth herein and in the Exchange Documents in order to determine the availability of such exemptions and the eligibility of the Holder to acquire the New Securities.

(d) Validity; Enforcement. This Agreement and the Exchange Documents to which the Holder is a party have been duly and validly authorized, executed and delivered on behalf of the Holder and shall constitute the legal, valid and binding obligations of the Holder enforceable against the Holder in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(e) No Conflicts. The execution, delivery and performance by the Holder of this Agreement and the Exchange Documents to which the Holder is a party, and the consummation by the Holder of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Holder or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Holder, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Holder to perform its obligations hereunder.

(f) Transfer or Resale. The Holder understands that: (i) the New Securities have not been and are not being registered under the 1933 Act or any state securities laws, are and will be offered and sold in reliance upon federal and state exemptions for transactions not involving any public offering and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) the Holder shall have delivered to the Company (if requested by the Company) an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such New Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Holder provides the Company with reasonable assurance that such New Securities can be sold, assigned or transferred pursuant to Rule 144; (ii) any sale of the New Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the New Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) except as set forth in the Registration Rights Agreement, if any, neither the Company nor any other Person is under any obligation to register the New Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the New Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the New Securities, subject to the requirements of applicable laws, and such pledge of New Securities shall not be deemed to be a transfer, sale or assignment of the New Securities hereunder, and the Holder effecting a pledge of New Securities shall not be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Exchange Document, including, without limitation, this Section 6(f).

(g) No Consideration Paid. No commission or other remuneration has been paid by the Holder for soliciting the exchange of the Exchange Note for the New Preferred Shares as contemplated hereby.

7. Disclosure of Transaction. The Company shall, on or before 9:30 a.m., New York City Time, on the first (1st) Business Day after the date of this Agreement, file a Current Report on Form 8-K describing the terms of the transactions contemplated hereby in the form required by the 1934 Act and attaching the Exchange Documents, to the extent they are required to be filed under the 1934 Act, that have not previously been filed with the SEC by the Company (including, without limitation, this Agreement) as exhibits to such filing (including all attachments, the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided up to such time to the Holder by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents. In addition, effective upon the filing of the 8-K Filing, the Company and Holder acknowledge and agree that any and all confidentiality or similar obligations under any agreement with respect to the transactions contemplated by the Exchange Documents or as otherwise disclosed in the 8-K Filing, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Holder or any of their affiliates, on the other hand, shall terminate. Neither the Company, its Subsidiaries nor the Holder shall issue any press releases or any other

public statements with respect to the transactions contemplated hereby without the consent of the other party; *provided*, *however*, the Company shall be entitled, without the prior approval of the Holder, to make a press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith or (ii) as is required by applicable law and regulations (provided that in the case of clause (i) the Holder shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the Holder (which may be granted or withheld in the Holder's sole discretion), except as required by applicable law, the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of the Holder in any filing, announcement, release or otherwise.

8. **No Integration**. None of the Company, its Subsidiaries, any of their affiliates, or any Person acting on their behalf shall, directly or indirectly, make any offers or sales of any security (as defined in the Securities Act) or solicit any offers to buy any security or take any other actions, under circumstances that would require registration of the New Securities under the Securities Act or cause this offering of the New Securities to be integrated with such offering or any prior offerings by the Company for purposes of Regulation D under the Securities Act.

9. **Listing**. The Company shall promptly secure the listing or designation for quotation (as applicable) of all of the New Conversion Shares upon the Principal Market (subject to official notice of issuance). The Company shall maintain the Common Stock's authorization for quotation on the Principal Market. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the Principal Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 9.

10. **Fees.** The Company shall (x) reimburse Kelley Drye & Warren LLP, on demand, for all costs and expenses incurred by it in connection with preparing and delivering this Agreement (including, without limitation, all legal fees and disbursements in connection therewith, and due diligence in connection with the transactions contemplated thereby) in an aggregate non-accountable amount equal to $50,000 (the "**Legal Fee Amount**") and (b) the Holder, on demand, for all other costs and expenses incurred by it or its affiliates in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Exchange Documents and any prior amendments and agreements with the Company not reimbursed prior to the date hereof (the "**Remaining Expenses**"). The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, DTC fees or broker's commissions (other than for Persons engaged by the Holder) relating to or arising out of the transactions contemplated. The Company shall pay, and hold the Holder harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment.

11. **Blue Sky**. The Company shall make all filings and reports relating to the Exchange as required under applicable securities or "Blue Sky" laws of the states of the United States following the date hereof, if any.

12. **Effective Date**. Except as otherwise provided herein, this Agreement shall be deemed effective as of such date that Company and the Holder shall have duly executed and delivered this Agreement (the "**Effective Date**").

13. **No Commissions**. Neither the Company nor the Holder has paid or given, or will pay or give, to any person, any commission, fee or other remuneration, directly or indirectly, in connection with the transactions contemplated by this Agreement.

14. **Termination**. Notwithstanding anything contained in this Agreement to the contrary, if the Effective Date has not occurred and the Company does not deliver the New Preferred Shares to the Holder, in accordance with Section 1 hereof, then, at the election of the Holder delivered in writing to the Company at any time after December 31, 2024, this Agreement shall be terminated and be null and void ab initio and the Exchange Note shall not be cancelled hereunder and shall remain outstanding as if this Agreement never existed.

15. **Conversion Procedures**. The form of Conversion Notice (as defined in the New Certificate of Designations) included in the New Preferred Shares sets forth the totality of the procedures required of the Holder in order to exercise the New Preferred Shares. No legal opinion or other information or instructions shall be required of the Holder to exercise the New Preferred Shares. The Company shall honor exercises of the New Preferred Shares and shall deliver the New Conversion Shares in accordance with the terms, conditions and time periods set forth in the New Preferred Shares. Without limiting the preceding sentences, no ink-original Conversion Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Conversion Notice form be required in order to exercise the New Preferred Shares.

16. **Reservation of Shares**. So long as any portion of the New Preferred Shares remains outstanding, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than 100% of the sum of the maximum number of New Conversion Shares issuable upon conversion of the New Preferred Shares then outstanding assuming for purposes hereof that (x) the New Preferred Shares are convertible at the Floor Price (as defined the New Certificate of Designations) then in effect, (y) dividends on the New Preferred Shares shall accrue through September 30, 2026 and will be converted in shares of Common Stock at a dividend conversion price equal to the Floor Price then in effect, and (z) any such conversion shall not take into account any limitations on the conversion of the New Preferred Shares set forth in the New Certificate of Designations) (collectively, the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 16 be reduced other than proportionally in connection with any conversion of the New Preferred Shares. If at any time the number of shares of Common Stock authorized and reserved for issuance by the Company is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of shareholders to authorize additional shares to meet the Company's obligations pursuant to the Exchange Documents, in the case of an insufficient number of authorized shares, obtain shareholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the

Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

17. **Pledge of New Securities**. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the New Securities may be pledged by an Holder in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the New Securities, subject to the requirements of applicable laws. The pledge of New Securities shall not be deemed to be a transfer, sale or assignment of the New Securities hereunder, and no Holder effecting a pledge of New Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Exchange Document, including, without limitation, Section 6(f) hereof; provided that an Holder and its pledgee shall be required to comply with the provisions of Section 6(f) hereof in order to effect a sale, transfer or assignment of New Securities to such pledgee. The Company hereby agrees to execute and deliver such documentation as a pledgee of the New Securities may reasonably request in connection with a pledge of the New Securities to such pledgee by the Holder.

18. **Stockholder Approval**. The Company shall either (x) if the Company shall have obtained the prior written consent of the requisite stockholders (the "**Stockholder Consent**") to obtain the Stockholder Approval (as defined below), inform the stockholders of the Company of the receipt of the Stockholder Consent by preparing and filing with the SEC, as promptly as practicable after the date hereof, but prior to the forty-fifth (45th) calendar day after the date hereof (or, if such filing is delayed by a court or regulatory agency, in no event later than ninety (90) calendar days after the date hereof), an information statement with respect thereto or (y) provide each stockholder entitled to vote at a special meeting of stockholders of the Company (the "**Stockholder Meeting**"), which shall be promptly called and held not later than December 31, 2024 (the "**Stockholder Meeting Deadline**"), a proxy statement, in each case, in a form reasonably acceptable to the Holders and Kelley Drye & Warren LLP, at the expense of the Company, with the Company obligated to reimburse the expenses of Kelley Drye & Warren LLP incurred in connection therewith in an amount not exceed $5,000. The proxy statement, if any, shall solicit each of the Company's stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions ("**Stockholder Resolutions**") providing for the issuance of all of the New Securities in compliance with the rules and regulations of the Nasdaq Capital Market (without regard to any limitations on conversion set forth in the New Certificate of Designations) (such affirmative approval being referred to herein as the "**Stockholder Approval**", and the date such Stockholder Approval is obtained, the "**Stockholder Approval Date**"), and the Company shall use its reasonable best efforts to solicit its stockholders' approval of such resolutions and to cause the Board of Directors of the Company to recommend to the stockholders that they approve such resolutions. The Company shall be obligated to seek to obtain the Stockholder Approval by the Stockholder Meeting Deadline. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained on or prior to the Stockholder Meeting Deadline, the Company shall cause an additional Stockholder Meeting to be held on or prior to March 30, 2025. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained after such subsequent stockholder meetings, the Company shall cause an additional Stockholder Meeting to be held semi-annually thereafter until such Stockholder Approval is obtained.

19. **Holding Period**. For the purposes of Rule 144 and Section 4(a)(1) of the Securities Act (collectively, or such other similar statue, the "**Resale Exceptions**"), the Company acknowledges that the holding period of the New Preferred Shares (and upon conversion of the New Preferred Shares, the New Conversion Shares) may be tacked onto the holding period of the Exchange Note, and the Company agrees not to take a position contrary to this Section 19. The Company acknowledges and agrees that, subject to the Holder's representations and warranties contained in Section 4 of this Agreement, New Preferred Shares (and upon conversion of the New Preferred Shares, the New Conversion Shares) shall not be required to bear any restrictive legend and shall be freely transferable by the Holder pursuant to and in accordance with the Resale Exceptions, provided, for the avoidance of doubt, that the Holder shall not be an affiliate of the Company and shall not have been an affiliate during the 90 days preceding the date of any transfer.

20. **Further Assurances**. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

21. **Register; Transfer Agent Instructions; Legend**.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each Holder), a register for the New Preferred Shares in which the Company shall record the name and address of the Person in whose name the New Preferred Shares has been issued (including the name and address of each transferee), and the number of New Conversion Shares issuable upon conversion of the New Preferred Shares held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of the Holder or its legal representatives.

(b) Transfer Agent Instructions. On or prior to the date hereof, the Company shall issue irrevocable instructions to its transfer agent (the "**Transfer Agent**") and, prior to obtaining any subsequent transfer agent, the Company shall issue irrevocable instructions to any subsequent transfer agent, in each case, in a form acceptable to the Holder (the "**Irrevocable Transfer Agent Instructions**") to issue certificates or credit shares to the applicable balance accounts at the Depository Trust Company ("**DTC**"), registered in the name of the Holder or its respective nominee(s), for the New Conversion Shares in such amounts as specified from time to time by the Holder to the Company upon the conversion of the New Preferred Shares. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 21(b) will be given by the Company to its Transfer Agent with respect to the New Conversion Shares, and that the New Conversion Shares shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Exchange Documents. If the Holder effects a sale, assignment or transfer of the New Conversion Shares, subject to applicable laws, the Company shall permit the transfer and shall promptly instruct its Transfer Agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in

such name and in such denominations as specified by the Holder to effect such sale, transfer or assignment. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 21(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 21(b) that the Holder shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue each legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Transfer Agent as follows: (i) upon each conversion of the New Preferred Shares (unless such issuance is covered by a prior legal opinion previously delivered to the Transfer Agent), and (ii) on each date a registration statement with respect to the issuance or resale of any of the New Conversion Shares is declared effective by the SEC. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the issuance of such opinions or the removal of any legends on any of the New Conversion Shares shall be borne by the Company.

(c) Legends. The Holder understands that the New Preferred Shares have been issued (or will be issued in the case of the New Conversion Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth below, the New Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

> [NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(d) Removal of Legends. Certificates evidencing New Securities shall not be required to contain the legend set forth in Section 21(c) above or any other legend (i) while a registration statement covering the resale of such New Securities is effective under the 1933 Act, (ii) following any sale of such New Securities pursuant to the Resale Exceptions (assuming neither the transferor nor the transferee is an affiliate of the Company), (iii) if such New Securities are eligible to be sold, assigned or transferred under the Resale Exceptions (provided that the Holder provides the Company with reasonable assurances that such New Securities are eligible for sale, assignment or transfer under the Resale Exceptions which shall not include an opinion of Holder's counsel), (iv) in connection with a sale, assignment or other transfer (other than under the Resale Exceptions), provided that the Holder provides the Company with an opinion of counsel to the Holder, in a generally acceptable form, to the effect that such sale, assignment or transfer of the New Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable requirements of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing with respect to such New Securities, the Company shall no later than one (1) Trading Day (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date the Holder delivers such legended certificate representing such New Securities to the Company) following the delivery by the Holder to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such New Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from the Holder as may be required above in this Section 21(d), as directed by the Holder, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program and such New Securities are New Conversion Shares, credit the aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Company's transfer agent is not participating in the DTC Fast Automated Securities Transfer Program ("**FAST**"), issue and deliver (via reputable overnight courier) to the Holder, a certificate representing such New Securities that is free from all restrictive and other legends, registered in the name of the Holder or its designee (the date by which such credit is so required to be made to the balance account of the Holder's or the Holder's nominee with DTC or such certificate is required to be delivered to the Holder pursuant to the foregoing is referred to herein as the "**Required Delivery Date**", and the date such shares of Common Stock are actually delivered without restrictive legend to the Holder or the Holder's designee with DTC, as applicable, the "**Share Delivery Date**"). The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of New Securities or the removal of any legends with respect to any New Securities in accordance herewith.

(e) Failure to Timely Deliver; Buy-In. If the Company fails, for any reason or for no reason, to issue and deliver (or cause to be delivered) to the Holder (or its designee) by the Required Delivery Date, if the Transfer Agent is not participating in

FAST, a certificate for the number of New Conversion Shares to which the Holder is entitled and register such New Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST, to credit the balance account of the Holder or the Holder's designee with DTC for such number of New Conversion Shares submitted for legend removal by the Holder pursuant to Section 21(d) above (a "**Delivery Failure**"), then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each day after the Share Delivery Date and during such Delivery Failure an amount equal to 1% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Required Delivery Date and to which the Holder is entitled, and (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the date of the delivery by the Holder to the Company of the applicable New Conversion Shares and ending on the applicable Share Delivery Date. In addition to the foregoing, if on or prior to the Required Delivery Date if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, credit the balance account of the Holder or the Holder's designee with DTC for the number of shares of Common Stock to which the Holder submitted for legend removal by the Holder pursuant to Section 21(d) above, and if on or after such Trading Day the Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such exercise that the Holder is entitled to receive from the Company and has not received from the Company in connection with such Delivery Failure (a "**Buy-In**"), then the Company shall, within one (1) Trading Day after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any, for the shares of Common Stock so acquired) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit the Holder's balance account shall terminate and such shares shall be cancelled, or (ii) promptly honor its obligation to so deliver to the Holder a certificate or certificates or credit the balance account of the Holder or the Holder's designee with DTC representing such number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of New Conversion Shares that the Company was required to deliver to the Holder by the Required Delivery Date multiplied by (B) the lowest Closing Sale Price (as defined in the New Certificate of Designations) of the Common Stock on any Trading Day during the period commencing on the date of the delivery by the Holder to the Company of the applicable New Conversion Shares and ending on the date of such delivery and payment under this clause (ii). Nothing shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Delivery Failure, this Section 21(e) shall not apply to the

applicable Holder the extent the Company has already paid such amounts in full to the Holder with respect to such Delivery Failure pursuant to the analogous sections of the New Certificate of Designations.

(f) FAST Compliance. While the New Preferred Shares remain outstanding, the Company shall maintain a transfer agent that participates in the DTC Fast Automated Securities Transfer Program.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, Holder and the Company have executed this Agreement as of the date set forth on the signature page of the Holder below.

COMPANY:

NAUTICUS ROBOTICS, INC.

By:__
Name:
Title:

IN WITNESS WHEREOF, Holder and the Company have executed this Agreement as of this 4th of November, 2024.

HOLDER:

By:__
Name:
Title:

Date of Securities Purchase Agreement pursuant to which the Original Note was issued:

SPA Date: _____

Issue Date: _____

Outstanding Amount of Exchange Note:

_____*

Aggregate Number of New Preferred Shares:

_____*

- Subject to adjustment with respect to any change in the Outstanding Amount, whether as a result of any additional amounts that may become outstanding under the Exchange Note or any conversion of all, or any part, of the Exchange Note, as applicable, from and after the date hereof through the Closing Date

Exhibit A

Form of Certificate of Designations

CERTIFICATE OF DESIGNATIONS
OF RIGHTS AND PREFERENCES OF
SERIES A CONVERTIBLE PREFERRED STOCK
OF
NAUTICUS ROBOTICS, INC.

I, [_____], hereby certify that I am the [_____] and [_____] of Nauticus Robotics, Inc. (the "**Company**"), a corporation organized and existing under the Delaware General Corporation Law (the "**DGCL**"), and further do hereby certify:

That pursuant to the authority expressly conferred upon the Board of Directors of the Company (the "**Board**") by the Company's Certificate of Incorporation, as amended (the "**Certificate of Incorporation**"), and Section 151(g) of the DGCL, the Board on _____, 20___ adopted the following resolution determining it desirable and in the best interests of the Company and its stockholders for the Company to create a series of [ ] ([ ]) shares of preferred stock designated as "**Series A Convertible Preferred Stock**", none of which shares have been issued as of the date hereof, to be issued pursuant to the Exchange Agreement (as defined in below), in accordance with the terms of the Exchange Agreement:

RESOLVED, that pursuant to the authority vested in the Board, in accordance with the provisions of the Certificate of Incorporation, a series of preferred stock, par value $0.0001 per share, of the Company be and hereby is created pursuant to this certificate of designations (this "**Certificate of Designations**"), and that the designation and number of shares established pursuant hereto and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

TERMS OF SERIES A CONVERTIBLE PREFERRED STOCK

Designation and Number of Shares. There shall hereby be created and established a series of preferred stock of the Company designated as "Series A Convertible Preferred Stock" (the "**Series A Convertible Preferred Stock**"). The authorized number of shares of Series A Convertible Preferred Stock (the "**Preferred Shares**") shall be [ ] ([ ]) shares. Each Preferred Share shall have a par value of $0.0001 per share. Capitalized terms not defined herein shall have the meaning as set forth in Section 32 below.

Ranking. Except to the extent that the Required Holders expressly consent to the creation of Parity Stock (as defined below) or Senior Preferred Stock (as defined below) in accordance with Section 16, all shares of capital stock of the Company shall be junior in rank to all Preferred Shares with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (such junior stock is referred to herein collectively as "**Junior Stock**"). For the avoidance of doubt, the Preferred Shares will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (A) junior to the Senior Preferred Stock, (B) on parity with the Parity Stock and (C) senior to the

Junior Stock. The rights of all such shares of capital stock of the Company shall be subject to the rights, powers, preferences and privileges of the Preferred Shares. Without limiting any other provision of this Certificate of Designations, without the prior express consent of the Required Holders, voting separately as a single class, the Company shall not hereafter authorize or issue any additional or other shares of capital stock that is (i) of senior rank to the Preferred Shares in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (collectively, the "**Senior Preferred Stock**") (ii) of pari passu rank to the Preferred Shares in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (collectively, the "**Parity Stock**") or (iii) any Junior Stock having a maturity date or any other date requiring redemption or repayment of such shares of Junior Stock that is prior to the ninety-first calendar day after the date no Preferred Shares remain outstanding. In the event of the merger or consolidation of the Company with or into another corporation, the Preferred Shares shall maintain their relative rights, powers, designations, privileges and preferences provided for herein and no such merger or consolidation shall result inconsistent therewith.

I. DIVIDENDS. IN ADDITION TO SECTION 7, SECTION 8 AND/OR SECTION 15 BELOW, FROM AND AFTER THE FIRST DATE OF ISSUANCE OF ANY PREFERRED SHARES (THE "INITIAL ISSUANCE DATE"), EACH HOLDER OF A PREFERRED SHARE (EACH, A "HOLDER" AND COLLECTIVELY, THE "HOLDERS") SHALL BE ENTITLED TO RECEIVE DIVIDENDS ("DIVIDENDS"), WHICH DIVIDENDS SHALL BE COMPUTED ON THE BASIS OF A 360-DAY YEAR AND TWELVE 30-DAY MONTHS AND SHALL BE PAYABLE IN ARREARS ON THE FIRST TRADING DAY OF EACH FISCAL QUARTER (EACH, AN "DIVIDEND DATE") WITH THE FIRST DIVIDEND DATE BEING THE FIRST TRADING DAY OF THE INITIAL FISCAL QUARTER COMMENCING AFTER THE INITIAL ISSUANCE DATE.

A. Dividends shall be payable on each Dividend Date, to each record holder of Preferred Shares on the applicable Dividend Date, in shares of Common Stock ("**Dividend Shares**") so long as there has been no Equity Conditions Failure; provided however, that the Company may, at its option following notice to each Holder (or shall be required if an Equity Conditions Failure exists that is not waived in writing by the Required Holders), capitalize such Dividend by increasing the Stated Value of each Preferred Share on such Dividend Date ("**Capitalized Dividend**") or, if no Equity Conditions Failure exists, elect a combination of a Capitalized Dividend and a payment in Dividend Shares. The Company shall deliver a written notice (each, an "**Dividend Election Notice**") to each Holder of the Preferred Shares on or prior to the tenth (10^{th}) Trading Day immediately prior to the applicable Dividend Date (each, an "**Dividend Notice Due Date**") (the date such notice is delivered to all of the Holders, the "**Dividend Notice Date**") which notice (i) either (A) confirms that Dividend to be paid on such Dividend Date shall be paid entirely in Dividend Shares or (B) elects to effect a Capitalized Dividend or a combination of Capitalized Dividend and a payment in Dividend Shares and specifies the amount of Dividend that shall be a Capitalized

Dividend and the amount of Dividend, if any, that shall be paid in Dividend Shares and (ii) certifies that there has been no Equity Conditions Failure. If an Equity Conditions Failure has occurred as of the Dividend Notice Date, then unless the Company has elected to effect a Capitalized Dividend, the Dividend Election Notice shall indicate that unless such applicable Holder waives the Equity Conditions Failure, the Dividend shall be effected as a Capitalized Dividend. Notwithstanding anything herein to the contrary, if no Equity Conditions Failure has occurred as of the Dividend Notice Date, but an Equity Conditions Failure occurs at any time prior to the Dividend Date, (A) the Company shall provide each Holder a subsequent notice to that effect and (B) unless such applicable Holder waives the Equity Conditions Failure, the Dividend shall be paid to such Holder in cash. Dividend to be paid on a Dividend Date in Dividend Shares shall be paid in a number of fully paid and nonassessable shares (rounded to the nearest whole share) of Common Stock equal to the quotient of (1) the amount of Dividend payable on such Dividend Date less any Capitalized Dividend and (2) the Dividend Conversion Price in effect on the applicable Dividend Date.

When any Dividend Shares are to be paid on a Dividend Date to a Holder, the Company shall (i) (A) provided that the Company's transfer agent (the "**Transfer Agent**") is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of Dividend Shares to which such Holder shall be entitled to such Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (B) if the Transfer Agent is not participating in FAST, issue and deliver on the applicable Dividend Date, to the address set forth in the register maintained by the Company for such purpose pursuant to the Exchange Agreement or to such address as specified by such Holder in writing to the Company at least two (2) Business Days prior to the applicable Dividend Date, a certificate, registered in the name of such Holder or its designee, for the number of Dividend Shares to which such Holder shall be entitled and (ii) with respect to each Dividend Date, increase the Stated Value of the Preferred Shares by the amount of any Capitalized Dividend.

Prior to the payment of Dividends on a Dividend Date, Dividends on the Preferred Shares shall accrue at the Dividend Rate and be payable by way of inclusion of the Dividends in the Conversion Amount on each Conversion Date in accordance with Section 4(b) or upon any redemption in accordance with Section 9 or upon any required payment upon any Bankruptcy Triggering Event. From and after the occurrence and during the continuance of any Triggering Event, the Dividend Rate in effect with respect to such determination shall automatically be increased to the lesser of 18% per annum or the maximum rate permitted under applicable law (the "**Default Rate**"). In the event that such Triggering Event is subsequently cured (and no other Triggering Event then exists (including, without limitation, for the Company's failure to pay such Dividends at the Default Rate on the applicable Dividend Date)), the adjustment referred to in the preceding sentence shall cease to be effective as of the calendar day immediately following the date of such cure; provided that the Dividends as calculated and unpaid at

such increased rate during the continuance of such Triggering Event shall continue to apply to the extent relating to the days after the occurrence of such Triggering Event through and including the date of such cure of such Triggering Event.

Conversion. At any time after the Initial Issuance Date, each Preferred Share shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (the "**Conversion Shares**"), on the terms and conditions set forth in this Section 4.

Holder's Conversion Right. Subject to the provisions of Section 4(d), at any time or times on or after the Initial Issuance Date, each Holder shall be entitled to convert any portion of the outstanding Preferred Shares held by such Holder into validly issued, fully paid and non-assessable Conversion Shares in accordance with Section 4(c) at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Preferred Shares.

Conversion Rate. Except as otherwise provided herein, the number of Conversion Shares issuable upon conversion of any Preferred Share pursuant to this Section 4 shall be determined by dividing (x) the Conversion Amount of such Preferred Share by (y) the Conversion Price (the "**Conversion Rate**").

For purposes of this Certificate of Designations, the term "**Conversion Amount**" means, with respect to each Preferred Share, as of the applicable date of determination, 120% of the sum of (1) the Stated Value thereof plus (2) any Additional Amount thereon as of such date of determination plus (3) any other amounts thereon owed to such Holder, pursuant to this Certificate of Designations or any other Transaction Document.

For purposes of this Certificate of Designations, the term "**Conversion Price**" means, with respect to each Preferred Share, as of any Conversion Date or other date of determination, $1.230, subject to adjustment as provided herein.

Mechanics of Conversion. The conversion of each Preferred Share shall be conducted in the following manner:

Optional Conversion. To convert one or more Preferred Shares into Conversion Shares on any date (a "**Conversion Date**"), a Holder shall deliver (whether via electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion of the Preferred Share(s) subject to such conversion in the form attached hereto as **Exhibit I** (the "**Conversion Notice**") to the Company. If required by Section 4(c)(ii), within two (2)

Trading Days following a conversion of any such Preferred Shares as aforesaid, such Holder shall surrender to a nationally recognized overnight delivery service for delivery to the Company the original certificates, if any, representing the Preferred Shares (the "**Preferred Share Certificates**") so converted as aforesaid (or an indemnification undertaking with respect to the Preferred Shares in the case of its loss, theft or destruction as contemplated by Section 18(b)). On the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment of confirmation and representation as to whether such shares of Common Stock may then be resold pursuant to Rule 144 or Section 4(a)(1) of the 1933 Act or an effective and available registration statement, in the form attached hereto as **Exhibit II**, of receipt of such Conversion Notice to such Holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms set forth herein. On or before the First (1st) Trading Day following each date on which the Company has received a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such Conversion Shares issuable pursuant to such Conversion Notice) (the "**Share Delivery Deadline**"), the Company shall (1) provided that the Transfer Agent is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**") and such shares of Common Stock (i) (A) may then be sold by the applicable Holder pursuant to an available and effective registration statement and (B) such Holder provides such documentation or other information evidencing the sale of the shares of Common Stock as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request (which, for the avoidance of doubt, shall not include the requirement of a medallion guarantee or a legal opinion) or (ii) may be sold by such Holder pursuant to Rule 144 of the 1933 Act, as applicable, including the requirements under Rule 144(i) or Section 4(a)(1) of the 1933 Act (the "**Resale Eligibility Conditions**"), credit such aggregate number of Conversion Shares to which such Holder shall be entitled pursuant to such conversion to such Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, upon the request of such Holder, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such Holder or its designee, for the number of Conversion Shares to which such Holder shall be entitled. If the number of Preferred Shares represented by the Preferred Share Certificate(s) submitted for conversion

pursuant to Section 4(c)(ii) is greater than the number of Preferred Shares being converted, then the Company shall, as soon as practicable and in no event later than two (2) Trading Days after receipt of the Preferred Share Certificate(s) and at its own expense, issue and mail to such Holder (or its designee) by overnight courier service a new Preferred Share Certificate or a new Book-Entry (in either case, in accordance with Section 18(d)) representing the number of Preferred Shares not converted. The Person or Persons entitled to receive the Conversion Shares issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such Conversion Shares on the Conversion Date; provided, that such Person shall be deemed to have waived any voting rights of any such Conversion Shares that may arise during the period commencing on such Conversion Date, through, and including, such applicable Share Delivery Deadline, as necessary, such that the aggregate voting rights of any Common Stock (including such Conversion Shares) beneficially owned by such Person and/or any of its Attribution Parties, collectively, on any such date of determination shall not exceed the Maximum Percentage (as defined below) as a result of any such conversion of such applicable Preferred Shares with respect thereto. Notwithstanding the foregoing, if a Holder delivers a Conversion Notice to the Company prior to the date of issuance of Preferred Shares to such Holder, whereby such Holder elects to convert such Preferred Shares pursuant to such Conversion Notice, the Share Delivery Deadline with respect to any such Conversion Notice shall be the later of (x) the date of issuance of such Preferred Shares and (y) the first (1st) Trading Day after the date of such Conversion Notice.

Company's Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, to issue and deliver to such Holder (or its designee) a certificate for the number of Conversion Shares to which such Holder is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, to credit such Holder's or its designee's balance account with DTC for such number of Conversion Shares to which such Holder is entitled upon such Holder's conversion of any Conversion Amount (as the case may be) (each, a "**Conversion Failure**"), and if on or after such Share Delivery Deadline such Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of Conversion Shares issuable upon such conversion that such Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure (a "**Buy-In**"), then, in addition to all other remedies available to such Holder, the Company shall, within one (1) Business Day after receipt of

such Holder's request and in such Holder's discretion, either: (I) pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such Conversion Shares) or credit to the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such Conversion Shares) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such Holder a certificate or certificates representing such Conversion Shares or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II) (each, a "**Buy-In Payment Amount**"). In addition to the foregoing, if on or prior to the Share Delivery Deadline the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, the Company shall fail to issue and deliver to such Holder (or its designee) a certificate and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in the FAST and the Resale Eligibility Conditions are satisfied, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (ii) below, then, in addition to all other remedies available to such Holder, (X) the Company shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Conversion Amount of the Preferred Shares being converted, $10 per Trading Day (increasing to $20 per Trading Day on the second Trading Day and increasing to $40 per Trading Day on the fifth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Deadline until such Conversion Shares are delivered or Holder rescinds such conversion and (Y) such Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Preferred Shares that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 4(c)(ii) or otherwise. Nothing herein shall limit a

Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Conversion Shares (or to electronically deliver such Conversion Shares) upon the conversion of the Preferred Shares as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Conversion Failure, this Section 4(c)(ii) shall not apply to a Holder to the extent the Company has already paid such amounts in full to such Holder with respect to such Conversion Failure pursuant to the analogous sections of the Exchange Agreement.

Registration; Book-Entry. At the time of issuance of any Preferred Shares hereunder, the applicable Holder may, by written request (including by electronic-mail) to the Company, elect to receive such Preferred Shares in the form of one or more Preferred Share Certificates or in Book-Entry form. The Company (or the Transfer Agent, as custodian for the Preferred Shares) shall maintain a register (the "**Register**") for the recordation of the names and addresses of the Holders of each Preferred Share and the Stated Value of the Preferred Shares and whether the Preferred Shares are held by such Holder in Preferred Share Certificates or in Book-Entry form (the "**Registered Preferred Shares**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and each Holder of the Preferred Shares shall treat each Person whose name is recorded in the Register as the owner of a Preferred Share for all purposes (including, without limitation, the right to receive payments and Dividends hereunder) notwithstanding notice to the contrary. A Registered Preferred Share may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Preferred Shares by such Holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Preferred Shares in the same aggregate Stated Value as the Stated Value of the surrendered Registered Preferred Shares to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of such Registered Preferred Shares within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 4, following conversion of any Preferred Shares in accordance with the terms hereof, the applicable Holder shall not be required to physically surrender such Preferred Shares held in the form of a Preferred Share Certificate to the Company unless (A) the full or remaining number of Preferred Shares represented by the applicable Preferred Share Certificate are being converted (in which event such certificate(s) shall be delivered to the Company as contemplated by this Section 4(c)(ii)) or (B) such Holder has provided the Company with prior written notice

(which notice may be included in a Conversion Notice) requesting reissuance of Preferred Shares upon physical surrender of the applicable Preferred Share Certificate. Each Holder and the Company shall maintain records showing the Stated Value and Dividends converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to such Holder and the Company, so as not to require physical surrender of a Preferred Share Certificate upon conversion. If the Company does not update the Register to record such Stated Value and Dividends converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within one (1) Business Day of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, the records of the Company establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each Preferred Share Certificate shall bear the following legend:

> ANY TRANSFEREE OR ASSIGNEE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 4(c)(ii) THEREOF. THE NUMBER OF SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 4(c)(ii) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

1. Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Preferred Shares submitted for conversion, the Company shall convert from each Holder electing to

have Preferred Shares converted on such date a pro rata amount of such Holder's Preferred Shares submitted for conversion on such date based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the aggregate number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of Conversion Shares issuable to a Holder in connection with a conversion of Preferred Shares, the Company shall issue to such Holder the number of Conversion Shares not in dispute and resolve such dispute in accordance with Section 23. If a Conversion Notice delivered to the Company would result in a breach of Section 4(d) below, and the applicable Holder does not elect in writing to withdraw, in whole, such Conversion Notice, the Company shall hold such Conversion Notice in abeyance until such time as such Conversion Notice may be satisfied without violating Section 4(d) below (with such calculations thereunder made as of the date such Conversion Notice was initially delivered to the Company).

B. Limitation on Beneficial Ownership

1. Beneficial Ownership. The Company shall not effect the conversion of any of the Preferred Shares held by a Holder, and such Holder shall not have the right to convert any of the Preferred Shares held by such Holder pursuant to the terms and conditions of this Certificate of Designations 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, such Holder together with the other Attribution Parties collectively would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the 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 such Holder and the other Attribution Parties shall include the number of shares of Common Stock held by such Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Preferred Shares beneficially owned by such Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes, convertible preferred stock or warrants, including the Preferred Shares) beneficially owned by such Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 4(d). For purposes of this Section 4(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For the avoidance of doubt, the calculation of the Maximum Percentage shall take into account the concurrent exercise and/or conversion, as applicable, of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Holder and/or any other

Attribution Party, as applicable. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Preferred Shares 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 SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from a 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 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 4(d), to exceed the Maximum Percentage, such Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including such Preferred Shares, by such Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Preferred Shares results in such Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which such Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and 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 Holder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage of such Holder 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 the other Attribution Parties and not to any other Holder that is not an Attribution Party of such Holder. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of

this Certificate of Designations in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert such Preferred Shares 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 not be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(d) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 4(d) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be amended, modified or waived and shall apply to a successor holder of such Preferred Shares. Notwithstanding the foregoing, this Section 4(d) shall not apply to any Preferred Shares held by Material Impact Fund II, L.P. ("**Material Impact**") and the other Attribution Parties of Material Impact, as applicable.

2. [Intentionally omitted.][Principal Market Regulation. The Company shall not issue any shares of Common Stock upon conversion of any Preferred Shares or otherwise pursuant to the terms of this Certificate of Designations if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of the Preferred Shares without breaching the Company's obligations under the rules and regulations the listing rules of the Principal Market (the maximum number of shares of Common Stock which may be issued without violating such rules and regulations, the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company obtains the approval of its stockholders as required by the applicable rules and regulations of the Principal Market for issuances of shares of Common Stock in excess of such amount. Until such approval is obtained, no Holder shall be issued in the aggregate, upon conversion of any Preferred Shares, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Initial Issuance Date multiplied by (ii) the quotient of (1) the aggregate number of Preferred Shares issued to such Holder on the Initial Issuance Date, divided by (2) the aggregate number of shares of Preferred Shares and Parity Stock outstanding as of the Initial Issuance Date (with respect to each Holder, the "**Exchange Cap Allocation**"). In the event that any Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, the transferee shall be allocated a pro rata portion of such Holder's Exchange Cap Allocation with respect to such portion of such Preferred Shares so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion in full of a Holder's Preferred Shares, the difference (if any) between such Holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such Holder upon such

Holder's conversion in full of such Preferred Shares shall be allocated, to the remaining holders of Preferred Shares and Parity Stock on a pro rata basis in proportion to the shares of Common Stock underlying the shares of preferred stock of the Company then held by each such holder of Preferred Shares and/or Parity Stock, as applicable.][1]

Right of Alternate Conversion.

3. Alternate Optional Conversion. Subject to Section 4(d), at any time, at the option of any Holder, such Holder may convert (each, an "**Alternate Optional Conversion**", and the date of such Alternate Optional Conversion, an "**Alternate Optional Conversion Date**") all, or any number, of Preferred Shares into shares of Common Stock (such aggregate Conversion Amount of the Preferred Shares to be converted pursuant to this Section 4(e)(i), the "**Alternate Optional Conversion Amount**") at the Alternate Conversion Price (each, an "**Alternate Optional Conversion**").

4. Alternate Conversion Upon a Triggering Event. Subject to Section 4(d), at any time after the earlier of a Holder's receipt of a Triggering Event Notice (as defined below) and such Holder becoming aware of a Triggering Event (such earlier date, the "**Alternate Conversion Right Commencement Date**") and ending (such ending date, the "**Alternate Conversion Right Expiration Date**", and each such period, an "**Alternate Conversion Right Period**") on the twentieth (20th) Trading Day after the later of (x) the date such Triggering Event is cured and (y) such Holder's receipt of a Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the reasonable opinion of the Company, such Triggering Event is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Triggering Event and (III) a certification as to the date the Triggering Event occurred and, if cured on or prior to the date of such Triggering Event Notice, the applicable Alternate Conversion Right Expiration Date, such Holder may, at such Holder's option, by delivery of a Conversion Notice to the Company (the date of any such Conversion Notice, each an "**Triggering Event Conversion Date**" and together with each Alternate Optional Conversion Date, each, an "**Alternate Conversion Date**"), convert all, or any number of Preferred Shares (such Conversion Amount of the Preferred Shares to be converted pursuant to this Section 4(e)(ii), the "**Triggering Event Conversion Amount**" and together with each Alternate Optional Conversion Amount, each, an "**Alternate Conversion Amount**") into shares of Common Stock at the Alternate Conversion Price (each, a "**Triggering Event Conversion**", and together with each Alternate Optional Conversion, each an "**Optional Conversion**").

[1] Insert Principal Market Regulation only if the Stockholder Approval is waived prior to the Closing Date.

5. Mechanics of Alternate Conversion. On any Alternate Conversion Date, a Holder may voluntarily convert any number of Preferred Shares held by such Holder pursuant to Section 4(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and, solely with respect to the calculation of the number of shares of Common Stock issuable upon conversion of any Conversion Amount of Preferred Shares in a Triggering Event Conversion, with "Redemption Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate in Section 4(b) above with respect to such Triggering Event Conversion) by designating in the Conversion Notice delivered pursuant to this Section 4(e) of this Certificate of Designations that such Holder is electing to use the Alternate Conversion Price for such conversion; provided that in the event of the Conversion Floor Price Condition, on the applicable Alternate Conversion Date the Stated Value of the remaining Preferred Shares of such Holder shall automatically increase, pro rata, by the applicable Alternate Conversion Floor Amount or, at the Company's option, the Company shall deliver the applicable Alternate Conversion Floor Amount to such applicable Holder on the applicable Alternate Conversion Date. Notwithstanding anything to the contrary in this Section 4(e), but subject to Section 4(d), until the Company delivers to such Holder the shares of Common Stock to which such Holder is entitled pursuant to the applicable Alternate Conversion of such Holder's Preferred Shares, such Preferred Shares may be converted by such Holder into shares of Common Stock pursuant to Section 4(c) without regard to this Section 4(e). In the event of an Alternate Conversion pursuant to this Section 4(e) of all, or any portion, of any Preferred Shares of a Holder, such Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for such Holder. Accordingly, any redemption premium due under this Section 4(e)(iii), together the Alternate Conversion Price used in such Alternate Conversion, as applicable, is intended by the parties to be, and shall be deemed, a reasonable estimate of, such Holder's actual loss of its investment opportunity and not as a penalty.

Triggering Events.

General. Unless waived by the Holder, each of the following events shall constitute a "**Triggering Event**" and each of the events in clauses 5(a)(viii), 5(a)(ix), and 5(a)(x), shall constitute a "**Bankruptcy Triggering Event**":

the suspension from trading or the failure of the Common Stock to be trading or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days or the delisting, removal or withdrawal, as applicable, of registration of the Common Stock under the 1934 Act with respect to a going-private transaction;

the Company's (A) failure to cure a Conversion Failure by delivery of the required number of shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or exercise date (as the case may be) or (B) notice, written or oral, to any holder of Preferred Shares, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Preferred Shares into shares of Common Stock that is requested in accordance with the provisions of this Certificate of Designations, other than pursuant to Section 4(d) hereof;

except to the extent the Company is in compliance with Section 11(b) below, at any time following the tenth (10th) consecutive day that a Holder's Authorized Share Allocation (as defined in Section 11(a) below) is less than 100% of the number of shares of Common Stock that such Holder would be entitled to receive upon a conversion, in full, of all of the Preferred Shares then held by such Holder (assuming for purposes hereof that (x) the Preferred Shares are convertible at the Floor Price then in effect, (y) dividends on the Preferred Shares shall accrue through September 30, 2026 and will be converted in shares of Common Stock at a dividend conversion price equal to the Floor Price then in effect, and (z) any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth herein);

subject to the provisions of Section 170 of the DGCL, the Board fails to declare any Dividend to be capitalized or paid in accordance with Section 3;

the Company's failure to pay to any Holder any Dividend when required to be paid hereunder (whether or not declared by the Board) or any other amount when and as due under this Certificate of Designations (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder), the Exchange Agreement or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby (in each case, whether or not permitted pursuant to the DGCL), except, in the case of a failure to pay Dividends when and as due, in each such case only if such failure remains uncured for a period of at least five (5) Trading Days;

the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the applicable Holder upon conversion or exercise (as the case may be) of any New Securities acquired by such Holder under the Transaction Documents as and when required by such New Securities or the Exchange Agreement, as

applicable, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) days;

the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $500,000 of Indebtedness (as defined in the Exchange Agreement) of the Company or any of its Subsidiaries;

bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as

properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

a final judgment or judgments for the payment of money aggregating in excess of $1,000,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the $1,000,000 amount set forth above so long as the Company provides each Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to each Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

the Company and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of $1,000,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of $1,000,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial

condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate;

other than as specifically set forth in another clause of this Section 5(a), the Company or any Subsidiary breaches 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) or any covenant or other term or condition of 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 two (2) consecutive Trading Days;

a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company as to whether any Triggering Event has occurred;

any Preferred Shares remain outstanding on or after September 30, 2026;

any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13 of this Certificate of Designations;

the electronic transfer by the Company of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a "chill";

any Change of Control occurs without the prior written consent of the Required Holders;

any Material Adverse Effect (as defined in the Exchange Agreement) occurs; or

any provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Company, or the validity or enforceability thereof shall be contested, directly or indirectly, by the Company or any Subsidiary, or a proceeding shall be commenced by the Company or any Subsidiary or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof or the Company or any of its Subsidiaries shall deny in writing that it has any liability or obligation purported to be created under one or more Transaction Documents.

Notice of a Triggering Event. Upon the occurrence of a Triggering Event with respect to the Preferred Shares, the Company shall within two (2) Business Days deliver

written notice thereof via electronic mail and overnight courier (with next day delivery specified) (a "**Triggering Event Notice**") to each Holder.

Mandatory Redemption upon Bankruptcy Triggering Event. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Triggering Event, the Company shall immediately redeem, in cash, each of the Preferred Shares then outstanding at a redemption price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Required Premium and (ii) the product of (X) the Conversion Rate (calculated using the lowest Alternate Conversion Price during the period commencing on the 20th Trading Day immediately preceding such public announcement and ending on the date the Company makes the entire redemption payment pursuant to this Section 5(c)) with respect to the Conversion Amount in effect immediately following the date of initial public announcement (or public filing of bankruptcy documents, as applicable) of such Bankruptcy Triggering Event multiplied by (Y) the product of (1) the Required Premium multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Bankruptcy Triggering Event and ending on the date the Company makes the entire payment required to be made under this Section 5(c), without the requirement for any notice or demand or other action by any Holder or any other person or entity, provided that a Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Triggering Event, in whole or in part, and any such waiver shall not affect any other rights of such Holder or any other Holder hereunder, including any other rights in respect of such Bankruptcy Triggering Event or any right to conversion (or Alternate Conversion), as applicable.

Rights Upon Fundamental Transactions.

Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents in accordance with the provisions of this Section 6(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders, including agreements to deliver to each holder of Preferred Shares in exchange for such Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designations, including, without limitation, having a stated value and dividend rate equal to the stated value and dividend rate of the Preferred Shares held by the Holders and having similar ranking to the Preferred Shares, and reasonably satisfactory to the Required Holders. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the

Company under this Certificate of Designations and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. In addition to the foregoing, upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to each Holder confirmation that there shall be issued upon conversion or redemption of the Preferred Shares at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 7 and 15, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Preferred Shares prior to such Fundamental Transaction, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity) which each Holder would have been entitled to receive upon the happening of such Fundamental Transaction had all the Preferred Shares held by each Holder been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designations), as adjusted in accordance with the provisions of this Certificate of Designations. Notwithstanding the foregoing, such Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 6(a) to permit the Fundamental Transaction without the assumption of the Preferred Shares. The provisions of this Section 6 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares.

Notice of a Change of Control; Change of Control Election Notice. No sooner than the earlier of (x) twenty (20) Trading Days prior to the consummation of a Change of Control or (y) the public announcement of the entry into an agreement with respect to a Change of Control, nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), the Company shall deliver written notice thereof via electronic mail and overnight courier to each Holder (a "**Change of Control Notice**"). At any time during the period beginning after a Holder's receipt of a Change of Control Notice or such Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to such Holder in accordance with the immediately preceding sentence (as applicable) and ending on twenty (20) Trading Days after the later of (A) the date of consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice or (C) the date of the announcement of such Change of Control, such Holder may require, by delivering written notice thereof ("**Change of Control Election Notice**") to the Company (which Change of Control Election Notice shall indicate the number of Preferred Shares subject to such election), to have the Company exchange such Holder's Preferred Shares designated in such Change of Control Election Notice for consideration equal to the Change of Control Election Price (as defined below), to be satisfied at the Company's election (such election to pay in cash or by delivery of the Rights (as defined below), a "**Consideration Election**"), in either (I) rights (with a beneficial ownership limitation in the form of Section 4(d) hereof, *mutatis mutandis*) (collectively, the "**Rights**"), convertible in whole, or in part, at any time, without the requirement to pay any additional consideration, at the option of the

Required Holders, into such Corporate Event Consideration (as defined below) applicable to such Change of Control equal in value to the Change of Control Election Price (as determined with the fair market value of the aggregate number of Successor Shares (as defined below) issuable upon conversion of the Rights to be determined in increments of 10% (or such greater percentage as the applicable Holder may notify the Company from time to time) of the portion of the Change of Control Election Price attributable to such Successor Shares (the "**Successor Share Value Increment**"), with the aggregate number of Successor Shares issuable upon exercise of the Rights with respect to the first Successor Share Value Increment determined based on 70% of the VWAP of the Successor Shares on the date the Rights are issued and on each of the nine (9) subsequent Trading Days, in each case, the aggregate number of additional Successor Shares issuable upon exercise of the Rights shall be determined based upon a Successor Share Value Increment at 70% of the VWAP of the Successor Shares in effect for such corresponding Trading Day (such ten (10) Trading Day period commencing on, and including, the date the Rights are issued, the "**Rights Measuring Period**")) or (II) in cash; provided, that the Company shall not consummate a Change of Control if the Corporate Event Consideration includes capital stock or other equity interest (the "**Successor Shares**") either in an entity that is not listed on an Eligible Market or an entity in which the daily share volume for the applicable Successor Shares for each of the twenty (20) Trading Days prior to the date of consummation of such Change of Control is less than the aggregate number of Successor Shares issuable to all Holders upon conversion in full of the applicable Rights (without regard to any limitations on conversion therein, assuming the exercise in full of the Rights on the date of issuance of the Rights and assuming the VWAP of the Successor Shares for each Trading Day in the Rights Measuring Period is the VWAP on the Trading Day ended immediately prior to the time of consummation of the Change of Control). The Company shall give each Holder written notice of each Consideration Election at least twenty (20) Trading Days prior to the time of consummation of such Change of Control. Payment of such amounts or delivery of the Rights, as applicable, shall be made by the Company (or at the Company's direction) to each Holder on the later of (x) the second (2nd) Trading Day after the date of such request and (y) the date of consummation of such Change of Control (or, with respect to any Right, if applicable, such later time that holders of shares of Common Stock are initially entitled to receive Corporate Event Consideration with respect to the shares of Common Stock of such holder). Any Corporate Event Consideration included in the Rights, if any, pursuant to this Section 6(b) is *pari passu* with the Corporate Event Consideration to be paid to holders of shares of Common Stock and the Company shall not permit a payment of any Corporate Event Consideration to the holders of shares of Common Stock without on or prior to such time delivering the Right to the Holders in accordance herewith. Cash payments, if any, required by this Section 6(b) shall have priority to payments to all other stockholders of the Company in connection with such Change of Control. Notwithstanding anything to the contrary in this Section 6(b), but subject to Section 4(d), until the applicable Change of Control Election Price is paid in full to the applicable Holder in cash or Corporate Event Consideration in accordance

herewith, the Preferred Shares submitted by such Holder for exchange or payment, as applicable, under this Section 6(b) may be converted, in whole or in part, by such Holder into Common Stock pursuant to Section 4 or in the event the Conversion Date is after the consummation of such Change of Control, stock or equity interests of the Successor Entity substantially equivalent to the Company's shares of Common Stock pursuant to Section 6(a). In the event of the Company's repayment or exchange, as applicable, of any of the Preferred Shares under this Section 6(b), such Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for a Holder. Accordingly, any Required Premium due under this Section 6(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of such Holder's actual loss of its investment opportunity and not as a penalty. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time a Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of such Holder delivered in writing to the Company, the applicable redemption price hereunder shall be increased by the amount of such cash payment owed to such Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document.

Rights Upon Issuance of Purchase Rights and Other Corporate Events.

Purchase Rights. In addition to any adjustments pursuant to Section 8 and Section 15 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose that all the Preferred Shares were converted at the Alternate Conversion Price as of the applicable record date) held by such Holder immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights; provided, however, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to such extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance,

if applicable) for the benefit of such Holder until such time or times, if ever, as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation.

Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that each Holder will thereafter have the right, at such Holder's option, to receive upon a conversion of all the Preferred Shares held by such Holder (i) such securities or other assets (the "**Corporate Event Consideration**") to which such Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by such Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares set forth in this Certificate of Designations) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as such Holder would have been entitled to receive had the Preferred Shares held by such Holder initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate of an Alternate Conversion. Provision made pursuant the preceding sentence shall be in a form and substance reasonably satisfactory to the Required Holders. The provisions of this Section 7 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares set forth in this Certificate of Designations.

Rights Upon Issuance of Other Securities.

C. Adjustment of Conversion Price upon Issuance of Common Stock. If and whenever on or after the Exchange Date the Company grants, issues or sells (or enters into any agreement to grant, issue or sell), or in accordance with this Section 8(a) is deemed to have granted, issued or sold, any shares of Common Stock (including the granting, issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities granted, issued or sold or deemed to have been granted, issued or sold) for a consideration per share (the "**New Issuance Price**") less than a price equal to the Conversion Price in effect immediately prior to such granting, issuance or sale or deemed granting, issuance or sale (such

Conversion Price then in effect is referred to herein as the "**Applicable Price**") (the foregoing a "**Dilutive Issuance**"), then, immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Conversion Price and the New Issuance Price under this Section 8(a)), the following shall be applicable:

1. Issuance of Options. If the Company in any manner grants, issues or sells (or enters into any agreement to grant, issue or sell) any Options and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting, issuance or sale of such Option for such price per share. For purposes of this Section 8(a)(i), the "lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof, minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration (including, without limitation, consideration consisting of cash, debt forgiveness, assets or any other property) received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

2. Issuance of Convertible Securities. If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale (or the time of execution of such agreement to issue or sell, as applicable) of such Convertible Securities for such price per share. For the purposes of this Section 8(a)(ii), the "lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) with respect to any one share of Common Stock upon the issuance or sale (or the agreement to issue or sell, as applicable) of such Convertible Security plus the value of any other consideration received or receivable (including, without limitation, any consideration consisting of cash, debt forgiveness, assets or other property) by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 8(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

3. Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 8(a) below), the Conversion Price in effect at the time of such increase or decrease shall be

adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 8(a)(iii), if the terms of any Option or Convertible Security (including, without limitation, any Option or Convertible Security that was outstanding as of the Exchange Date) are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 8(a) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

4. Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Required Holder, the "**Primary Security**", and such Option and/or Convertible Security and/or Adjustment Right, the "**Secondary Securities**"), together comprising one integrated transaction (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Company either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing), the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of Common Stock was issued (or was deemed to be issued pursuant to Section 8(a)(i) or 8(a)(ii) above, as applicable) in such integrated transaction solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (I) the Black Scholes Consideration Value of each such Option, if any, (II) the fair market value (as determined by the Required Holder in good faith) or the Black Scholes Consideration Value, as applicable, of such Adjustment Right, if any, and (III) the fair market value (as determined by the Required Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 8(a)(iv). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Stock, Option or

Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Required Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10^{th}) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Required Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

5. Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

D. Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 7 or Section 15, if the Company at any time on or after the Exchange Date subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 7 or Section 15, if the Company at any time on or after the Exchange Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion

Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 8(a) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 8(a) occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

E. Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 8(c), **if the Company** in any manner issues or sells or enters into any agreement to issue or sell, any Common Stock, Options or Convertible Securities (excluding any Permitted ATM) (any such securities, "**Variable Price Securities**") after the Exchange Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to a fixed price, but exclusive of such formulations reflecting share splits, share combinations, and share dividends (each of the formulations for such variable price being herein referred to as, the "**Variable Price**"), the Company shall provide written notice thereof via electronic mail and overnight courier to each Holder on the date of such agreement and/or the issuance of such shares of Common Stock, Convertible Securities or Options, as applicable. From and after the date the Company enters into such agreement or issues any such Variable Price Securities, each Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of the Preferred Shares by designating in the Conversion Notice delivered upon any conversion of Preferred Shares that solely for purposes of such conversion such Holder is relying on the Variable Price rather than the Conversion Price then in effect. A Holder's election to rely on a Variable Price for a particular conversion of Preferred Shares shall not obligate such Holder to rely on a Variable Price for any future conversions of Preferred Shares.

F. Calculations. All calculations under this Section 8 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

G. Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time any Preferred Shares remain outstanding, with the prior written consent of the Required Holder, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board.

H. Adjustments. If on either of (i) the thirtieth (30th) calendar day after the Initial Issuance Date or (ii) the sixtieth (60th) calendar day after the Initial Issuance Date, as applicable, (each, an "**Adjustment Date**"), the Conversion Price then in effect is

greater than the greater of (A) the Floor Price and (B) the Market Price then in effect (the "**Adjustment Price**"), on the Adjustment Date the Conversion Price shall automatically lower to the Adjustment Price.

I. Exchange Right. Notwithstanding anything herein to the contrary, if the Company or any of its Subsidiaries consummates any Subsequent Placement (other than with respect to Excluded Securities), and a Holder elects in writing to the Company to participate in such Subsequent Placement, each such Holder may, at the option of such Holder as elected in writing to the Company, exchange all, or any part, of the Preferred Shares of such Holder into the securities in such Subsequent Placement (with the aggregate amount of such securities to be issued in such exchange equal to such aggregate amount of such securities with a purchase price valued at 125% of the Conversion Amount of the Preferred Shares delivered by such Holder in exchange therefor).

Redemption at the Company's Election. At any time, the Company shall have the right to redeem all, but not less than all, of the Preferred Shares then outstanding (the "**Company Optional Redemption Amount**") on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The Preferred Shares subject to redemption pursuant to this Section 9 shall be redeemed by the Company in cash at a price (the "**Company Optional Redemption Price**") equal to 125% of the greater of (i) the Conversion Amount being redeemed as of the Company Optional Redemption Date and (ii) the product of (1) the Conversion Rate with respect to the Conversion Amount being redeemed as of the Company Optional Redemption Date multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Company Optional Redemption Notice Date and ending on the Trading Day immediately prior to the date the Company makes the entire payment required to be made under this Section 9. The Company may exercise its right to require redemption under this Section 9 by delivering a written notice thereof by electronic mail and overnight courier to all, but not less than all, of the Holders (the "**Company Optional Redemption Notice**" and the date all of the Holders received such notice is referred to as the "**Company Optional Redemption Notice Date**"). Such Company Optional Redemption Notice shall be irrevocable; provided that the Company Optional Redemption Notice may be conditioned upon the consummation of a refinancing transaction or a Going Private Transaction. The Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**") which date shall not be less than ten (10) Trading Days nor more than twenty (20) Trading Days following the Company Optional Redemption Notice Date, and (y) state the aggregate Conversion Amount of the Preferred Shares which is being redeemed in such Company Optional Redemption from such Holder and all of the other Holders of the Preferred Shares pursuant to this Section 9 on the Company Optional Redemption Date. The Company shall deliver the applicable Company Optional Redemption Price to each Holder in cash on the applicable Company Optional Redemption Date. Notwithstanding anything herein to the contrary, at any time prior to the date the Company Optional Redemption Price is paid, in full, the Company Optional Redemption Amount may be converted, in whole or in part, by any

Holder into shares of Common Stock pursuant to Section 4. All Conversion Amounts converted by a Holder after the Company Optional Redemption Notice Date shall reduce the Company Optional Redemption Amount of the Preferred Shares of such Holder required to be redeemed on the Company Optional Redemption Date. In the event of the Company's redemption of any of the Preferred Shares under this Section 9, a Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for such Holder. Accordingly, any redemption premium due under this Section 9 is intended by the parties to be, and shall be deemed, a reasonable estimate of such Holder's actual loss of its investment opportunity and not as a penalty. For the avoidance of doubt, the Company shall have no right to effect a Company Optional Redemption if any Triggering Event has occurred and continuing, but any Triggering Event shall have no effect upon any Holder's right to convert Preferred Shares in its discretion. Notwithstanding the foregoing, with respect to a Going Private Transaction, the Company may effect a Company Optional Redemption under this Section 9, but with "Change of Control Election Price" replacing "Company Optional Redemption Price" for all purposes in this Section 9 in connection therewith.

Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders hereunder. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Preferred Shares above the Conversion Price then in effect, (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Preferred Shares and (c) shall, so long as any Preferred Shares are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Preferred Shares then outstanding (without regard to any limitations on conversion contained herein). Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Initial Issuance Date, each Holder is not permitted to convert such Holder's Preferred Shares in full for any reason (other than pursuant to restrictions set forth in Section 4(d) hereof), the Company shall use its best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to effect such conversion into shares of Common Stock.

Authorized Shares.

Reservation. So long as any Preferred Shares remain outstanding, the Company shall at all times reserve at least 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion, including without limitation, Alternate Conversions, of all of the Preferred Shares then outstanding (assuming for purposes hereof that (x) the Preferred Shares are convertible at the Floor Price then in effect, (y) dividends on the Preferred Shares shall accrue through September 30, 2026 and will be converted in shares of Common Stock at a dividend conversion price equal to the Floor Price then in effect, and (z) any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth herein) (the "**Required Reserve Amount**"). The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the Holders based on the number of the Preferred Shares held by each Holder on the Initial Issuance Date or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, each transferee shall be allocated a pro rata portion of such Holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Preferred Shares shall be allocated to the remaining Holders of Preferred Shares, pro rata based on the number of the Preferred Shares then held by the Holders. Notwithstanding the foregoing, a Holder may allocate its Authorized Share Allocation to any other of the securities of the Company held by such Holder (or any of its designees) by delivery of a written notice to the Company.

Insufficient Authorized Shares. If, notwithstanding Section 11(a) and not in limitation thereof, at any time while any of the Preferred Shares remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Preferred Shares at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Preferred Shares then outstanding (or deemed outstanding pursuant to Section 11(a) above). Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than seventy-five (75) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal (or, if a majority of the voting power then in effect of the capital stock of the Company consents to such increase, in lieu of such proxy

statement, deliver to the stockholders of the Company an information statement that has been filed with (and either approved by or not subject to comments from) the SEC with respect thereto). Notwithstanding the foregoing, if at any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding shares of Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. In the event that the Company is prohibited from issuing shares of Common Stock to a Holder upon any conversion due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the "**Authorized Failure Shares**"), in lieu of delivering such Authorized Failure Shares to such Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount of the Preferred Shares convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorized Failure Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date such Holder delivers the applicable Conversion Notice with respect to such Authorized Failure Shares to the Company and ending on the date of such issuance and payment under this Section 11(b); and (ii) to the extent such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of such Holder incurred in connection therewith. Nothing contained in Section 11(a) or this Section 11(b) shall limit any obligations of the Company under any provision of the Exchange Agreement.

Voting Rights. The holders of the Preferred Shares shall have no voting power and no right to vote on any matter at any time, either as a separate series or class or together with any other series or class of share of capital stock, and shall not be entitled to call a meeting of such holders for any purpose nor shall they be entitled to participate in any meeting of the holders of Common Stock, except as provided in this Section 12 and Section 16 or as otherwise required by the DGCL. To the extent that under the DGCL the vote of the holders of the Preferred Shares, voting separately as a class or series, as applicable, is required to authorize a given action of the Company, the affirmative vote or consent of the Required Holders of the Preferred Shares, voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, shall constitute the approval of such action by both the class or the series, as applicable. Holders of the Preferred Shares shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled to vote, which notice would be provided pursuant to the Company's bylaws (the "**Bylaws**") and the DGCL.

Covenants. Without the prior consent of the Required Holders:

Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than Permitted Indebtedness).

Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "**Liens**") other than Permitted Liens.

Restricted Payments and Investments. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other pursuant to this Certificate of Designations) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness or make any Investment, as applicable, if at the time such payment with respect to such Indebtedness and/or Investment, as applicable, is due or is otherwise made or, after giving effect to such payment, (i) an event constituting a Triggering Event has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute a Triggering Event has occurred and is continuing.

J. Restriction on Redemption and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its capital stock (other than as required by this Certificate of Designations).

K. Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice and, (ii) sales of inventory and product in the ordinary course of business.

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

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

M. Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except where the failure to become or remain duly qualified or in good standing could not reasonably be expected to result in a Material Adverse Effect.

N. Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its material properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to materially comply, at all times 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.

O. Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the Intellectual Property Rights of the Company and/or any of its Subsidiaries that are necessary or material to the conduct of its business in full force and effect.

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

Q. Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, 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 in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

R. Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Preferred Shares (other than as contemplated by the Exchange Agreement and this Certificate of Designations), (ii) issue any other securities that would cause a breach or default under this Certificate of Designations or (iii) issue any securities at a New Issuance Price less than the Floor Price then in effect.

S. Stay, Extension and Usury Laws. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Certificate of Designations; 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 this Certificate of Designations, but will suffer and permit the execution of every such power as though no such law has been enacted.

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

U. PCAOB Registered Auditor. At all times any Preferred Shares remain outstanding, the Company shall have engaged an independent auditor to audit its financial statements that is registered with (and in compliance with the rules and regulations of) the Public Company Accounting Oversight Board.

V. Independent Investigation. At the request of the Required Holders either (x) at any time when a Triggering Event has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute a Triggering Event or (z) at any time such Required Holders reasonably believe a Triggering Event may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by such Holder (such approval not to be unreasonably withheld, conditioned or delayed) to investigate as to whether any breach of this Certificate of Designations has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such

breach of this Certificate of Designations has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each Holder of such breach. In connection with such investigation, the Independent Investigator may, during normal business hours, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its legal advisors and accountants and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), before any amount shall be paid to the holders of any of shares of Junior Stock, but pari passu with any Parity Stock then outstanding, an amount per Preferred Share equal to the greater of (A) 125% of the Conversion Amount of such Preferred Share on the date of such payment and (B) the amount per share such Holder would receive if such Holder converted such Preferred Share into Common Stock immediately prior to the date of such payment, provided that if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of Parity Stock, then each Holder and each holder of Parity Stock shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder and such holder of Parity Stock as a liquidation preference, in accordance with their respective certificate of designations (or equivalent), as a percentage of the full amount of Liquidation Funds payable to all holders of Preferred Shares and all holders of shares of Parity Stock. To the extent necessary, the Company shall cause such actions to be taken by each of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section 14. All the preferential amounts to be paid to the Holders under this Section 14 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Company to the holders of shares of Junior Stock in connection with a Liquidation Event as to which this Section 14 applies.

Distribution of Assets. In addition to any adjustments pursuant to Section 7 and Section 8, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "**Distributions**"), then each Holder, as holders of Preferred Shares, will be entitled to such Distributions as if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose that the Preferred Share was converted at the Alternate Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that such Holder's right to participate in any such Distribution would result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Distribution to such extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of such Holder until such time or times as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, the Company shall not: (a) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation or bylaws, or file any certificate of designations or articles of amendment of any series of shares of preferred stock, if such action would adversely alter or change in any respect the preferences, rights, privileges or powers, or restrictions provided for the benefit of the Preferred Shares hereunder, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of shares of Series A Convertible Preferred Stock; (c) without limiting any provision of Section 2, create or authorize (by reclassification or otherwise) any new class or series of Senior Preferred Stock or Parity Stock; (d) purchase, repurchase or redeem any shares of Junior Stock (other than pursuant to the terms of the Company's equity incentive plans and options and other equity awards granted under such plans (that have in good faith been approved by the Board)); (e) without limiting any provision of Section 2, pay dividends or make any other distribution on any shares of any Junior Stock; (f) issue any Preferred Shares other than as contemplated hereby or pursuant to the Exchange

Agreement; or (g) without limiting any provision of Section 10, whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares hereunder.

Transfer of Preferred Shares. A Holder may offer, sell or transfer some or all of its Preferred Shares without the consent of the Company subject only to the provisions of Section 5 of the Exchange Agreement.

Reissuance of Preferred Share Certificates and Book Entries.

W. Transfer. If any Preferred Shares are to be transferred, the applicable Holder shall surrender the applicable Preferred Share Certificate to the Company (or, if the Preferred Shares are held in Book-Entry form, a written instruction letter to the Company), whereupon the Company will forthwith issue and deliver upon the order of such Holder a new Preferred Share Certificate (in accordance with Section 18(d)) (or evidence of the transfer of such Book-Entry), registered as such Holder may request, representing the outstanding number of Preferred Shares being transferred by such Holder and, if less than the entire outstanding number of Preferred Shares is being transferred, a new Preferred Share Certificate (in accordance with Section 18(d)) to such Holder representing the outstanding number of Preferred Shares not being transferred (or evidence of such remaining Preferred Shares in a Book-Entry for such Holder). Such Holder and any assignee, by acceptance of the Preferred Share Certificate or evidence of Book-Entry issuance, as applicable, acknowledge and agree that, by reason of the provisions of Section 4(c)(i) following conversion or redemption of any of the Preferred Shares, the outstanding number of Preferred Shares represented by the Preferred Share Certificates or Book-Entry may be less than the number of Preferred Shares stated on the face of the Preferred Share Certificates or Book-Entry.

X. Lost, Stolen or Mutilated Preferred Share Certificate. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of a Preferred Share Certificate (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the applicable Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of such Preferred Share Certificate, the Company shall execute and deliver to such Holder a new Preferred Share Certificate (in accordance with Section 18(d)) representing the applicable outstanding number of Preferred Shares.

Y. Preferred Share Certificate and Book-Entries Exchangeable for Different Denominations and Forms. Each Preferred Share Certificate is exchangeable, upon the surrender hereof by the applicable Holder at the principal office of the Company, for a new Preferred Share Certificate or Preferred Share Certificate(s) or new Book-Entry (in accordance with Section 18(d)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Preferred Share Certificate, and each such new

Preferred Share Certificate and/or new Book-Entry, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Preferred Share Certificate as is designated in writing by such Holder at the time of such surrender. Each Book-Entry may be exchanged into one or more new Preferred Share Certificates or split by the applicable Holder by delivery of a written notice to the Company into two or more new Book-Entries (in accordance with Section 18(d)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Book-Entry, and each such new Book-Entry and/or new Preferred Share Certificate, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Book-Entry as is designated in writing by such Holder at the time of such surrender.

Z. Issuance of New Preferred Share Certificate or Book-Entry. Whenever the Company is required to issue a new Preferred Share Certificate or a new Book-Entry pursuant to the terms of this Certificate of Designations, such new Preferred Share Certificate or new Book-Entry (i) shall represent, as indicated on the face of such Preferred Share Certificate or in such Book-Entry, as applicable, the number of Preferred Shares remaining outstanding (or in the case of a new Preferred Share Certificate or new Book-Entry being issued pursuant to Section 18(a) or Section 18(c), the number of Preferred Shares designated by such Holder) which, when added to the number of Preferred Shares represented by the other new Preferred Share Certificates or other new Book-Entry, as applicable, issued in connection with such issuance, does not exceed the number of Preferred Shares remaining outstanding under the original Preferred Share Certificate or original Book-Entry, as applicable, immediately prior to such issuance of new Preferred Share Certificate or new Book-Entry, as applicable, and (ii) shall have an issuance date, as indicated on the face of such new Preferred Share Certificate or in such new Book-Entry, as applicable, which is the same as the issuance date of the original Preferred Share Certificate or in such original Book-Entry, as applicable.

Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Certificate of Designations. No failure on the part of a Holder to exercise, 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 such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of a Holder at law or equity or under this Certificate of Designations or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and

shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). No failure on the part of a Holder to exercise, 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 such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of any Holder at law or equity or under Preferred Shares or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Company's compliance with the terms and conditions of this Certificate of Designations.

Payment of Collection, Enforcement and Other Costs. If (a) any Preferred Shares are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of Designations with respect to the Preferred Shares or to enforce the provisions of this Certificate of Designations or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Certificate of Designations, then the Company shall pay the costs reasonably incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Certificate of Designations with respect to any Preferred Shares shall be affected, or limited, by the fact that the purchase price paid for each Preferred Share was less than the original Stated Value thereof.

Construction; Headings. This Certificate of Designations shall be deemed to be jointly drafted by the Company and the Holders and shall not be construed against any such Person as the drafter hereof. The headings of this Certificate of Designations are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designations. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Certificate of Designations instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Certificate of Designations. Terms used in this Certificate of Designations and not otherwise defined herein, but defined in the other Transaction Documents, shall have the

meanings ascribed to such terms on the Initial Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Required Holders.

Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all Holders and shall not be construed against any Person as the drafter hereof. Notwithstanding the foregoing, nothing contained in this Section 22 shall permit any waiver of any provision of Section 4(d).

Dispute Resolution.

AA. Submission to Dispute Resolution.

1. In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Alternate Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate, or the applicable redemption price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the applicable Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such Holder at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Company are unable to promptly resolve such dispute relating to such Closing Bid Price, such Closing Sale Price, such Conversion Price, such Alternate Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable redemption price (as the case may be), at any time after the second (2nd) Business Day following such initial notice by the Company or such Holder (as the case may be) of such dispute to the Company or such Holder (as the case may be), then such Holder may, with the consent of the Company (not to be unreasonably withheld, conditioned or delayed), select an independent, reputable investment bank to resolve such dispute.

2. Such Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 23 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such investment bank (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as

the "**Required Dispute Documentation**") (it being understood and agreed that if either such Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such investment bank, neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

3. The Company and such Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne by the party in whose favor the investment bank decides such dispute or, in the event that the investment bank determines that the applicable calculation is in between the amounts submitted by the Company and such Holder, then half of such fees and expenses shall be borne by the Company and half of such fees and expenses shall be borne by the Holder, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

AB. Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 23 constitutes an agreement to arbitrate between the Company and each Holder (and constitutes an arbitration agreement) under the rules then in effect under Delaware Rapid Arbitration Act, as amended, (ii) the terms of this Certificate of Designations and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Certificate of Designations and any other applicable Transaction Documents, (iii) the applicable Holder (and only such Holder with respect to disputes solely relating to such Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 23 to any state or federal court sitting in Wilmington Delaware, in lieu of utilizing the procedures set forth in this Section 23 and (iv) nothing in this Section 23 shall limit such Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 23).

Notices; Currency; Payments.

AC. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Certificate of Designations must be in writing and will be deemed to have been delivered on the earliest of: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing address and e-mail address for any such communications to the Company shall be: Nauticus Robotics, Inc. 17146 Feathercraft Lane, Suite 450, Webster, Texas 77598, Attention: John Gibson, CEO, e-mail address: jgibson@nauticusrobotics.com, or such other mailing address and/or e-mail address as the Company has specified by written notice given to each of the Holders in accordance with this Section 24(a) not later than five (5) days prior to the effectiveness of such change. The mailing address and e-mail address for any such communications to any Holder shall be as set forth on such Holder's respective signature page to the Exchange Agreement, or such other mailing address and/or e-mail address as such Holder has specified by written notice given to the Company in accordance with this Section 24(a) not later than five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and recipient's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

AD. The Company shall provide each Holder with prompt written notice of all actions taken pursuant to this Certificate of Designations, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company shall give written notice to each Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

AE. Currency. All dollar amounts referred to in this Certificate of Designations are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Certificate of Designations shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in

accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Certificate of Designations, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

AF. Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Certificate of Designations, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by wire transfer of immediately available funds pursuant to wire transfer instructions that Holder shall provide to the Company in writing from time to time. Whenever any amount expressed to be due by the terms of this Certificate of Designations is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Certificate of Designations and the Exchange Agreement.

Governing Law. This Certificate of Designations shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Except as otherwise required by Section 23 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Wilmington, Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 23 above. **THE COMPANY AND EACH HOLDER HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF**

THIS CERTIFICATE OF DESIGNATIONS OR ANY TRANSACTION CONTEMPLATED HEREBY.

Judgment Currency.

AG. If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 27 referred to as the "**Judgment Currency**") an amount due in U.S. Dollars under this Certificate of Designations, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

1. the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

2. the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 27(a)(ii) being hereinafter referred to as the "**Judgment Conversion Date**").

AH. If in the case of any proceeding in the court of any jurisdiction referred to in Section 27(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

AI. Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Certificate of Designations.

II. TAXES.

A. All payments made by the Company hereunder or under any other Transaction Document shall be made in accordance with the terms of the respective Transaction Document and shall be made without set-off, counterclaim, withholding, deduction or other defense. Without limiting the foregoing, all such payments shall be made free and clear of and without deduction or withholding for any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (i) taxes imposed on the net income of a Holder by the jurisdiction in which such Holder is organized or where it has its principal lending office, (ii) with respect to any payments made by the Company hereunder, taxes (including, but not

limited to, backup withholding) to the extent such taxes are imposed due to the failure of the applicable recipient of such payment to provide the Company with whichever (if any) is applicable of valid and properly completed and executed IRS Forms W-9, W-8BEN, W-8BEN-E, W-8ECI, and/or W-8IMY, when requested in writing by the Company, and (iii) with respect to any payments made by the Company, taxes to the extent such taxes are imposed due to the failure of the applicable recipient of such payment to comply with FATCA (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities, collectively or individually, "**Taxes**"). If the Company shall be required to deduct or to withhold any Taxes from or in respect of any amount payable hereunder or under any other Transaction Document:

1. the amount so payable shall be increased to the extent necessary so that after making all required deductions and withholdings (including Taxes on amounts payable to a Holder pursuant to this sentence) such Holder receives an amount equal to the sum it would have received had no such deduction or withholding been made,

2. the Company shall make such deduction or withholding,

3. the Company shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law, and

4. as promptly as possible thereafter, the Company shall send such Holder an official receipt (or, if an official receipt is not available, such other documentation as shall be satisfactory to such Holder, as the case may be) showing payment. In addition, the Company agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Preferred Shares or any other Transaction Document (collectively, "**Other Taxes**").

B. The Company hereby indemnifies and agrees to hold each Holder and each of their affiliates and their respective officers, directors, employees, agents and advisors (each, an "**Indemnified Party**") each Indemnified Party harmless from and against Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 28) paid by any Indemnified Party as a result of any payment made hereunder or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Preferred Shares or any other Transaction Document, and any liability (including penalties, interest and expenses for nonpayment, late payment or otherwise) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be paid within thirty (30) days from the date on

which such Holder makes written demand therefor, which demand shall identify the nature and amount of such Taxes or Other Taxes.

C. If the Company fails to perform any of its obligations under this Section 28, the Company shall indemnify such Holder for any taxes, interest or penalties that may become payable as a result of any such failure. The obligations of the Company under this Section 28 shall survive the repayment and/or conversion, as applicable, in full of the Preferred Shares and all other amounts payable with respect thereto.

D. If any Indemnified Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 28 (including by the payment of additional amounts pursuant to this Section 28), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 28 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including taxes) of such Indemnified Party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such Indemnified Party, shall repay to such Indemnified Party the amount paid over pursuant to this paragraph (d) (plus any penalties, interest, or other charges imposed by the relevant Governmental Authority) in the event that such Indemnified Party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (d), in no event will the Indemnified Party be required to pay any amount to an indemnifying party pursuant to this paragraph (d) the payment of which would place the Indemnified Party in a less favorable net after-Tax position than the Indemnified Party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (d) shall not be construed to require any Indemnified Party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

Severability. If any provision of this Certificate of Designations is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Certificate of Designations so long as this Certificate of Designations as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or

unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

Maximum Payments. Without limitation Section 9(d) of the Exchange Agreement, nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the applicable Holder and thus refunded to the Company.

Stockholder Matters; Amendment.

E. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the DGCL, the Certificate of Incorporation, this Certificate of Designations or otherwise with respect to the issuance of Preferred Shares may be effected by written consent of the Company's stockholders or at a duly called meeting of the Company's stockholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

F. Amendment. Except for Section 4(d) and this Section 31(b), which may not be amended, modified or waived hereunder, this Certificate of Designations or any provision hereof may be amended by obtaining the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the DGCL, of the Required Holders, voting separate as a single class, and with such other stockholder approval, if any, as may then be required pursuant to the DGCL and the Certificate of Incorporation; provided, however, and notwithstanding anything this Certificate of Designations or the Transaction Documents to the contrary, no provision of the Preferred Shares or this Certificate of Designations shall be amended, modified or waived, and no consent, approval, objection, determination or selection shall be made by the Required Holders thereunder or hereunder, in each case, to the extent any such amendment, modification, waiver, consent, approval, objection, determination or selection would disproportionately and materially adversely affect any rights of any Holder of the Preferred Shares (for the avoidance of doubt, excluding the payment by the Company or any of its Subsidiaries of any legal fees and/or expenses of any Holder in connection therewith), unless any such Holder shall have previously consented in writing to such amendment, modification, waiver, consent, approval, objection, determination or selection. Except (a) to the extent otherwise expressly provided in this Certificate of Designations or the Certificate of Incorporation with respect to voting or approval rights of a particular class or series of capital stock or (b) to the extent otherwise provided pursuant to the DGCL, the holders of each outstanding class or series of shares of the Company shall not be entitled to vote as a separate voting group on any amendment to

the terms of this Certificate of Designations with respect to which such class or series would otherwise be entitled under the DGCL to vote as a separate voting group.

Certain Defined Terms. For purposes of this Certificate of Designations, the following terms shall have the following meanings:

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

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

"**Additional Amount**" means, as of the applicable date of determination, with respect to each Preferred Share, all declared and unpaid Dividends on such Preferred Share.

"**Additional Notes**" means any Indebtedness issued by the Company (and/or any of its Subsidiaries) to ATW Special Situations I LLC or any of its affiliates on or after the Initial Issuance Date.

"**Adjustment Right**" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 8(a)) of shares of Common Stock (other than rights of the type described in Section 7(a) hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

"**Affiliate**" or "**Affiliated**" means, with respect to any Person, any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the 1933 Act.

"**Alternate Conversion Price**" means, with respect to any Alternate Conversion that price which shall be the lowest of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) the greater of (x) the Floor Price and (y) 98% of the lowest VWAP of the Common Stock during the ten (10) consecutive Trading Day period ending and including the Trading Day immediately preceding the delivery or deemed delivery of the applicable Conversion Notice (such period, the "**Alternate Conversion Measuring Period**"). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Alternate Conversion Measuring Period.

"**Alternate Conversion Floor Amount**" means an amount equal to the product obtained by multiplying (A) the higher of (I) the highest price that the Common Stock trades at on the Trading Day immediately preceding the relevant Alternate Conversion Date and (II) the applicable Alternate Conversion Price and (B) the difference obtained by subtracting (I) the number of shares of Common Stock delivered (or to be delivered) to such Holder on the applicable Share Delivery Deadline with respect to such Alternate Conversion from (II) the quotient obtained by dividing (x) the applicable Conversion Amount that such Holder has elected to be the subject of the applicable Alternate Conversion, by (y) the applicable Alternate Conversion Price without giving effect to clause (x) of such definition.

"**Approved Stock Plan**" means any employee benefit plan or agreement which has been approved by the Board prior to or subsequent to the Exchange Date pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer, consultant or director for services provided to the Company in their capacity as such.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Initial Issuance Date, directly or indirectly managed or advised by a 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 together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with such Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively such Holder and all other Attribution Parties to the Maximum Percentage.

"**Black Scholes Consideration Value**" means the value of the applicable Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance thereof calculated using the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg utilizing (i) an underlying price per share equal to the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the public announcement of the execution of definitive documents with respect to the issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (ii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of such Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (iii) a zero cost of borrow and (iv) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the "HVT" function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be).

"**Bloomberg**" means Bloomberg, L.P.

"**Book-Entry**" means each entry on the Register evidencing one or more Preferred Shares held by a Holder in lieu of a Preferred Share Certificate issuable hereunder.

"**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain 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 generally are open for use by customers on such day.

"**Change of Control**" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

"**Change of Control Election Price**" means, with respect to any given Change of Control, such price equal to the greatest of (i) the product of (A) the Required Premium multiplied by (B) the Conversion Amount of the Preferred Shares subject to the applicable election, as applicable, (ii) the product of (A) the Conversion Amount of the Preferred Shares being redeemed or exchanged, as applicable, multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable Change of Control and (2) the public announcement of such Change of Control and ending on the date such Holder delivers the Change of Control Election Notice by (II) the Alternate Conversion Price then in effect, and (iii) the product of (A) the Conversion Amount of the Preferred Shares being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration and the aggregate cash value of any non-cash consideration per share of Common Stock to be paid to such holders of the shares of Common Stock upon consummation of such Change of Control (any such non-cash consideration constituting publicly-traded securities shall

be valued at the highest of the Closing Sale Price of such securities as of the Trading Day immediately prior to the consummation of such Change of Control, the Closing Sale Price of such securities on the Trading Day immediately following the public announcement of such proposed Change of Control and the Closing Sale Price of such securities on the Trading Day immediately prior to the public announcement of such proposed Change of Control) divided by (II) the Conversion Price then in effect.

"**Closing Bid Price**" and "**Closing Sale Price**" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holders. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

"**Closing Date**" shall have the meaning set forth in the Exchange Agreement, which date is the date the Company initially issued the Preferred Shares pursuant to the terms of the Exchange Agreement.

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

"**Common Stock**" means (i) the Company's shares of common stock, $0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

"**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend

or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

G. "**Conversion Floor Price Condition**" means that the relevant Alternate Conversion Price is being determined based on clause (x) of such definitions.

H. "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

I. "**Current Public Information Failure**" means either (x) the failure by the Company for any reason to satisfy the requirements of Rule 144(c)(1) of the 1933 Act, including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) of the 1933 Act or (y) if the Company has ever been an issuer described in Rule 144(i)(1)(i) of the 1933 Act or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) of the 1933 Act.

J. "**Dividend Conversion Price**" means, with respect to any given Dividend Date, that price which shall be the lowest of (i) the applicable Conversion Price as in effect on the applicable Dividend Date, (ii) 90% of the lowest VWAP of the Common Stock during the five (5) consecutive Trading Day period ending and including the Trading Day immediately preceding the applicable Dividend Date (such period, the "**Dividend Conversion Measuring Period**"). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Dividend Conversion Measuring Period.

K. "**Dividend Rate**" means, as of any date of determination, five percent (5%) per annum; provided, further, that such rate shall be subject to adjustment from time to time in accordance with Section 3.

"**Eligible Market**" means The New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market.

"**Equity Conditions**" means, with respect to an given date of determination: (i) on each day during the period beginning thirty calendar days prior to such applicable date of determination and ending on and including such applicable date of determination all shares of Common Stock to be issued in connection with the event requiring this determination, as applicable, in the event requiring this determination at the Dividend Conversion Price then in effect (without regard to any limitations on conversion set forth

herein)) (each, a "**Required Minimum Securities Amount**") shall be eligible for sale pursuant to Rule 144 (as defined in the Exchange Agreement) without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Preferred Shares, other issuance of securities with respect to the Preferred Shares) and no Current Public Information Failure exists or is continuing; (ii) on each day during the period beginning thirty calendar days prior to the applicable date of determination and ending on and including the applicable date of determination (the "**Equity Conditions Measuring Period**"), the Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Preferred Shares) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have 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 (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation, as applicable; (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of the Preferred Shares on a timely basis as set forth in Section 4 hereof and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in the other Transaction Documents; (iv) any shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating Section 4(d) hereof; (v) any shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated; (vii) the Company shall have no knowledge of any fact that would reasonably be expected to cause the applicable Required Minimum Securities Amount of shares of Common Stock issuable in connection with the event requiring such determination to not be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Preferred Shares, other issuance of securities with respect to the Preferred Shares), (viii) none of the Holders shall be in possession of any material, non-public information provided to any of them by the Company, any of its Subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like; (ix) on each day during the Equity Conditions Measuring Period, the Company otherwise shall have been in compliance with each, and shall not have breached 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) or any covenant or other term or condition of any Transaction Document, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any Transaction Document; (x) on each Trading Day during the Equity Conditions Measuring Period, there shall not have occurred any Volume Failure or Price Failure as of such applicable date of determination; (xi) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and the applicable Required Minimum Securities Amount of shares of Common Stock are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to this Certificate of Designations and (B) all shares of Common Stock to be issued in connection with the event requiring this determination may be issued in full without resulting in an Authorized Share Failure; (xii) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist a Triggering Event or an event that with the passage of time or giving of notice would constitute a Triggering Event; or (xiii) the shares of Common Stock issuable pursuant to the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

"**Equity Conditions Failure**" means that on any day during the period commencing twenty (20) Trading Days prior to such applicable date of determination, the Equity Conditions have not been satisfied (or waived in writing by the applicable Holder).

"**Exchange Agreement**" means that certain Second Amendment and Exchange Agreement by and among the Company and the initial Holder, dated as of the Exchange Date, as may be amended from time in accordance with the terms thereof.

"**Exchange Date**" means November 4, 2024.

"**Excluded Securities**" means (i) shares of Common Stock or standard options to purchase Common Stock issued to directors, officers or employees of the Company for services rendered to the Company in their capacity as such pursuant to an Approved Stock Plan (as defined above), provided that (A) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the Exchange Date pursuant to this clause (i) do not, in the aggregate, exceed more than 10% of the Common Stock issued and outstanding on a fully-diluted basis, giving effect to the exercise or conversion of Convertible Securities, immediately prior to the Exchange Date and (B) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Holders; (ii) shares of Common Stock issued upon the conversion or exercise, as applicable, of Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Exchange Date, provided that the

conversion price or exercise price, as applicable, of any such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered, none of such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Holders; and (iii) the shares of Common Stock issuable upon conversion of the Preferred Shares or otherwise pursuant to the terms of this Certificate of Designations; provided, that the terms of this Certificate of Designations are not amended, modified or changed on or after the Exchange Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Exchange Date);

"**FATCA**" means Sections 1471 through 1474 of the Code, as of the date of this Certificate of Designation (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"**Floor Price**" means $0.246 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events), or, subject to the rules and regulations of the Principal Market, such lower price as the Company and the Required Holders may agree, from time to time.

"**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined

in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Certificate of Designations calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

"**GAAP**" means United States generally accepted accounting principles, consistently applied.

"**Going Private Transaction**" means any Change of Control (i) pursuant to which, the Company (and the Successor Entity, if applicable) ceases to have any securities registered under the 1934 Act or (ii) that results in the purchase and/or

cancellation of all of the Common Stock of the Company solely for cash (and not in whole, or in part, for any other securities of any Person).

"**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

"**Governmental Authority**" means any federal, foreign, state, county, municipal, provincial, or local governmental authority, court, judicial body, arbitration tribunal, government or self-regulatory organization, commission, tribunal or organization, or any regulatory, administrative, or other agency, or any political or other subdivision, department, commission, board, bureau, branch, division, ministry, or instrumentality of any of the foregoing.

"**Indebtedness**" means of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including, without limitation, "capital leases" in accordance with United States generally accepted accounting principles consistently applied for the periods covered thereby (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with United States generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance of any nature whatsoever in or upon any property or assets (including accounts and contract rights) with respect to any asset or property owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above.

"**Intellectual Property Rights**" means, with respect to the Company and its Subsidiaries, all of their 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.

"**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.

"**Liquidation Event**" means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries, taken as a whole.

"**Market Price**" means, with respect to any Adjustment Date, the Closing Bid Price of the Common Stock as of the Trading Day ended immediately prior to such applicable Adjustment Date."

"**Material Adverse Effect**" means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of the Company and its Subsidiaries, if any, individually or taken as a whole, or on the transactions contemplated hereby or on the other Transaction Documents (as defined below), or by the agreements and instruments to be entered into in connection therewith or on the authority or ability of the Company to perform its obligations under the Transaction Documents.

"**New Securities**" shall have the meaning as set forth in the Exchange Agreement.

"**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

"**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

"**Permitted ATM**" means any issuance of Common Stock pursuant to an "at-the-market" offering of Common Stock with a registered broker-dealer under a currently effective Registration Statement on Form S-3; provided that (i) the New Issuance Price with respect thereto is not less than the Floor Price and (ii) the aggregate sales of Common Stock thereunder during any given Trading Day shall not constitute more than 10% of the aggregate trading volume of the Common Stock on such Trading Day (as reported by Bloomberg, LP).

"**Permitted Indebtedness**" means (i) the Notes and any Additional Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Exchange Agreement, as in effect as of the Exchange Date, and (iii) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens.

"**Permitted Liens**" means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen's liens, mechanics' liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment, in either case, with respect to Indebtedness in an aggregate amount not to exceed $500,000, (v) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clause (iv) above, 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 does not increase, and (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, and Liens arising from judgments, decrees or attachments in circumstances not constituting a Triggering Event under Section 5(a)(xi) and (viii) Liens with respect to the Notes.

"**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

"Price Failure" means, with respect to a particular date of determination, the VWAP of the Common Stock on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination fails to exceed $0.369 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Exchange Date). All such determinations to be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during any such measuring period.

"**Principal Market**" means, as of any time of determination, the principal trading market, if any, in which the shares of Common Stock then trade.

"**Redemption Premium of the Conversion Amount**" means the Conversion Amount to be redeemed multiplied by 125%.

"**Required Holders**" means (i) ATW Special Situations I LLC or any of its assigns so long as they hold any of the Preferred Shares or (ii) otherwise, holders of a majority of the Preferred Shares as of such time.

"**Required Premium**" means 125%.

"**SEC**" means the United States Securities and Exchange Commission or the successor thereto.

"**Stated Value**" shall mean $1,000 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Initial Issuance Date with respect to the Preferred Shares.

L. **"Subsequent Placement"** means any direct, or indirect, issuance, offer, sale, grant of any option or right to purchase, or otherwise disposal of (or announcement of any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the 1933 Act), any Convertible Securities, any debt, any preferred stock or any purchase rights) by the Company or any of its Subsidiaries.

M. "**Stock Combination Event**" means the occurrence at any time and from time to time on or after the Exchange Date of any stock split, stock dividend, stock combination recapitalization or other similar transaction involving the Common Stock.

N. **"Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

"**Subsidiary**" shall have the meaning set forth in the Exchange Agreement.

"**Successor Entity**" means the Person (or, if so elected by the Required Holders, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

"**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on

such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the applicable Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

O. "**Transaction Documents**" means the Exchange Agreement, this Certificate of Designations and each of the other agreements and instruments entered into or delivered by the Company or any of the Holders in connection with the transactions contemplated by the Exchange Agreement, all as may be amended from time to time in accordance with the terms thereof.

P. "**Volume Failure**" means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination (such period, the "**Volume Failure Measuring Period**"), is less than $75,000.

"**VWAP**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its "VAP" function (set to 09:30 start time and 16:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holders. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designations, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the applicable Holder explicitly in writing in such notice (or promptly (but no later than the next Business Day) following receipt of notice from such Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company promptly (but no later than the next Business Day) following receipt of notice from such Holder), such Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 33 shall limit any obligations of the Company, or any rights of any Holder, under Section 4(i) of the Exchange Agreement.

Absence of Trading and Disclosure Restrictions. The Company acknowledges and agrees that no Holder is a fiduciary or agent of the Company and that each Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of such Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that each Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designations of the Certificate of Incorporation of Nauticus Robotics, Inc. to be signed by its Chief Executive Officer on this 4th day of November, 2024.

NAUTICUS ROBOTICS, INC.

By: _____
Name:
Title: Chief Executive Officer

EXHIBIT I

NAUTICUS ROBOTICS, INC.

CONVERSION NOTICE

Reference is made to the Certificate of Designations of the Certificate of Incorporation of Nauticus Robotics, Inc., a Delaware corporation (the "**Company**") establishing the terms, preferences and rights of the Series A Convertible Preferred Stock, $0.001 par value (the "**Preferred Shares**") of the Company (the "**Certificate of Designations**"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of Preferred Shares indicated below into shares of common stock, $0.001 value per share (the "**Common Stock**"), of the Company, as of the date specified below.

Date of Conversion: _____

Aggregate number of Preferred Shares to be converted: _____

Aggregate Stated Value of such Preferred Shares to be converted: _____

Aggregate accrued and unpaid Dividends with respect to such Preferred Shares to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

☐ If this Conversion Notice is being delivered with respect to an Alternate Conversion, check here if Holder is electing to use the following Alternate Conversion Price:_____

Please issue the Common Stock into which the applicable Preferred Shares are being converted to Holder, or for its benefit, as follows:

☐ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

☐ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____ __, __

__
Name of Registered Holder

By: __
Name:
Title:

Tax ID:_____

E-mail Address:

EXHIBIT II

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice, (a) certifies that the above indicated number of shares of Common Stock [are][are not] eligible to be resold by the applicable Holder either (i) pursuant to Rule 144 or Section 4(a)(1) of the 1933 Act (subject to such Holder's execution and delivery to the Company of a customary 144 or Section 4(a)(1) representation letter) or (ii) an effective and available registration statement and (b) hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__ from the Company and acknowledged and agreed to by _____.

NAUTICUS ROBOTICS, INC.

By:
Name:
Title:

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of November 4, 2024, is by and among Nauticus Robotics, Inc., a Delaware corporation, with offices located at 17146 Feathercraft Lane, Suite 450, Webster, TX 77598 (the "**Company**"), and each of the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**").

RECITALS

A. The Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

B. The Company has authorized a new series of original issue discount senior secured convertible debentures of the Company, in the aggregate original principal amount of $21,150,000, substantially in the form attached hereto as **Exhibit A** (the "**Notes**"), which Notes shall be convertible into shares of Common Stock (as defined below) (the shares of Common Stock issuable pursuant to the terms of the Notes, including, without limitation, upon conversion or otherwise, collectively, the "**Conversion Shares**"), in accordance with the terms of the Notes.

C. Each Buyer wishes to purchase, and the Company wishes to sell at the Initial Closing (as defined below), upon the terms and conditions stated in this Agreement, a Note in the aggregate original principal amount as set forth opposite such Buyer's name in column (3) on the Schedule of Buyers (which aggregate principal amount for all Buyers shall not exceed $1,150,000) (each an "**Initial Note**", and collectively, the "**Initial Notes**")(the Conversion Shares issuable pursuant to the terms of the Initial Notes, collectively, the "**Initial Conversion Shares**").

D. Subject to the terms and conditions set forth in this Agreement, each Buyer, severally, may require the Company to participate in one or more Additional Closings (as defined below) for the purchase by such Buyer, and the sale by the Company, of one or more Notes with an aggregate original principal amount for all Additional Closings not to exceed the maximum aggregate principal amount as set forth opposite such Buyer's name in column (4) on the Schedule of Buyers (which aggregate principal amount for all Buyers for all Additional Closings shall not exceed $20,000,000 (or such other amount as the Company and each Buyer shall mutually agree in writing)) (each an "**Additional Note**", and collectively, the "**Additional Notes**", and together with the Initial Notes, the "**Notes**")(the Conversion Shares issuable pursuant to the terms of the Additional Notes, collectively, the "**Additional Conversion Shares**", and collectively with the Initial Conversion Shares, the "**Conversion Shares**").

E. The Notes and the Conversion Shares are collectively referred to herein as the "**Securities**."

F. The Notes will rank senior to all outstanding and future indebtedness of the Company, and its Subsidiaries (as defined below) the Notes will be secured by (a) a first priority security interest in all of the existing and future assets of the Company and its direct and indirect Subsidiaries, including a pledge of all of the share capital of each of the Subsidiaries, as evidenced by a security agreement in the form attached hereto as **Exhibit B** (the "**Security Agreement**"), (b) account control agreements with respect to certain accounts described in the Note and the Security Agreement, in form and substance acceptable to each Buyer, duly executed by the Company and each depositary bank (each, an "**Controlled Account Bank**") in which each such account is maintained (the "**Controlled Account Agreements**", and together with the Security Agreement, the Perfection Certificate (as defined below) and the other security documents and agreements entered into in connection with this Agreement and each of such other documents and agreements, as each may be amended or modified from time to time, collectively, the "**Security Documents**") and (c) a guaranty executed by each U.S. Subsidiary (if any) of the Company, in the form attached hereto as **Exhibit C** (collectively, the "**Guaranties**") pursuant to which each of them guarantees the obligations of the Company under the Transaction Documents (as defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF NOTES.

(a) Purchase of Notes .

(i) Purchase of Initial Notes. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6(a) and 7(a) below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Initial Closing Date (as defined below) an Initial Note in the original principal amount as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers (the "**Initial Closing**").

(ii) Purchase of Additional Notes. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 1(b)(ii), 6(b) and 7(b) below, the Company shall issue and sell to such Buyer, and such Buyer severally, but not jointly, agrees to purchase from the Company on the applicable Additional Closing Date (as defined below) such aggregate number of Additional Notes as is set forth in such applicable Additional Closing Notice (as defined below)(each such closing of the purchase of such Additional Notes, each, an "**Additional Closing**").

(b) Closing. Each of the Initial Closing and any Additional Closings (collectively, the "**Closings**") of the purchase of the Notes by the Buyers shall occur at the offices of Kelley Drye & Warren LLP, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007.

(i) Initial Closing. The date and time of the Initial Closing (the "**Initial Closing Date**") shall be 10:00 a.m., New York time, on the first (1st) Business Day on which the conditions to the Initial Closing set forth in Sections 6(a) and 7(a) below are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer). As used herein "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain 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 generally are open for use by customers on such day.

(ii) Additional Closings. Subject to the satisfaction (or waiver) of the conditions set forth in this Section 1(b)(ii) and Sections 6(b) and 7(b) below, at any time on or after the Initial Closing Date, each Buyer, severally, shall have the right, exercisable by delivery by e-mail of a written notice to the Company (each, an "**Additional Closing Notice**", and the date hereof, each an "**Additional Closing Notice Date**") to purchase, and to require the Company to sell to such Buyer, at one or more Additional Closings, up to such aggregate principal amount of such Additional Notes as set forth opposite its name in column (4) on the Schedule of Buyers (less the aggregate principal amount of any Additional Notes issued in any prior Additional Closing) (each, an "**Additional Notes Amount**"). Each Additional Closing Notice shall specify (A) the proposed date and time of the Additional Closing (which, if unspecified in such Additional Closing Notice, shall be the second (2nd) Trading Day (as defined below) after such Additional Closing Notice (or such other date as is mutually agreed to by the Company and each Buyer)) (each, an "**Additional Closing Date**"), and (B) the applicable Additional Notes Amount of the Additional Notes to be issued to such Buyer at such Additional Closing. If a Buyer has not elected to effect an Additional Closing on or prior to the seventy-two (72) month anniversary of the Initial Closing Date (or such later date as the Required Holders (as defined below) may elect from time to time in writing to the Company, the "**Additional Closing Expiration Date**"), such Buyer shall have no further right to effect an Additional Closing hereunder.

(c) Purchase Price. The aggregate purchase price for the Initial Notes to be purchased by each Buyer (the "**Initial Purchase Price**") shall be the amount set forth opposite such Buyer's name in column (5) on the Schedule of Buyers. The aggregate purchase price for the Additional Notes to be purchased by each Buyer at any given Additional Closing (each, an "**Additional Purchase Price**", and together with the Initial Purchase Price, each, a "**Purchase Price**") shall be approximately $980 for each $1,000 of aggregate principal amount of Additional Notes to be issued in such Additional Closing (which together with the Additional Purchase Price of each prior Additional Closing, shall not exceed the aggregate amount set forth opposite such Buyer's name in column (6) of the Schedule of Buyers).

(d) Form of Payment.

(i) Initial Closing. On the Initial Closing Date, (i) each Buyer shall pay its respective Initial Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(g)) to the Company for the Initial Notes to be issued and sold to such Buyer at the Initial Closing, by wire transfer of immediately available funds in accordance with the Initial Flow of Funds Letter (as defined below) and (ii) the Company shall deliver to each Buyer an Initial Note in the aggregate original principal amount as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, duly executed on behalf of the Company and registered in the name of such Buyer or its designee.

(ii) Additional Closing. On each Additional Closing Date, (i) each Buyer shall pay its respective Additional Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(g)) to the Company for the Additional Notes to be issued and sold to such Buyer at each Additional Closing, by wire transfer of immediately available funds in accordance with the Additional Flow of Funds Letter (as defined below) and (ii) the Company shall deliver to each Buyer an Additional Note in the aggregate original principal amount as is set forth in the applicable Additional Closing Notice to be issued to such Buyer, duly executed on behalf of the Company and registered in the name of such Buyer or its designee.

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

Each Buyer, severally and not jointly, represents and warrants to the Company with respect to only itself that, as of the date hereof and as of each Closing Date:

(a) Organization; Authority. Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Such Buyer (i) is acquiring its Note, and (ii) upon conversion of its Note will acquire the Conversion Shares issuable upon conversion thereof, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, such Buyer does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the 1933 Act. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a

trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(c) Accredited Investor Status. Such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

(d) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(e) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(f) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Buyer understands that except as provided in Section 4(h) hereof: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company (if requested by the Company) an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither the Company nor any

other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 3(b)), including, without limitation, this Section 2(g).

(h) Validity; Enforcement. This Agreement and each of the Transaction Documents to which such Buyer is a party has been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and each of the Transaction Documents to which such Buyer is a party and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(j) Residency. Such Buyer is a resident of that jurisdiction specified below its address on the Schedule of Buyers.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that, as of the date hereof and as of each Closing Date:

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries (as defined below) are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it

makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any Subsidiary, individually or 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 any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents (as defined below). Other than the Persons (as defined below) set forth on Schedule 3(a), the Company has no Subsidiaries. "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary**."

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the other applicable Transaction Documents by the Company and its Subsidiaries, and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes and the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Notes) have been duly authorized by the Company's board of directors and each of its Subsidiaries' board of directors or other governing body, as applicable, and (other than the filing with the SEC of a Form D with the SEC and any other filings as may be required by any state securities agencies) no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or their shareholders or other governing body. This Agreement has been, and the other applicable Transaction Documents to which it is a party will be prior to such Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. Prior to such Closing, the Transaction Documents to which each Subsidiary is a party will be duly executed and delivered by each such Subsidiary, and shall constitute the legal, valid and binding obligations of each such Subsidiary, enforceable against each such Subsidiary in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "**Transaction Documents**" means, collectively, this Agreement, the Notes, the Guaranties, the

Security Documents, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Securities. The issuance of the Notes are duly authorized and upon issuance in accordance with the terms of the Transaction Documents shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof. As of the Initial Closing, the Company shall have reserved from its duly authorized capital stock not less than 100% of the maximum number of Conversion Shares issuable upon conversion of the Notes (assuming for purposes hereof that (w) all Additional Notes issuable hereunder shall have been issued at an Additional Closing on the Initial Closing Date, (x) the Notes are convertible at the Floor Price (as defined in the Notes) assuming an Alternate Conversion Date (as defined in the Notes) as of the date hereof, (y) interest on the Notes shall accrue through September 9, 2026 and will be converted into shares of Common Stock at a conversion price equal to the Floor Price assuming an Alternate Conversion Date as of the date hereof and (z) any such conversion shall not take into account any limitations on the conversion of the Notes set forth in the Notes). Upon issuance or conversion in accordance with the Notes, the Conversion Shares when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Subject to the accuracy of the representations and warranties of the Buyers in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act. The Company is not generally in the business of trading in, or advising on, securities.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and its Subsidiaries and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes, the Conversion Shares and the reservation for issuance of the Conversion Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined below) (including, without limitation, any certificate of designation contained therein), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market (the **"Principal Market**") and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected.

(e) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the filing of a Listing of Additional Shares application with the Principal Market, the Stockholder Approval (as defined below), a Form D with the SEC and any other filings as may be required by any state securities agencies), any Governmental Entity (as defined below) or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the applicable Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. Except as set forth in the SEC Documents (as defined below), the Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock in the foreseeable future. "**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.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company or any of its Subsidiaries, (ii) to its knowledge, an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further acknowledges that Chardan Capital Markets, LLC is neither an affiliate of a Buyer nor an Attribution Party (as defined in the Notes). The Company further represents to each Buyer that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(g) No General Solicitation; No Placement Agent's Fees . Neither the Company, nor any of its Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby in connection with the sale of the Securities. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such claim. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the Securities.

(h) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of the Company for purposes of the 1933 Act or under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of the Principal Market or any other exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares pursuant to the terms of the Notes in accordance with this Agreement and the Notes are, in each case, absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(j) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement), stockholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company or any of its Subsidiaries.

(k) SEC Documents; Financial Statements. During the two (2) years prior to the date hereof, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Buyers or their respective representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments, which will not be material, either individually or in the aggregate). The reserves, if any, established by the Company or the lack of reserves, if applicable, are reasonable based upon facts and circumstances known by the Company on the date hereof and there are no loss contingencies that are required to be accrued by the Statement of Financial Accounting Standard No. 5 of the Financial Accounting Standards Board which are not provided for by the Company in its financial statements or otherwise. No other information provided by or on behalf of the Company to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(e) of this Agreement or in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financial Statements to be in compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(l) Absence of Certain Changes. Except as set forth on Schedule 3(l), since the date of the Company's most recent audited financial statements contained in a Form 10-K, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at such Closing, will not be Insolvent (as defined below). For purposes of this Section 3(l), "**Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature. Neither the Company nor any of its Subsidiaries has engaged in any business or in any transaction, and is not about to engage in any business or in any transaction, for which the Company's or such Subsidiary's remaining assets constitute unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. Except as set forth in the SEC Documents, no event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced, (ii) could have a material adverse effect on any Buyer's investment hereunder or (iii) could have a Material Adverse Effect.

(n) Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under its Certificate of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any of its Subsidiaries or Bylaws or their organizational charter, certificate of formation, memorandum of association, articles of association, Certificate of Incorporation or certificate of incorporation or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth in the SEC Documents, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. During the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) except as set forth in the SEC Documents, the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

(o) Foreign Corrupt Practices. Neither the Company, the Company's subsidiary or any director, officer, agent, employee, nor any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act (the "**FCPA**") or any other applicable anti-bribery or anti-corruption laws, nor, to the Company's knowledge, has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that

all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

(p) Sarbanes-Oxley Act. The Company and each Subsidiary is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. Except as disclosed in Schedule 3(q) hereto, no current or former employee, partner, director, officer or stockholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or stockholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock of a company whose securities are traded on or quoted through an Eligible Market (as defined in the Notes)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, stockholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, and (iii) for other standard employee benefits made generally available to all employees or executives (including stock option agreements outstanding under any stock option plan approved by the Board of Directors of the Company).

(r) Equity Capitalization.

(i) Definitions:

(A) "**Common Stock**" means (x) the Company's shares of common stock, $0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(B) "**Preferred Stock**" means (x) the Company's blank check preferred stock, $0.0001 par value per share, the terms of which may be designated by the board of directors of the Company in a certificate of designations and (y) any capital stock into which such preferred stock shall have been changed or any share capital resulting from a reclassification of such preferred stock (other than a conversion of such preferred stock into Common Stock in accordance with the terms of such certificate of designations).

(ii) Authorized and Outstanding Capital Stock. Schedule 3(r)(ii) sets forth as of the date hereof, the authorized, issued and outstanding capital stock of the Company as well as all outstanding equity linked securities, including all options, warrants, restricted stock units, Common Stock Equivalents (as defined below) (other than the Notes). No shares of Common Stock are held in the treasury of the Company. "**Common Stock Equivalents**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(iii) Valid Issuance; Available Shares; Affiliates . All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. Schedule 3(r)(iii) sets forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Common Stock Equivalents (other than the Notes) and (B) that are, as of the date hereof, owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, except as set forth in the SEC Documents, no Person owns 10% or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Common Stock Equivalents, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% stockholder for purposes of federal securities laws).

(iv) Existing Securities; Obligations. Except as disclosed in the SEC Documents: (A) none of the Company's or any Subsidiary's assets, shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered

or permitted by the Company or any Subsidiary other than Permitted Liens (as defined in the Notes); (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) except as set forth on Schedule 3(r)(iv), there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(v) Organizational Documents. The Company has furnished to the Buyers true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**"), and the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), and the terms of all Common Stock Equivalents and the material rights of the holders thereof in respect thereto.

(s) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries, except as disclosed in the SEC Documents or on Schedule 3(s), (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound other than as set forth on Schedule 3(s), (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) has any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries; (iv) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than

those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) Litigation. Except as set forth in the SEC Documents or on Schedule 3(t), There is no action, suit, arbitration, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, which could result, individually or in the aggregate, in a Material Adverse Effect. No director, officer or employee of the Company or any of its subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. After reasonable inquiry of its employees, the Company is not aware of any fact which might result in or form the basis for

any such action, suit, arbitration, investigation, inquiry or other proceeding. Except as set forth in the SEC Documents, neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(u) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for, and neither the Company nor any such Subsidiary has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(v) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or to the Company's knowledge employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. No current (or former) executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(w) Title.

(i) Real Property. Except as disclosed in Schedule 3(w)(i) hereto, each of the Company and its Subsidiaries holds good title to all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries (the "**Real Property**") owned by the Company or any of its Subsidiaries (as applicable). The Real Property is free and clear of all Liens and is not subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except for (a) Liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such

exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(ii) Fixtures and Equipment. Except as disclosed in Schedule 3(w)(ii) hereto, each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company or its Subsidiary in connection with the conduct of its business (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to such Closing. Each of the Company and its Subsidiaries owns all of its Fixtures and Equipment free and clear of all Liens except for (a) liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.

(x) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate 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 ("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted and presently proposed to be conducted. Each of the patents owned by the Company or any of its Subsidiaries is listed on Schedule 3(x)(i). Except as set forth in Schedule 3(x)(ii), none of the Company's Intellectual Property Rights have expired or terminated or have been abandoned or are expected to expire or terminate or are expected to be abandoned, within three years from the date of this Agreement. The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights. Except as set forth on Schedule 3(x)(iii), neither the Company nor any of its Subsidiaries is aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property Rights.

(y) Environmental Laws. (i) The Company and its Subsidiaries (A) are in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (A), (B) and (C), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws

relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(i) No Hazardous Materials:

(1) have been disposed of or otherwise released from any Real Property of the Company or any of its Subsidiaries in violation of any Environmental Laws; or

(2) are present on, over, beneath, in or upon any Real Property or any portion thereof in quantities that would constitute a violation of any Environmental Laws. No prior use by the Company or any of its Subsidiaries of any Real Property has occurred that violates any Environmental Laws, which violation would have a material adverse effect on the business of the Company or any of its Subsidiaries.

(ii) Neither the Company nor any of its Subsidiaries knows of any other person who or entity which has stored, treated, recycled, disposed of or otherwise located on any Real Property any Hazardous Materials, including, without limitation, such substances as asbestos and polychlorinated biphenyls.

(iii) None of the Real Properties are on any federal or state "Superfund" list or Liability Information System ("**CERCLIS**") list or any state environmental agency list of sites under consideration for CERCLIS, nor subject to any environmental related Liens.

(z) Subsidiary Rights. The Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or such Subsidiary.

(aa) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim. The

Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the Code. The net operating loss carryforwards ("**NOLs**") for United States federal income tax purposes of the consolidated group of which the Company is the common parent, if any, shall not be adversely effected by the transactions contemplated hereby. The transactions contemplated hereby do not constitute an "ownership change" within the meaning of Section 382 of the Code, thereby preserving the Company's ability to utilize such NOLs.

(ab) Internal Accounting and Disclosure Controls. Except as set forth in the SEC Documents, the Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in the SEC Documents, the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as set forth in the SEC Documents, neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(ac) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(ad) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an "investment company," an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(ae) Acknowledgement Regarding Buyers' Trading Activity . It is understood and acknowledged by the Company that (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Buyers have been asked by the Company or any of its Subsidiaries to agree, nor has any Buyer agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Buyer, and counterparties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Buyer's knowledge of the transactions contemplated by the Transaction Documents; (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Buyer may rely on the Company's obligation to timely deliver shares of Common Stock upon conversion, exercise or exchange, as applicable, of the Securities as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the initial 8-K Filing (as defined below) one or more Buyers may engage in hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Conversion Shares, as applicable, deliverable with respect to the Securities are being determined and such hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Notes or any other Transaction Document or any of the documents executed in connection herewith or therewith.

(af) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(ag) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the Buyers, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company and each Subsidiary shall so certify upon any Buyer's request.

(ah) Transfer Taxes. On each Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(ai) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries or affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(aj) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or any other business entity or enterprise with which the Company or any Subsidiary is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(ak) Money Laundering. The Company and its Subsidiaries are in compliance with, and have not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, but not limited, to (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(al) Management. Except as set forth in Schedule 3(ll) hereto, during the past five year period, no current or former officer or director or, to the knowledge of the Company, no current ten percent (10%) or greater shareholder of the Company or any of its Subsidiaries has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or

business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(am) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly

granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(an) No Disagreements with Accountants and Lawyers. Except as set forth on Schedule 3(nn), there are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents. In addition, on or prior to the date hereof, the Company had discussions with its accountants about its financial statements previously filed with the SEC. Based on those discussions, the Company has no reason to believe that it will need to restate any such financial statements or any part thereof.

(ao) No Disqualification Events. With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act ("**Regulation D Securities**"), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**" and, together, "**Issuer Covered Persons**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Buyers a copy of any disclosures provided thereunder.

(ap) Other Covered Persons. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyers or potential purchasers in connection with the sale of any Regulation D Securities.

(aq) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(ar) Public Utility Holding Act. None of the Company nor any of its Subsidiaries is a "holding company," or an "affiliate" of a "holding company," as such terms are defined in the Public Utility Holding Act of 2005.

(as) Federal Power Act. None of the Company nor any of its Subsidiaries is subject to regulation as a "public utility" under the Federal Power Act, as amended.

(at) Ranking of Notes. Other than Permitted Indebtedness (as defined in the Notes) secured by Permitted Liens (as defined in the Notes), if any, no Indebtedness of the Company, at the applicable Closing, will be senior to, or *pari passu* with, the Notes in right of payment, whether with respect to payment or redemptions, interest, damages, upon liquidation or dissolution or otherwise.

(au) Cybersecurity. The Company and its Subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants that would reasonably be expected to have a Material Adverse Effect on the Company's business. The Company and its Subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA**"); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person or such, nor any incidents under internal review or investigations relating to the same except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Company and its Subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(av) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its Subsidiaries have taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679)

(collectively, the "**Privacy Laws**") except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. The Company further certifies that neither it nor any Subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(aw) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Buyers regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to each Buyer pursuant to or in connection with this Agreement and the other Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Each press release issued by the Company or any of its Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed. All financial

projections and forecasts that have been prepared by or on behalf of the Company or any of its Subsidiaries and made available to you have been prepared in good faith based upon reasonable assumptions and represented, at the time each such financial projection or forecast was delivered to each Buyer, the Company's best estimate of future financial performance (it being recognized that such financial projections or forecasts are not to be viewed as facts and that the actual results during the period or periods covered by any such financial projections or forecasts may differ from the projected or forecasted results). The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

4. COVENANTS.

(a) Best Efforts. Each Buyer shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Form D and Blue Sky. The Company shall file a Form D with respect to the Securities as required under Regulation D within ten (10) days of each Closing Date and to provide a copy thereof to each Buyer promptly after such filing. The Company shall, on or before each Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyers at the applicable Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to each Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyers.

(c) Reporting Status. Until the date on which a Buyer or any transferee or assignee thereof to which a Buyer assigns its rights as a holder of Securities under this Agreement (each an "**Investor**", and collectively, the "**Investors**") shall have sold all of the Underlying Securities (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require such filings or otherwise permit such termination.

(d) Use of Proceeds. The Company will use the proceeds from the sale of the Securities for general corporate purposes, but not, directly or indirectly, for (i) except as set forth on Schedule 4(d), the satisfaction of any indebtedness of the Company or any of its Subsidiaries, (ii) the redemption or repurchase of any securities of the Company or any of its Subsidiaries, or (iii) the settlement of any outstanding litigation.

(e) Financial Information. The Company agrees to send the following to each Investor during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any interim reports or any consolidated balance sheets, income statements, stockholders' equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, e-mail copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(f) Listing. The Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Underlying Securities (as defined below) upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all Underlying Securities from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall maintain the Common Stock's listing or authorization for quotation (as the case may be) on the Principal Market, The New York Stock Exchange, the NYSE American, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f). "**Underlying Securities**" means (i) the Conversion Shares and (ii) any capital stock of the Company issued or issuable with respect to the Conversion Shares or the Notes, respectively, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock are converted or exchanged and shares of capital stock of a Successor Entity (as defined in the Notes) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on conversion of the Notes.

(g) Fees. The Company shall reimburse the lead Buyer for the costs and expenses incurred by it or its affiliates in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents (including, without limitation, as applicable, (x) a non-accountable amount of $50,000 to be paid upon the Initial Closing Date and an additional non-accountable amount of $25,000 to be paid upon each Additional Closing Date, in each case, for the legal fees and disbursements of Kelley Drye & Warren LLP, counsel to the lead Buyer, and (y) any other reasonable fees and expenses in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents and due diligence and regulatory filings in

connection therewith) (the "**Transaction Expenses**") and shall be withheld by the lead Buyer from its applicable Purchase Price at the applicable Closing, less any amounts previously paid by the Company to Kelley Drye & Warren LLP; provided, that the Company shall promptly reimburse Kelley Drye & Warren LLP on demand for all Transaction Expenses described in clause (x) above not so reimbursed through such withholding at such Closing. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, Controlled Account Bank fees, transfer agent fees, DTC (as defined below) fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by an Investor in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including, without limitation, Section 2(g) hereof; provided that an Investor and its pledgee shall be required to comply with the provisions of Section 2(g) hereof in order to effect a sale, transfer or assignment of Securities to such pledgee. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. On or before 9:00 a.m., New York time, on the date of this Agreement, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (and all schedules to this Agreement), the form of Notes, the form of Guaranties and the form of Security Agreement) (including all attachments, the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided to any of the Buyers by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the filing of the 8-K Filing, the Company and the Buyers acknowledge and agree that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, shall terminate.

(ii) Limitations on Disclosure. The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide any Buyer with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of such Buyer (which may be granted or withheld in such Buyer's sole discretion). In the event of a breach of any of the foregoing covenants, including, without limitation, Section 4(n) of this Agreement, or any of the covenants or agreements contained in any other Transaction Document, by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents (as determined in the reasonable good faith judgment of such Buyer), in addition to any other remedy provided herein or in the Transaction Documents, such Buyer shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such breach or such material, non-public information, as applicable, without the prior approval by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees or agents. No Buyer shall have any liability to the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees, affiliates, stockholders or agents, for any such disclosure. To the extent that the Company delivers any material, non-public information to a Buyer without such Buyer's consent, the Company hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information. Subject to the foregoing, neither the Company, its Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby without the consent of the other party; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Buyer (which may be granted or withheld in such Buyer's sole discretion), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Buyer in any filing, announcement, release or otherwise. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that no Buyer shall have (unless expressly agreed to by a particular Buyer after the date hereof in a written definitive and binding agreement executed by the Company and such particular Buyer (it being understood and agreed that no Buyer may bind any other Buyer with respect thereto)), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

(iii) Other Confidential Information. Disclosure Failures; Disclosure Delay Payments. In addition to other remedies set forth in this Section 4(i), and without limiting anything set forth in any other Transaction Document, at any time after each Closing Date if the Company, any of its Subsidiaries, or any of their respective officers,

directors, employees or agents, provides any Buyer with material non-public information relating to the Company or any of its Subsidiaries (each, the "**Confidential Information**"), the Company shall, on or prior to the applicable Required Disclosure Date (as defined below), publicly disclose such Confidential Information on a Current Report on Form 8-K or otherwise (each, a "**Disclosure**"). From and after such Disclosure, the Company shall have disclosed all Confidential Information provided to such Buyer by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon such Disclosure, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, shall terminate. In the event that the Company fails to effect such Disclosure on or prior to the Required Disclosure Date and such Buyer shall have possessed Confidential Information for at least ten (10) consecutive Trading Days (each, a "**Disclosure Failure**"), then, as partial relief for the damages to such Buyer by reason of any such delay in, or reduction of, its ability to buy or sell Common Stock after such Required Disclosure Date (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to such Buyer an amount in cash equal to the greater of (I) two percent (2%) of the aggregate principal of Notes purchased by such Buyer hereunder and (II) the applicable Disclosure Restitution Amount (as defined below), on each of the following dates (each, a "**Disclosure Delay Payment Date**"): (i) on the date of such Disclosure Failure and (ii) on every thirty (30) day anniversary such Disclosure Failure until the earlier of (x) the date such Disclosure Failure is cured and (y) such time as all such non-public information provided to such Buyer shall cease to be Confidential Information (as evidenced by a certificate, duly executed by an authorized officer of the Company to the foregoing effect) (such earlier date, as applicable, a "**Disclosure Cure Date**"). Following the initial Disclosure Delay Payment for any particular Disclosure Failure, without limiting the foregoing, if a Disclosure Cure Date occurs prior to any thirty (30) day anniversary of such Disclosure Failure, then such Disclosure Delay Payment (prorated for such partial month) shall be made on the second (2nd) Business Day after such Disclosure Cure Date. The payments to which a Buyer shall be entitled pursuant to this Section 4(i)(iii) are referred to herein as "**Disclosure Delay Payments.**" In the event the Company fails to make Disclosure Delay Payments in a timely manner in accordance with the foregoing, such Disclosure Delay Payments shall bear interest at the rate of two percent (2%) per month (prorated for partial months) until paid in full.

(iv) For the purpose of this Agreement the following definitions shall apply:

(1) "**Disclosure Failure Market Price**" means, as of any Disclosure Delay Payment Date, the price computed as the quotient of (I) the sum of the five (5) highest VWAPs (as defined in the Notes) of the Common Stock during the applicable Disclosure Restitution Period (as defined below), divided by (II) five (5) (such period, the **"Disclosure Failure Measuring Period**"). All such

determinations to be appropriately adjusted for any share dividend, share split, share combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Disclosure Failure Measuring Period.

(2) "**Disclosure Restitution Amount**" means, as of any Disclosure Delay Payment Date, the product of (x) difference of (I) the Disclosure Failure Market Price less (II) the lowest purchase price, per share of Common Stock, of any Common Stock issued or issuable to such Buyer pursuant to this Agreement or any other Transaction Documents, multiplied by (y) 10% of the aggregate daily dollar trading volume (as reported on Bloomberg (as defined in the Notes)) of the Common Stock on the Principal Market for each Trading Day (as defined in the Notes) either (1) with respect to the initial Disclosure Delay Payment Date, during the period commencing on the applicable Required Disclosure Date through and including the Trading Day immediately prior to the initial Disclosure Delay Payment Date or (2) with respect to each other Disclosure Delay Payment Date, during the period commencing the immediately preceding Disclosure Delay Payment Date through and including the Trading Day immediately prior to such applicable Disclosure Delay Payment Date (such applicable period, the "**Disclosure Restitution Period**").

(3) "**Required Disclosure Date**" means (x) if such Buyer authorized the delivery of such Confidential Information, either (I) if the Company and such Buyer have mutually agreed upon a date (as evidenced by an e-mail or other writing) of Disclosure of such Confidential Information, such agreed upon date or (II) otherwise, the seventh (7th) calendar day after the date such Buyer first received any Confidential Information or (y) if such Buyer did not authorize the delivery of such Confidential Information, the first (1st) Business Day after such Buyer's receipt of such Confidential Information.

(j) Additional Issuance of Securities. Except as set forth below, so long as any Buyer beneficially owns any Securities, the Company will not, without the prior written consent of the Required Holders, issue any Notes (other than to the Buyers as contemplated hereby) and the Company shall not issue any other securities that would cause a breach or default under the Notes. The Company agrees that for the period commencing on the date hereof and ending on the date immediately following the 30th Trading Day after the Applicable Date (as defined below) (the "**Restricted Period**"), neither the Company nor any of its Subsidiaries shall directly or indirectly issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the 1933 Act), any Common Stock Equivalents, any debt, any preferred shares or any purchase rights) (any such issuance, offer, sale, grant, disposition or announcement (whether occurring during the Restricted Period or at any time thereafter) is referred to as a "**Subsequent Placement**"). Notwithstanding the foregoing, this Section 4(j) shall not limit, restrict or prevent the Company's issuance of (i)

Common Stock or standard options to purchase Common Stock to directors, officers or employees of the Company in their capacity as such pursuant to an Approved Stock Plan (as defined below), provided that (1) all such issuances (taking into account the Common Stock issuable upon exercise of such options) after the date hereof pursuant to this clause (i) do not, in the aggregate, exceed more than 5% of the Common Stock issued and outstanding immediately prior to the date hereof and (2) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Buyers; (ii) Common Stock issued upon the conversion or exercise of Common Stock Equivalents (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the date hereof, provided that the conversion, exercise or other method of issuance (as the case may be) of any such Common Stock Equivalent is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Common Stock Equivalent that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Common Stock Equivalents (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered, none of such Common Stock Equivalents (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Common Stock Equivalents (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Buyers; (iii) the Conversion Shares; (iv) shares of Common Stock issued pursuant to a Permitted ATM (as defined in the Notes); and (v) securities (including any shares of Common Stock issuable upon conversion thereof, as applicable) issued pursuant to (x) the certificate of designations for the Series A Preferred Stock (as defined below) (the "**Certificate of Designations**"); provided, that the terms of the Certification of Designations are not amended, modified or changed on or after the date hereof (other than antidilution adjustments pursuant to the terms thereof in effect as of the date hereof) and (y) that certain the Second Amendment and Exchange Agreement, dated November 4, 2024, by and among the Company and ATW Special Situations I LLC (the "**Exchange Agreement**"); provided, that the terms of the Exchange Agreement are not amended, modified or changed on or after the date hereof (each of the foregoing in clauses (i) through (v), collectively the "**Excluded Securities**"). For the purpose of this Agreement, the following definitions shall apply: (x) "**Approved Stock Plan**" means any employee benefit plan which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which Common Stock and standard options to purchase Common Stock may be issued to any employee, officer or director for services provided to the Company in their capacity as such; (y) "**Applicable Date**" means the earlier of (i) the first date on which a registration statement covering the resale by the Investors of all the Underlying Securities is declared effective by the SEC (and each prospectus contained therein is available for use on such date) and (ii) the first date on which all of the Underlying Securities are eligible to be resold by the Investors pursuant to Rule 144 (or, if a Current Public Information Failure (as defined below) has occurred and is continuing, such later date after which the Company has cured such Current Public Information Failure); and (z) "**Current Public**

Information Failure" means at any time either (x) the Company fails for any reason to satisfy the requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) or (y) the Company has ever been an issuer described in Rule 144(i)(1)(i) or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2).

(k) Reservation of Shares. So long as any of the Notes remain outstanding, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than 100% of the maximum number of Conversion Shares issuable upon conversion of the Notes then outstanding (assuming for purposes hereof that (w) all Additional Notes issuable hereunder shall have been issued at an Additional Closing on the Initial Closing Date, (x) the Notes are convertible at the Floor Price assuming an Alternate Conversion Date as of such applicable date of determination, (y) interest on the Notes shall accrue through September 9, 2026 and will be converted in shares of Common Stock at a conversion price equal to the Floor Price assuming an Alternate Conversion Date as of such applicable date of determination and (z) any such conversion shall not take into account any limitations on the conversion of the Notes set forth in the Notes) (collectively, the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(k) be reduced other than proportionally in connection with any conversion and/or redemption, as applicable, of Notes. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of shareholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain shareholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(l) Conduct of Business. The business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(m) Other Notes; Variable Securities. So long as any Notes remain outstanding, unless otherwise consented in writing by the Required Holders, the Company and each Subsidiary shall be prohibited from effecting or entering into an agreement to effect any Subsequent Placement involving a Variable Rate Transaction (other than a Permitted ATM). "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Common Stock Equivalents either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Common Stock Equivalents, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Common Stock Equivalents or upon the

occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to a customary "weighted average" anti-dilution provision or (ii) enters into any agreement (including, without limitation, an equity line of credit or an "at-the-market" offering) whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights). Each Buyer shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(n) Participation Right. At any time on or prior to the five (5) year anniversary of the later of (x) the Initial Closing Date (or, if later, the date no Notes remain outstanding) and (y) the last Additional Closing Date hereunder, neither the Company nor any of its Subsidiaries shall, directly or indirectly, effect any Subsequent Placement unless the Company shall have first complied with this Section 4(n). The Company acknowledges and agrees that the right set forth in this Section 4(n) is a right granted by the Company, separately, to each Buyer.

(i) At least five (5) Trading Days prior to any proposed or intended Subsequent Placement, the Company shall deliver to each Buyer a written notice (each such notice, a "**Pre-Notice**"), which Pre-Notice shall not contain any information (including, without limitation, material, non-public information) other than: (A) if the proposed Offer Notice (as defined below) constitutes or contains material, non-public information, a statement asking whether the Investor is willing to accept material non-public information or (B) if the proposed Offer Notice does not constitute or contain material, non-public information, (x) a statement that the Company proposes or intends to effect a Subsequent Placement, (y) a statement that the statement in clause (x) above does not constitute material, non-public information and (z) a statement informing such Buyer that it is entitled to receive an Offer Notice (as defined below) with respect to such Subsequent Placement upon its written request. Upon the written request of a Buyer within three (3) Trading Days after the Company's delivery to such Buyer of such Pre-Notice, and only upon a written request by such Buyer, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver to such Buyer an irrevocable written notice (the "**Offer Notice**") of any proposed or intended issuance or sale or exchange (the "**Offer**") of the securities being offered (the "**Offered Securities**") in a Subsequent Placement, which Offer Notice shall (A) identify and describe the Offered Securities, (B) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (C) identify the Persons (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (D) offer to issue and sell to or exchange with such Buyer in accordance with the terms of the Offer such Buyer's pro rata portion of 30% of the Offered Securities, provided that the number of Offered Securities which such Buyer shall have the right to subscribe for under this Section 4(n) shall be (x) based on such Buyer's pro rata portion of the aggregate original principal amount of the Notes purchased hereunder by all Buyers (the "**Basic Amount**"), and (y) with respect to each Buyer that elects to purchase its Basic Amount, any additional portion of the Offered Securities attributable to the Basic Amounts of other Buyers as

such Buyer shall indicate it will purchase or acquire should the other Buyers subscribe for less than their Basic Amounts (the "**Undersubscription Amount**"), which process shall be repeated until each Buyer shall have an opportunity to subscribe for any remaining Undersubscription Amount.

(ii) To accept an Offer, in whole or in part, such Buyer must deliver a written notice to the Company prior to the end of the fifth (5th) Business Day after such Buyer's receipt of the Offer Notice (the "**Offer Period**"), setting forth the portion of such Buyer's Basic Amount that such Buyer elects to purchase and, if such Buyer shall elect to purchase all of its Basic Amount, the Undersubscription Amount, if any, that such Buyer elects to purchase (in either case, the "**Notice of Acceptance**"). If the Basic Amounts subscribed for by all Buyers are less than the total of all of the Basic Amounts, then each Buyer who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, if the Undersubscription Amounts subscribed for exceed the difference between the total of all the Basic Amounts and the Basic Amounts subscribed for (the "**Available Undersubscription Amount**"), each Buyer who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Basic Amount of such Buyer bears to the total Basic Amounts of all Buyers that have subscribed for Undersubscription Amounts, subject to rounding by the Company to the extent it deems reasonably necessary. Notwithstanding the foregoing, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to each Buyer a new Offer Notice and the Offer Period shall expire on the fifth (5th) Business Day after such Buyer's receipt of such new Offer Notice.

(iii) The Company shall have five (5) Business Days from the expiration of the Offer Period above (A) to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by a Buyer (the "**Refused Securities**") pursuant to a definitive agreement(s) (the "**Subsequent Placement Agreement**"), but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and (B) to publicly announce (x) the execution of such Subsequent Placement Agreement, and (y) either (I) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (II) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(iv) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(n)(iii) above), then each Buyer may, at its sole option and in its sole discretion, withdraw its Notice of Acceptance or reduce the number or amount of the Offered

Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that such Buyer elected to purchase pursuant to Section 4(n)(ii) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to Buyers pursuant to this Section 4(n) prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Buyer so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Buyers in accordance with Section 4(n)(i) above.

(v) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, such Buyer shall acquire from the Company, and the Company shall issue to such Buyer, the number or amount of Offered Securities specified in its Notice of Acceptance, as reduced pursuant to Section 4(n)(iv) above if such Buyer has so elected, upon the terms and conditions specified in the Offer. The purchase by such Buyer of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and such Buyer of a separate purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to such Buyer and its counsel.

(vi) Any Offered Securities not acquired by a Buyer or other Persons in accordance with this Section 4(n) may not be issued, sold or exchanged until they are again offered to such Buyer under the procedures specified in this Agreement.

(vii) The Company and each Buyer agree that if any Buyer elects to participate in the Offer, neither the Subsequent Placement Agreement with respect to such Offer nor any other transaction documents related thereto (collectively, the "**Subsequent Placement Documents**") shall include any term or provision whereby such Buyer shall be required to agree to any restrictions on trading as to any securities of the Company or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, any agreement previously entered into with the Company or any instrument received from the Company.

(viii) Notwithstanding anything to the contrary in this Section 4(n) and unless otherwise agreed to by such Buyer, the Company shall either confirm in writing to such Buyer that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case, in such a manner such that such Buyer will not be in possession of any material, non-public information, by the tenth (10^{th}) Business Day following delivery of the Offer Notice. If by such tenth (10^{th}) Business Day, no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by such Buyer, such transaction shall be deemed to have been abandoned and such Buyer shall not be in possession of any

material, non-public information with respect to the Company or any of its Subsidiaries. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide such Buyer with another Offer Notice and such Buyer will again have the right of participation set forth in this Section 4(n). The Company shall not be permitted to deliver more than one such Offer Notice to such Buyer in any sixty (60) day period, except as expressly contemplated by the last sentence of Section 4(n)(ii).

(ix) The restrictions contained in this Section 4(n) shall not apply in connection with the issuance of any Excluded Securities. The Company shall not circumvent the provisions of this Section 4(n) by providing terms or conditions to one Buyer that are not provided to all.

(o) Dilutive Issuances. For so long as any Notes remain outstanding, the Company shall not, in any manner, enter into or affect any Dilutive Issuance (as defined in the Notes) if the effect of such Dilutive Issuance is to cause the Company to be required to issue upon conversion of any Notes any shares of Common Stock in excess of that number of shares of Common Stock which the Company may issue upon conversion of the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market.

(p) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(q) Restriction on Redemption and Cash Dividends. So long as any Notes are outstanding, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Buyers.

(r) Corporate Existence. So long as any Buyer beneficially owns any Notes, the Company shall not be party to any Fundamental Transaction (as defined in the Notes) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Notes.

(s) Conversion Procedures. Each of the form of Conversion Notice (as defined in the Notes) included in the Notes set forth the totality of the procedures required of the Buyers in order to convert the Notes. Except as provided in Section 5(d), no additional legal opinion, other information or instructions shall be required of the Buyers to convert their Notes. The Company shall honor conversions of the Notes and shall deliver the Conversion Shares in accordance with the terms, conditions and time periods set forth in the Notes.

(t) Collateral Agent. Each Buyer hereby (i) appoints ATW Special Situations Management LLC, as the collateral agent hereunder and under the other Security Documents (in such capacity, the "**Collateral Agent**"), and (ii) authorizes the Collateral Agent (and its officers, directors, employees and agents) to take such action on such Buyer's behalf in accordance with

the terms hereof and thereof. The Collateral Agent shall not have, by reason hereof or any of the other Security Documents, a fiduciary relationship in respect of any Buyer. Neither the Collateral Agent nor any of its officers, directors, employees or agents shall have any liability to any Buyer for any action taken or omitted to be taken in connection hereof or any other Security Document except to the extent caused by its own gross negligence or willful misconduct, and each Buyer agrees to defend, protect, indemnify and hold harmless the Collateral Agent and all of its officers, directors, employees and agents (collectively, the "**Collateral Agent Indemnitees**") from and against any losses, damages, liabilities, obligations, penalties, actions, judgments, suits, fees, costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by such Collateral Agent Indemnitee, whether direct, indirect or consequential, arising from or in connection with the performance by such Collateral Agent Indemnitee of the duties and obligations of Collateral Agent pursuant hereto or any of the Security Documents. The Collateral Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Holders, and such instructions shall be binding upon all holders of Notes; provided, however, that the Collateral Agent shall not be required to take any action which, in the reasonable opinion of the Collateral Agent, exposes the Collateral Agent to liability or which is contrary to this Agreement or any other Transaction Document or applicable law. The Collateral Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Transaction Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

(u) Successor Collateral Agent.

(i) The Collateral Agent may resign from the performance of all its functions and duties hereunder and under the other Transaction Documents at any time by giving at least ten (10) Business Days' prior written notice to the Company and each holder of Notes. Such resignation shall take effect upon the acceptance by a successor Collateral Agent of appointment pursuant to clauses (ii) and (iii) below or as otherwise provided below. If at any time the Collateral Agent (together with its affiliates) beneficially owns less than $100,000 in aggregate principal amount of Notes, the Required Holders may, by written consent, remove the Collateral Agent from all its functions and duties hereunder and under the other Transaction Documents.

(ii) Upon any such notice of resignation or removal, the Required Holders shall appoint a successor collateral agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor agent, such successor collateral agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the collateral agent, and the Collateral Agent shall be discharged from its duties and obligations under this Agreement and the other Transaction Documents. After the Collateral Agent's resignation or removal hereunder as the collateral agent, the provisions of this Section 4(u) shall inure to its benefit as to any actions taken or omitted to be taken

by it while it was the Collateral Agent under this Agreement and the other Transaction Documents.

(iii) If a successor collateral agent shall not have been so appointed within ten (10) Business Days of receipt of a written notice of resignation or removal, the Collateral Agent shall then appoint a successor collateral agent who shall serve as the Collateral Agent until such time, if any, as the Required Holders appoint a successor collateral agent as provided above.

(iv) In the event that a successor Collateral Agent is appointed pursuant to the provisions of this Section 4(u) that is not a Buyer or an affiliate of any Buyer (or the Required Holders or the Collateral Agent (or its successor), as applicable, notify the Company that they or it wants to appoint such a successor Collateral Agent pursuant to the terms of this Section 4(u)), the Company and each Subsidiary thereof covenants and agrees to promptly take all actions reasonably requested by the Required Holders or the Collateral Agent (or its successor), as applicable, from time to time, to secure a successor Collateral Agent satisfactory to the requesting part(y)(ies), in their sole discretion, including, without limitation, by paying all reasonable and customary fees and expenses of such successor Collateral Agent, by having the Company and each Subsidiary thereof agree to indemnify any successor Collateral Agent pursuant to reasonable and customary terms and by each of the Company and each Subsidiary thereof executing a collateral agency agreement or similar agreement and/or any amendment to the Security Documents reasonably requested or required by the successor Collateral Agent.

(v) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(w) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer or sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(x) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require the registration of the Securities under the 1933 Act or require stockholder approval under the rules and regulations of the Principal Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market, with the issuance of Securities contemplated hereby.

(y) Notice of Disqualification Events. The Company will notify the Buyers in writing, prior to each Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

(z) Stockholder Approval. The Company shall either (x) if the Company shall have obtained the prior written consent of the requisite stockholders (the "**Stockholder Consent**") to obtain the Stockholder Approval, inform the stockholders of the Company of the receipt of the Stockholder Consent by preparing and filing with the SEC, as promptly as practicable after the date hereof, but prior to the forty-fifth (45th) calendar day after the Initial Closing Date (or, if such filing is delayed by a court or regulatory agency, in no event later than 90 calendar days after the Initial Closing), an information statement with respect thereto or (y) provide each stockholder entitled to vote at a special meeting of stockholders of the Company (the "**Stockholder Meeting**"), which shall be promptly called and held not later than December 31, 2024 (the "**Stockholder Meeting Deadline**"), a proxy statement, in each case, in a form reasonably acceptable to the Buyers and Kelley Drye & Warren LLP, at the expense of the Company, with the Company obligated to reimburse the expenses of Kelley Drye & Warren LLP incurred in connection therewith in an amount not exceed $5,000. The proxy statement, if any, shall solicit each of the Company's stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions ("**Stockholder Resolutions**") providing for the approval of the issuance of (i) all of the Securities in compliance with the rules and regulations of the Principal Market (without regard to any limitations on conversion or exercise set forth in the Notes, assuming all Additional Notes have been issued hereunder) and (ii) all of the shares of the Company's Series A Convertible Preferred Stock, $0.0001 par value (the "**Series A Preferred Stock**"), and such shares of Common Stock issuable pursuant to the terms of the certificate of designations for the Series A Preferred Stock (the "**Certificate of Designations**"), including, without limitation, upon conversion or otherwise, in compliance with the rules and regulations of the Principal Market (without regard to any limitations on conversion set forth in the Certificate of Designations) (such affirmative approval being referred to herein as the "**Stockholder Approval**", and the date such Stockholder Approval is obtained, the "**Stockholder Approval Date**"), and the Company shall use its reasonable best efforts to solicit its stockholders' approval of such resolutions and to cause the Board of Directors of the Company to recommend to the stockholders that they approve such resolutions. The Company shall be obligated to seek to obtain the Stockholder Approval by the Stockholder Meeting Deadline. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained on or prior to the Stockholder Meeting Deadline, the Company shall cause an additional Stockholder Meeting to be held on or prior to March 30, 2025. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained after such subsequent stockholder meetings, the Company shall cause an additional Stockholder Meeting to be held every sixty (60) calendar days thereafter until such Stockholder Approval is obtained.

(aa) The Subsidiary Guarantee. For so long as any Notes remain outstanding, upon any entity becoming a direct, or indirect, Subsidiary of the Company, the Company shall cause each such Subsidiary to become party to the Guaranty by executing a joinder to the Guaranty reasonably satisfactory in form and substance to the Required Holders.

(ab) Closing Documents. On or prior to fourteen (14) calendar days after each Closing Date, the Company agrees to deliver, or cause to be delivered, to each Buyer and Kelley Drye & Warren LLP a complete closing set of the executed Transaction Documents, Securities and any other document required to be delivered to any party pursuant to Section 7 hereof or otherwise.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS; LEGEND.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Notes in which the Company shall record the name and address of the Person in whose name the Notes have been issued (including the name and address of each transferee), the principal amount of the Notes held by such Person, and the number of Conversion Shares issuable pursuant to the terms of the Notes held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of any Buyer or its legal representatives.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable, the "**Transfer Agent**") in a form acceptable to each of the Buyers (the "**Irrevocable Transfer Agent Instructions**") to issue certificates or credit shares to the applicable balance accounts at The Depository Trust Company ("**DTC**"), registered in the name of each Buyer or its respective nominee(s), for the Conversion Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Notes. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b), and stop transfer instructions to give effect to Section 2(g) hereof, will be given by the Company to its transfer agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(g), the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves Conversion Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the transfer agent shall issue such shares to such Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(d) below. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Company's transfer agent on each effective date of a registration statement registering the resale of any Underlying Securities. Any

fees (with respect to the transfer agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the removal of any legends on any of the Securities shall be borne by the Company.

(c) Legends. Each Buyer understands that the Securities have been issued (or will be issued in the case of the Conversion Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth below, the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

> [NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(d) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 5(c) above or any other legend (i) while a registration statement covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 (provided that a Buyer provides the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144 which shall not include an opinion of Buyer's counsel), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Buyer provides the Company with an opinion of counsel to such Buyer, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable requirements of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Trading Days (or such earlier date as required pursuant to the 1934 Act or other applicable law,

rule or regulation for the settlement of a trade initiated on the date such Buyer delivers such legended certificate representing such Securities to the Company) following the delivery by a Buyer to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Buyer as may be required above in this Section 5(d), as directed by such Buyer, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program ("**FAST**") and such Securities are Conversion Shares, credit the aggregate number of shares of Common Stock to which such Buyer shall be entitled to such Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Company's transfer agent is not participating in FAST, issue and deliver (via reputable overnight courier) to such Buyer, a certificate representing such Securities that is free from all restrictive and other legends, registered in the name of such Buyer or its designee (the date by which such credit is so required to be made to the balance account of such Buyer's or such Buyer's designee with DTC or such certificate is required to be delivered to such Buyer pursuant to the foregoing is referred to herein as the "**Required Delivery Date**", and the date such shares of Common Stock are actually delivered without restrictive legend to such Buyer or such Buyer's designee with DTC, as applicable, the "**Share Delivery Date**"). The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Securities or the removal of any legends with respect to any Securities in accordance herewith.

(e) Failure to Timely Deliver; Buy-In. If the Company fails, for any reason or for no reason, to issue and deliver (or cause to be delivered) to a Buyer (or its designee) by the Required Delivery Date, either (I) if the Transfer Agent is not participating in FAST, a certificate for the number of Conversion Shares to which such Buyer is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST, to credit the balance account of such Buyer or such Buyer's designee with DTC for such number of Conversion Shares submitted for legend removal by such Buyer pursuant to Section 5(d) above or (II) if the registration statement covering the resale of the Conversion Shares submitted for legend removal by such Buyer pursuant to Section 5(d) above (the "**Unavailable Shares**") is not available for the resale of such Unavailable Shares and the Company fails to promptly (x) so notify such Buyer and (y) deliver the Conversion Shares electronically without any restrictive legend by crediting such aggregate number of Conversion Shares submitted for legend removal by such Buyer pursuant to Section 5(d) above to such Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred as a "**Notice Failure**" and together with the event described in clause (I) above, a "**Delivery Failure**"), then, in addition to all other remedies available to such Buyer, the Company shall pay in cash to such Buyer on each day after the Share Delivery Date and during such Delivery Failure an amount equal to 2% of the product of (A) the sum of the number of shares of Common Stock not issued to such Buyer on or prior to the Required Delivery Date and to which such Buyer is entitled, and (B) any trading price of the Common Stock selected by such Buyer in writing as in effect at any time during the period beginning on the date of the delivery by such Buyer to the Company of the applicable Conversion Shares and ending on the applicable Share Delivery Date. In addition to the

foregoing, if on or prior to the Required Delivery Date either (I) if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver a certificate to a Buyer and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, credit the balance account of such Buyer or such Buyer's designee with DTC for the number of shares of Common Stock to which such Buyer submitted for legend removal by such Buyer pursuant to Section 5(d) above (ii) below or (II) a Notice Failure occurs, and if on or after such Trading Day such Buyer acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock submitted for legend removal by such Buyer pursuant to Section 5(d) above (a "**Buy-In**"), then the Company shall, within two (2) Trading Days after such Buyer's request and in such Buyer's discretion, either (i) pay cash to such Buyer in an amount equal to such Buyer's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of the holder) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Buyer's balance account shall terminate and such shares shall be cancelled, or (ii) promptly honor its obligation to so deliver to such Buyer a certificate or certificates or credit the balance account of such Buyer or such Buyer's designee with DTC representing such number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to such Buyer in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Conversion Shares that the Company was required to deliver to such Buyer by the Required Delivery Date multiplied by (B) the lowest Closing Sale Price (as defined in the Notes) of the Common Stock on any Trading Day during the period commencing on the date of the delivery by such Buyer to the Company of the applicable Conversion Shares and ending on the date of such delivery and payment under this clause (ii). Nothing shall limit such Buyer's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Notice Failure and/or Delivery Failure, this Section 5(e) shall not apply to the applicable Buyer the extent the Company has already paid such amounts in full to such Buyer with respect to such Notice Failure and/or Delivery Failure, as applicable, pursuant to the analogous sections of the Note held by such Buyer.

(f) FAST Compliance. While any Notes remain outstanding, the Company shall maintain a transfer agent that participates in FAST.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

(a) The obligation of the Company hereunder to issue and sell the Initial Notes to each Buyer at the Initial Closing is subject to the satisfaction, at or before the Initial Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(i) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) Such Buyer and each other Buyer shall have delivered to the Company the Initial Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(g)) for the Initial Note being purchased by such Buyer at the Initial Closing by wire transfer of immediately available funds in accordance with the Initial Flow of Funds Letter.

(iii) The representations and warranties of such Buyer shall be true and correct in all material respects as of the date when made and as of the Initial Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Initial Closing Date.

(b) The obligation of the Company hereunder to issue and sell the Additional Notes to each Buyer at each Additional Closing is subject to the satisfaction, at or before the applicable Additional Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(i) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) Such Buyer and each other Buyer shall have delivered to the Company the Additional Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(g)) for the Additional Note being purchased by such Buyer at the Additional Closing by wire transfer of immediately available funds in accordance with the Additional Flow of Funds Letter.

(iii) The representations and warranties of such Buyer shall be true and correct in all material respects as of the date when made and as of the Additional Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Additional Closing Date.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.[1]

(a) The obligation of each Buyer hereunder to purchase its Initial Note at the Initial Closing is subject to the satisfaction, at or before the Initial Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be

[1] Company to provide detail on which deliverables should be moved to post-closing.

waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to such Buyer an Initial Note in such original principal amount as is set forth across from such Buyer's name in column (3) of the Schedule of Buyers, as being purchased by such Buyer at the Initial Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Norton Rose Fulbright LLP, the Company's counsel, dated as of the Initial Closing Date, in the form acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Company's transfer agent and shall remain in full force and effect as of such Initial Closing Date.

(iv) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company and each of its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Initial Closing Date.

(v) The Company shall have delivered to such Buyer a certificate evidencing the Company's and each Subsidiary's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company and each Subsidiary conducts business and is required to so qualify, as of a date within ten (10) days of the Initial Closing Date.

(vi) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation as certified by the Delaware Secretary of State within ten (10) days of the Initial Closing Date.

(vii) Each Subsidiary shall have delivered to such Buyer a certified copy of its Certificate of Incorporation (or such equivalent organizational document) as certified by the Secretary of State (or comparable office) of such Subsidiary's jurisdiction of incorporation within ten (10) days of the Initial Closing Date.

(viii) The Company and each Subsidiary shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and each Subsidiary and dated as of the Initial Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's and each Subsidiary's board of directors in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and the organizational documents of each

Subsidiary and (iii) the Bylaws of the Company and the bylaws of each Subsidiary, each as in effect at the Initial Closing.

(ix) Each and every representation and warranty of the Company shall be true and correct as of the date when made and as of the Initial Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Initial Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of the Initial Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(x) The Company shall have delivered to such Buyer a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding on the Initial Closing Date immediately prior to the Initial Closing.

(xi) The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the Initial Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Initial Closing Date, either (I) in writing by the SEC or the Principal Market or (II) by falling below the minimum maintenance requirements of the Principal Market, except as otherwise disclosed in the SEC Documents.

(xii) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities, including without limitation, those required by the Principal Market, if any.

(xiii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(xiv) Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.

(xv) The Company shall have obtained approval of the Principal Market to list or designate for quotation (as the case may be) the Underlying Securities.

(xvi) In accordance with the terms of the Security Documents, the Company shall have delivered to the Collateral Agent (A) original certificates (if any) (I) representing the Subsidiaries' shares of share capital to the extent such subsidiary is a corporation or otherwise has certificated equity and (II) representing all other equity interests and all promissory notes required to be pledged thereunder, in each case,

accompanied by undated share powers and allonges executed in blank and other proper instruments of transfer and (B) appropriate financing statements on Form UCC-1 to be duly filed in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Document.

(xvii) Within two (2) Business Days prior to the Initial Closing, the Company shall have delivered or caused to be delivered to each Buyer and the Collateral Agent (A) certified copies of requests for copies of information on Form UCC-11, listing all effective financing statements which name as debtor the Company or any of its Subsidiaries and which are filed in such office or offices as may be necessary or, in the opinion of the Collateral Agent or the Buyers, desirable to perfect the security interests purported to be created by the Security Agreement, together with copies of such financing statements, none of which, except as otherwise agreed in writing by the Collateral Agent, shall cover any of the Collateral (as defined in the Security Agreement), and the results of searches for any tax Lien and judgment Lien filed against such Person or its property, which results, except as otherwise agreed to in writing by the Collateral Agent and the Buyers, shall not show any such Liens; and (B) a perfection certificate, duly completed and executed by the Company and each of its Subsidiaries, in form and substance satisfactory to the Buyers (the "**Perfection Certificate**").

(xviii) The Collateral Agent shall have received the Security Agreement, duly executed by the Company and each of its Subsidiaries, together with the original share certificates representing all of the equity interests and all promissory notes required to be pledged thereunder, accompanied by undated share powers and allonges executed in blank and other proper instruments of transfer.

(xix) With respect to the Intellectual Property Rights, if any, of the Company or any of its Subsidiaries, the Company and/or such Subsidiaries, as applicable, shall have duly executed and delivered to such Buyer each Assignment For Security for the Intellectual Property Rights of the Company and its Subsidiaries, in the form attached as Exhibit A to the Security Agreement.

(xx) Each Controlled Account Bank and the Collateral Agent shall have duly executed and delivered to such Buyer a Controlled Account Agreement with respect to each account of the Company or any of its Subsidiaries held at such Controlled Account Bank.

(xxi) Such Buyer shall have received a letter on the letterhead of the Company (the "**Initial Flow of Funds Letter**") duly executed by the Chief Financial Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company.

(xxii) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

(b) The obligation of each Buyer hereunder to purchase its Additional Note at any Additional Closing is subject to the satisfaction, at or before such Additional Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to such Buyer each applicable Transaction Documents to which it is a party and the Company shall have duly executed and delivered to such Buyer such Additional Note being purchased by such Buyer at such Additional Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Norton Rose Fulbright LLP, the Company's counsel, dated as of such Additional Closing Date, in the form acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Company's transfer agent and shall remain in full force and effect as of such Additional Closing Date.

(iv) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing (if a good standing concept exists in such jurisdiction) of the Company and each of its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of such Additional Closing Date.

(v) The Company shall have delivered to such Buyer a certificate evidencing the Company's and each Subsidiary's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company and each Subsidiary conducts business and is required to so qualify, as of a date within ten (10) days of such Additional Closing Date.

(vi) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation as certified by the Delaware Secretary of State within ten (10) days of the Additional Closing Date.

(vii) Each Subsidiary shall have delivered to such Buyer a certified copy of its Certificate of Incorporation (or such equivalent organizational document) as certified by the Secretary of State (or comparable office) of such Subsidiary's jurisdiction of incorporation within ten (10) days of such Additional Closing Date.

(viii) Each and every representation and warranty of the Company shall be true and correct as of the date when made and as of such Additional Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company

shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to such Additional Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of such Additional Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(ix) The Company shall have delivered to such Buyer a letter from the Company's transfer agent certifying the number of Common Stock outstanding on such Additional Closing Date immediately prior to such Additional Closing.

(x) The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of such Additional Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of such Additional Closing Date, either (I) in writing by the SEC or the Principal Market or (II) by falling below the minimum maintenance requirements of the Principal Market.

(xi) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities, including without limitation, those required by the Principal Market, if any.

(xii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(xiii) Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.

(xiv) In accordance with the terms of the Security Documents, the Company shall have delivered to the Collateral Agent (A) original certificates (I) representing the Subsidiaries' shares of share capital to the extent such subsidiary is a corporation or otherwise has certificated equity and (II) representing all other equity interests and all promissory notes required to be pledged thereunder, in each case, accompanied by undated share powers and allonges executed in blank and other proper instruments of transfer and (B) appropriate financing statements on Form UCC-1 to be duly filed in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Document.

(xv) Within two (2) Business Days prior to such Additional Closing, the Company shall have delivered or caused to be delivered to each Buyer and the Collateral Agent (A) certified copies of requests for copies of information on Form UCC-11, listing all effective financing statements which name as debtor the Company or any of its Subsidiaries and which are filed in such office or offices as may be necessary or, in the

opinion of the Collateral Agent or the Buyers, desirable to perfect the security interests purported to be created by the Security Agreement, together with copies of such financing statements, none of which, except as otherwise agreed in writing by the Collateral Agent, shall cover any of the Collateral, and the results of searches for any tax Lien and judgment Lien filed against such Person or its property, which results, except as otherwise agreed to in writing by the Collateral Agent and the Buyers, shall not show any such Liens.

(xvi) The Collateral Agent shall have received amended and restated schedules to the Security Agreement, if applicable.

(xvii) The Collateral Agent shall have received amended and restated schedules to the Intellectual Property Security Agreement, if applicable.

(xviii) Each Controlled Account Bank and the Collateral Agent shall have duly executed and delivered to such Buyer a Controlled Account Agreement with respect to each account of the Company or any of its Subsidiaries held at such Controlled Account Bank).

(xix) Such Buyer shall have received a letter on the letterhead of the Company (the "**Additional Flow of Funds Letter**") duly executed by the Chief Financial Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company.

(xx) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

8. TERMINATION.

In the event that the Initial Closing shall not have occurred with respect to a Buyer within five (5) Business Days of the date hereof, then such Buyer shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of such Buyer to any other party; provided, however, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Buyer's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Notes shall be applicable only to such Buyer providing such written notice, provided further that no such termination shall affect any obligation of the Company under this Agreement to reimburse such Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any provision of law or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Wilmington, Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(c) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, the Company, its Subsidiaries, their affiliates and Persons acting on their behalf, including, without limitation, any transactions by any Buyer with respect to Common Stock or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any

prior investment made by such Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Buyer, or any instruments any Buyer received from the Company and/or any of its Subsidiaries prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Holders (as defined below), and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable; provided that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion); and provided further that the provisions of Sections 4(t) and 4(u) above cannot be amended or waived without the additional prior written approval of the Collateral Agent or its successor. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Holders may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents, all holders of the Notes. From the date hereof and while any Notes are outstanding, the Company shall not be permitted to receive any consideration from a Buyer or a holder of Notes that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce the Company or any Subsidiary (i) to treat such Buyer or holder of Notes in a manner that is more favorable than to other similarly situated Buyers or holders of Notes, or (ii) to treat any Buyer(s) or holder(s) of Notes in a manner that is less favorable than the Buyer or holder of Notes that is paying such consideration; provided, however, that the determination of whether a Buyer has been treated more or less favorably than another Buyer shall disregard any securities of the Company purchased or sold by any Buyer. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for each Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall

modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as disclosed in the SEC Documents," nothing contained in any of the SEC Documents shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Holders**" means (i) ATW Special Situations I LLC or any of its assigns so long as they hold any of the Notes or (ii) otherwise, holders of a majority of aggregate principal amount of the Notes then outstanding.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses for such communications shall be:

If to the Company:

Nauticus Robotics, Inc.
17146 Feathercraft Lane
Suite 450
Webster, TX 77598
Telephone: (832) 266-8926
Attention: John Symington
E-Mail: jsymington@nauticusrobotics.com

With a copy (for informational purposes only) to:

Norton Rose Fulbright US LLP
1550 Lamar Street, Suite 2000
Houston, TX 77010
E-mail: Robert.morris@nortonrosefulbright.com, brandon.byrne@nortonrosefulbright.com
Attention: Rob Morris, Brandon Byrne

If to the Transfer Agent:

Continental Stock Transfer & Trust Company
1 State Street, 30th Floor
New York, New York 10004
Telephone: (212) 616-6890
Attention: Luis Ortiz

Email: lortiz@continentalstock.com

If to a Buyer, to its mailing address and e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

with a copy (for informational purposes only) to:

Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Telephone: (212) 808-7540
Attention: Michael A. Adelstein, Esq.
E-mail: madelstein@kelleydrye.com

or to such other mailing address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change, provided that Kelley Drye & Warren LLP shall only be provided copies of notices sent to the lead Buyer. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and recipient's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Notes. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Transaction (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Notes). A Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Securities without the consent of the Company, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees (as defined below) referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive each Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other

agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification.

(i) In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents, (B) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (C) any disclosure properly made by such Buyer pursuant to Section 4(i), or (D) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(k) of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Section 9(k), deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnitee;

provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the Company if: (A) the Company has agreed in writing to pay such fees and expenses; (B) the Company shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (C) the named parties to any such Indemnified Liability (including any impleaded parties) include both such Indemnitee and the Company, and such Indemnitee shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitee and the Company (in which case, if such Indemnitee notifies the Company in writing that it elects to employ separate counsel at the expense of the Company, then the Company shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Company), provided further, that in the case of clause (C) above the Company shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for the Indemnitees. The Indemnitee shall reasonably cooperate with the Company in connection with any negotiation or defense of any such action or Indemnified Liability by the Company and shall furnish to the Company all information reasonably available to the Indemnitee which relates to such action or Indemnified Liability. The Company shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. The Company shall not be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the Company shall not unreasonably withhold, delay or condition its consent. The Company shall not, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the Company shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnitee under this Section 9(k), except to the extent that the Company is materially and adversely prejudiced in its ability to defend such action.

(iii) The indemnification required by this Section 9(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, within ten (10) days after bills are received or Indemnified Liabilities are incurred.

(iv) The indemnity agreement contained herein shall be in addition to (A) any cause of action or similar right of the Indemnitee against the Company or others, and (B) any liabilities the Company may be subject to pursuant to the law.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for such Buyer (or its broker or other financial representative) to effect short sales or similar transactions in the future.

(m) Remedies. Each Buyer and in the event of assignment by Buyer of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to any Buyer hereunder or pursuant to any of the other Transaction Documents or any of the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or

are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the "**Judgment Currency**") an amount due in US Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the courts of Delaware or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the "**Judgment Conversion Date**").

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Buyers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Buyer confirms that each Buyer has independently participated with the Company and its Subsidiaries in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Buyer, and was done solely for the convenience of the Company and its Subsidiaries and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company, each Subsidiary and a Buyer, solely, and not between the Company, its Subsidiaries and the Buyers collectively and not between and among the Buyers.

[*signature pages follow*]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:
NAUTICUS ROBOTICS, INC.

By: ____
Name:
Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

By: _____
Name:
Title:

[*Signature Page to Securities Purchase Agreement*]

EXHIBIT 10.3

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

Issuance Date: _____, 2024

$_____

ORIGINAL ISSUE DISCOUNT SENIOR SECURED CONVERTIBLE DEBENTURE DUE 2026

THIS ORIGINAL ISSUE DISCOUNT SENIOR SECURED CONVERTIBLE DEBENTURE is one of a series of duly authorized and validly issued Original Issue Discount Senior Secured Convertible Debentures of Nauticus Robotics, Inc., a Delaware corporation (together with its successors and assigns, the "Company"), having its principal place of business at 17146 Feathercraft Lane, Suite 450 Webster, TX 77598, designated as its Original Issue Discount Senior Secured Convertible Debenture due 2026 (this debenture, the "Debenture" and, collectively with the other debentures of such series, the "Debentures"), issued in accordance with that certain Securities Purchase Agreement, dated as of November 4, 2024 (the "Securities Purchase Agreement", and the date thereof, the "Subscription Date"), by and among the Company and the investors referred to therein (the "Purchasers").

FOR VALUE RECEIVED, the Company promises to pay to _____or its registered assigns (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of $ _____on September 9, 2026 (the "Maturity Date") or such earlier date as this Debenture is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Debenture in accordance with the provisions hereof. Notwithstanding anything herein to the contrary, the Holder may, at its option upon written notice to the Company prior to the Maturity Date, elect to extend the Maturity Date by one year. This Debenture is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Debenture, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Securities Purchase Agreement and (b) the following terms shall have the following meanings:

"2023 Collateral Agent" means Acquiom Agency Services LLC and any of its successor or assigns.

"2023 ICA" means the Intercreditor Agreement dated as of the date hereof, between the Super Senior Collateral Agent and the 2023 Collateral Agent, and acknowledged by the Company and certain affiliates of the Company, as amended, amended and restated, or otherwise modified from time to time in accordance with the terms thereof.

"2023 Loan Agreement" means the Senior Secured Term Loan Agreement dated as of September 18, 2023, by and among the Company, the lenders party thereto and the 2023 Collateral Agent.

"2024 Collateral Agent" means ATW Special Situations Management LLC and any of its successor or assigns.

"2024 ICA" means the Intercreditor Agreement dated as of the date hereof, between the Super Senior Collateral Agent and the 2024 Collateral Agent, and acknowledged by the Company and certain affiliates of the Company, as amended, amended and restated, or otherwise modified from time to time in accordance with the terms thereof.

"2024 Loan Agreement" means the Senior Secured Term Loan Agreement dated as of January 30, 2024, by and among the Company, the lenders party thereto and the 2024 Collateral Agent.

"Adjusted Floor Price" means, as determined on each six month anniversary of the Issuance Date (each, an "Adjustment Date"), the lower of (i) the Floor Price then in effect and (ii) 20% of the lower of (x) the closing price of the Common Stock (as defined in the Securities Purchase Agreement) of the Principal Market (as defined in the Securities Purchase Agreement) (as reported by the Principal Market) as of the Trading Day ended immediately prior to such applicable Adjustment Date and (y) the quotient of (I) the sum of each the closing price of the Common Stock of the Principal Market (as reported by the Principal Market) on each Trading Day of the five (5) Trading Day period ended on, and including, the Trading Day ended immediately prior to such applicable Adjustment Date, divided by (II) five (5). All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

"Adjustment Right" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in

accordance with Section 5) of shares of Common Stock (other than rights of the type described in Section 5(c)) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

"Alternate Consideration" shall have the meaning set forth in Section 5(e).

"Alternate Conversion Floor Amount" means an amount equal to the product obtained by multiplying (A) the higher of (I) the highest price that the Common Stock trades at on the Trading Day immediately preceding the relevant Alternate Conversion Date (as defined below) and (II) the applicable Alternate Conversion Price and (B) the difference obtained by subtracting (I) the number of shares of Common Stock delivered (or to be delivered) to such Holder on the applicable Share Delivery Date with respect to such Alternate Conversion (as defined below) from (II) the quotient obtained by dividing (x) the applicable Conversion Amount that such Holder has elected to be the subject of the applicable Alternate Conversion, by (y) the applicable Alternate Conversion Price without giving effect to clause (x) of such definition.

"Alternate Conversion Price" means, with respect to any Alternate Conversion that price which shall be the lowest of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) the greater of (x) the Floor Price and (y) 98% of the lowest VWAP of the Common Stock during the ten (10) consecutive Trading Day period ending and including the Trading Day immediately preceding the delivery or deemed delivery of the applicable Notice of Conversion (such period, the "Alternate Conversion Measuring Period"). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Alternate Conversion Measuring Period.

"Bankruptcy Event" means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, (g) the Company or any Significant Subsidiary thereof admits in writing that it is

generally unable to pay its debts as they become due, (h) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 4(d).

"Black Scholes Consideration Value" means the value of the applicable Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance thereof calculated using the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg utilizing (i) an underlying price per share equal to the last closing trade price of the Common Stock on the Principal Market on the Trading Day immediately preceding the public announcement of the execution of definitive documents with respect to the issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (ii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of such Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (iii) a zero cost of borrow and (iv) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the "HVT" function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be).

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain 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 generally are open for use by customers on such day.

"Buy-In" shall have the meaning set forth in Section 4(c)(v).

"Capitalized Interest" shall have the meaning set forth in Section 2(a).

"Change of Control Transaction" means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of 33% of the voting securities of the Company (other than by means of conversion or exercise of the Debentures and the Securities issued together with the Debentures), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the

Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than 66% of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company (and all of its Subsidiaries, taken as a whole) sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a three year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Issuance Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Conversion" shall have the meaning ascribed to such term in Section 4. "Conversion Date" shall have the meaning set forth in Section 4(a).

"Conversion Amount" means the sum of (A) the portion of the principal of this Debenture to be converted, redeemed or otherwise with respect to which this determination is being made, (B) accrued and unpaid Interest with respect to such principal of this Debenture, (C) accrued and unpaid Late Fees with respect to such principal of this Debenture and Interest, and (E) any other unpaid amounts pursuant to the Transaction Documents (as defined in the Securities Purchase Agreement), if any.

"Conversion Floor Price Condition" means that the relevant Alternate Conversion Price is being determined based on clause (x) of such definitions.

"Conversion Price" shall have the meaning set forth in Section 4(b).

"Conversion Schedule" means the Conversion Schedule in the form of Schedule 1 attached hereto.

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of this Debenture in accordance with the terms hereof.

"Convertible Securities" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

"Debenture Register" shall have the meaning set forth in Section 2(a).

"Delaware Courts" shall have the meaning set forth in Section 9(d).

"Dilutive Issuance" shall have the meaning set forth in Section 5(b).

"Effective Date" means the first date on which a registration statement covering the resale by the Investors (as defined in the Securities Purchase Agreement) of all, or any part, of the Underlying Securities (as defined in the Securities Purchase Agreement) is declared effective by the SEC (and each prospectus contained therein is available for use on such date).

"Equity Conditions" means, during the period in question, (a) the Company shall have duly honored all conversions and redemptions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the Holder, if any, (b) the Company shall have paid all liquidated damages and other amounts owing to the Holder in respect of this Debenture, (c)(i) there is an effective registration statement pursuant to which the Holder is permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable pursuant to the Transaction Documents (and the Company believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (ii) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of interest) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the Holder, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Company believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Event of Default and no existing event which, with the passage of time or the giving of notice, would constitute an Event of Default, (g) the issuance of the shares in question (or, in the case of an Optional Redemption, the shares issuable upon conversion in full of the Optional Redemption Amount) to the Holder would not violate the limitations set forth in Sections 4(d) or 4(e) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Company, any of its Subsidiaries, or any of their officers, directors, employees, agents or Affiliates, that constitutes, or may constitute, material non-public information and (j) in the case of an Optional Redemption, the average daily trading volume for the Common Stock on the principal Trading Market exceeds 2,000,000 shares (subject to adjustment for reverse and forward stock splits, recapitalizations and similar transactions following the date of the Securities Purchase Agreement) during the applicable Optional Redemption Period.

"Equity Conditions Failure" means on any date of determination, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

"Event of Default" shall have the meaning set forth in Section 8(a).

"Event Market Price" means, with respect to any Stock Combination Event Date, the quotient determined by dividing (x) the sum of the VWAP of the shares of Common Stock for each of the five (5) Trading Days with the lowest VWAP of the shares of Common Stock during the fifteen (15) consecutive Trading Day period ending and including the Trading Day immediately preceding the sixteenth (16th) Trading Day after such Stock Combination Event Date, divided by (y) five (5).

"Excluded Subsidiary" shall have the meaning given to such term in the Pledge and Security Agreement.

"Floor Price" means $0.246 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events); provided, that if on an Adjustment Date the Floor Price then in effect is higher than the Adjusted Floor Price with respect to such Adjustment Date, on such Adjustment Date the Floor Price shall automatically lower to such applicable Adjusted Floor Price.

"Fundamental Transaction" shall have the meaning set forth in Section 5(e).

"Indebtedness" or "indebtedness" of any person shall mean, if and to the extent (other than with respect to clause (i)) the same would constitute indebtedness or a liability on a balance sheet prepared in accordance with GAAP, without duplication, (a) all obligations of such person for borrowed money, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (d) all obligations of such person issued or assumed as the deferred purchase price of property or services (other than such obligations accrued in the ordinary course of business or consistent with past practice or industry norm), to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all capitalized lease obligations of such person, (f) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of letters of credit, (g) the principal component of all obligations of such person in respect of bankers' acceptances, and (h) all guarantees by such person of indebtedness described in clauses (a) to (g) above; provided, that Indebtedness shall not include (A) trade and other ordinary-course payables and intercompany liabilities arising in the ordinary course of business or consistent with past practice or industry norm, (B) accrued expenses, (C) prepaid or deferred revenue, (D) purchase price holdbacks arising in the ordinary course of business or consistent with past practice or industry norm in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset, or (E) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP.

"Interest Date" shall have the meaning set forth in Section 2(a).

"Interest Rate" means, as of any date of determination, the sum of the Prime Rate and two (2%) per annum, subject to adjustment from time to time in accordance with Section 2.

"Junior Debenture Collateral Agent" means ATW Special Situations I LLC, in its capacity as collateral agent for the holders of the Junior Debentures, and any of its successor or assigns.

"Junior Debenture ICA" means that certain Intercreditor Agreement, dated as of the date hereof, between the Super Senior Collateral Agent the Junior Debenture Collateral Agent, and acknowledged by the Company and certain affiliates of the Company, as amended, amended and restated, or otherwise modified from time to time in accordance with the terms thereof.

"Junior Debentures" means the 5% Original Issue Discount Senior Secured Convertible Debentures dated as of September 9, 2022, in the original aggregate principal amount of $36,530,320 issued pursuant to the Junior Securities Purchase Agreement (as amended, restated, exchanged, supplemented or otherwise modified from time to time).

"Junior Securities Purchase Agreement" means that certain Securities Purchase Agreement by and among the Company, Nauticus Robotics Holdings, Inc. (f/k/a Nauticus Robotics, Inc.), a Texas corporation (the "Nauticus Sub") and the purchasers party thereto dated as of December 16, 2021, as amended, amended and restated, or otherwise modified from time to time, to the extent permitted by the Junior Debenture ICA.

"Late Fees" shall have the meaning set forth in Section 2(b).

"Mandatory Default Amount" means the sum of (a) the greater of (i) the outstanding principal amount of this Debenture, plus all accrued and unpaid interest hereon, divided by the Conversion Price on the date the Mandatory Default Amount is either (A) demanded (if demand or notice is required to create an Event of Default) or otherwise due or (B) paid in full, whichever has a lower Conversion Price, multiplied by the VWAP on the date the Mandatory Default Amount is either (x) demanded or otherwise due or (y) paid in full, whichever has a higher VWAP, or (ii) 130% of the outstanding principal amount of this Debenture, plus 100% of accrued and unpaid interest hereon, and (b) all other amounts, costs, expenses and liquidated damages due in respect of this Debenture.

"New Issuance Price" shall have the meaning set forth in Section 5(b).

"Notice of Conversion" shall have the meaning set forth in Section 4(a).

"Optional Redemption" shall have the meaning set forth in Section 6(a).

"Optional Redemption Amount" means the sum of (a) 120% of the then outstanding principal amount of the Debenture, (b) accrued but unpaid interest and (c) all liquidated damages and other amounts due in respect of the Debenture.

"Optional Redemption Date" shall have the meaning set forth in Section 6(a).

"Optional Redemption Notice" shall have the meaning set forth in Section 6(a).

"Optional Redemption Notice Date" shall have the meaning set forth in Section 6(a).

"Optional Redemption Period" shall have the meaning set forth in Section 6(a).

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

"Permitted ATM " means any issuance of Common Stock pursuant to an "at-the-market" offering of Common Stock with a registered broker-dealer under a currently effective Registration Statement on Form S-3; provided that (i) the New Issuance Price with respect thereto is not less than the Floor Price and (ii) the aggregate sales of Common Stock thereunder during any given Trading Day shall not constitute more than 10% of the aggregate trading volume of the Common Stock on such Trading Day (as reported by Bloomberg, LP).

"Permitted Indebtedness" means (a) the indebtedness evidenced by the Debentures, (b) the indebtedness existing on the Subscription Date set forth on Schedule 20 to the Perfection Certificate (attached as Exhibit A to the Pledge and Security Agreement), (c) lease obligations (including capital leases) and purchase money indebtedness of up to $500,000, in the aggregate, incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets, (d) indebtedness that (i) is expressly subordinate to the Debentures pursuant to a written subordination agreement with the Purchasers that is acceptable to each Purchaser in its sole and absolute discretion and (ii) matures at a date later than the 91st day following the Maturity Date, (e) up to $75 million, in the aggregate, indebtedness that is senior, pari-passu or junior to the Debentures (including unsecured indebtedness), provided that (i) any such indebtedness does not include any equity or equity-linked component thereof, (ii) any pari-passu or junior indebtedness incurred pursuant to this clause (e) (other than unsecured indebtedness) shall be subject to a written intercreditor agreement with the Purchasers that is acceptable to each Purchaser in its sole discretion and (iii) any indebtedness incurred pursuant to this clause (e) shall not be incurred by a Foreign Subsidiary (as defined in the Pledge and Security Agreement), (f) additional unsecured indebtedness in an amount not to exceed $1,500,000 in the aggregate, (g) without duplication of any amount described in clause (b) of this definition, the indebtedness incurred pursuant to the 2023 Loan Agreement and existing on the date hereof (the "2023 Term Loans"), subject to the terms of the 2023 ICA, in a principal amount not to exceed $16,050,000 in the aggregate and any additional indebtedness

under the 2023 Loan Agreement that evidences interest paid in kind on the 2023 Term Loans less repayments (including by conversion) after the Initial Closing Date, (h) without duplication of any amount described in clause (b) of this definition, the indebtedness incurred pursuant to the 2024 Loan Agreement and existing on the date hereof, subject to the terms of the 2024 ICA, in an amount not to exceed $75,000,000 in the aggregate less repayments (including by conversion) after the Initial Closing Date and (i) without duplication of any amount described in clause (b) of this definition, the indebtedness evidenced by the Junior Debentures existing on the date hereof and any additional indebtedness issued under the Junior Securities Purchase Agreement that evidences interest paid in kind on the Junior Debentures, in each case subject to the terms of the Junior Debenture ICA, in an amount not to exceed $45,000,000 in the aggregate less repayments (including by conversion) after the Initial Closing Date.

"Permitted Lien" means the individual and collective reference to the following: (a) Liens (as defined in the Securities Purchase Agreement) for taxes, assessments and other governmental charges or levies not yet delinquent by more than 30 days or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Company's business which secure obligations which are not more than 30 days overdue, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a), (b), (d), (e), (g), (h), and (i) thereunder that do not encumber assets that do not constitute Collateral (as defined in the Pledge and Security Agreement), in each case, to the extent permitted by, and subject to, the terms of the applicable intercreditor agreement, (d) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased and (e) other Liens incurred in the ordinary course of business securing obligations not to exceed $500,000.00 in the aggregate.

"Prime Rate" means the "prime rate" which from time to time published in the "Money Rates" column of The Wall Street Journal (Eastern Edition, New York Metro); provided, however, if the Money Rates column of The Wall Street Journal (Eastern Edition, New York Metro) ceases to be published or otherwise does not designate a "prime rate" as of a Business Day, the Holder has the right to obtain such information from a similar business publication of its selection.

"Rule 144 Date" means the first date on which all of the Underlying Securities are eligible to be resold by the Investors pursuant to Rule 144 (as defined in the Securities Purchase Agreement) (or, if a Current Public Information Failure (as defined in the Securities Purchase Agreement) has occurred and is continuing, such later date after which the Company has cured such Current Public Information Failure)

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

"Senior Debentures" means the indebtedness existing on the Issuance Date set forth on Schedule 1 hereto.

"Share Delivery Date" shall have the meaning set forth in Section 4(c)(ii).

"Successor Entity" shall have the meaning set forth in Section 5(e).

"Super Senior Collateral Agent" means ATW Special Situations Management LLC and any of its successor or assigns.

"Trading Day" means a day on which the principal Trading Market is open for trading.

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

"Volume Failure" means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg, LP) of the Common Stock on the principal Trading Market of the Common Stock on any Trading Day during the ten (10) Trading Day period ending on the Trading Day immediately preceding such date of determination, is less than $100,000.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair

market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Section 2. Interest.

a) Payment of Interest in Cash or Kind. Interest on this Note shall commence accruing on the Issuance Date and shall be computed on the basis of a 360-day year and twelve 30-day months and shall be payable in arrears with respect to any given calendar month, on the first Business Day of such calendar quarter (each, an "Interest Date"). Interest shall capitalize on each Interest Date by adding the accrued Interest to the then outstanding Principal of this Note ("Capitalized Interest"), or, at the Company's option, shall be payable on such Interest Date in cash. Interest shall cease to accrue with respect to any principal amount converted, provided that, the Company actually delivers the Conversion Shares within the time period required by Section 4(c)(ii) herein. Interest hereunder will be paid to the Person in whose name this Debenture is registered on the records of the Company regarding registration and transfers of this Debenture (the "Debenture Register"). Except as otherwise provided herein, if at any time the Company pays interest partially in cash and partially as Capitalized Interest to the holders of the Debentures, then such payment of cash shall be distributed ratably among the holders of the then-outstanding Debentures based on their (or their predecessor's) aggregate purchases of Debentures pursuant to the Securities Purchase Agreement.

b) Late Fee. All overdue accrued and unpaid interest to be paid hereunder in cash shall entail a late fee at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law (the "Late Fees") which shall accrue daily from the date such interest is due hereunder through and including the date of actual payment in full.

e) Prepayment. Except as otherwise set forth in this Debenture, the Company may not prepay any portion of the principal amount of this Debenture without the prior written consent of the Holder.

Section 3. Registration of Transfers and Exchanges.

a) Different Denominations. This Debenture is exchangeable for an equal aggregate principal amount of Debentures of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) Investment Representations. This Debenture has been issued subject to certain investment representations of the original Holder set forth in the Securities Purchase Agreement and may be transferred or exchanged only in compliance with the

Securities Purchase Agreement and applicable federal and state securities laws and regulations.

c) Reliance on Debenture Register. Prior to due presentment for transfer to the Company of this Debenture, the Company and any agent of the Company may treat the Person in whose name this Debenture is duly registered on the Debenture Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Debenture is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

Section 4. Conversion.

a) Voluntary Conversion. At any time after the Issuance Date until this Debenture is no longer outstanding, this Debenture shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, at any time and from time to time (subject to the conversion limitations set forth in Sections 4(d) or 4(e) hereof). The Holder shall effect conversions by delivering to the Company a Notice of Conversion, the form of which is attached hereto as Annex A (each, a "Notice of Conversion"), specifying therein the principal amount of this Debenture to be converted and the date on which such conversion shall be effected (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions hereunder, the Holder shall not be required to physically surrender this Debenture to the Company unless the entire principal amount of this Debenture, plus all accrued and unpaid interest thereon, has been so converted in which case the Holder shall surrender this Debenture as promptly as is reasonably practicable after such conversion without delaying the Company's obligation to deliver the shares on the Share Delivery Date. Conversions hereunder shall have the effect of lowering the outstanding Conversion Amount of this Debenture in an amount equal to the applicable conversion. The Holder and the Company shall maintain records showing the Conversion Amount(s) converted and the date of such conversion(s). The Company may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. **The Holder, and any assignee by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Debenture, the unpaid and unconverted principal amount of this Debenture may be less than the amount stated on the face hereof.**

b) Conversion Price. The conversion price in effect on any Conversion Date shall be equal to $1.230, subject to adjustment herein (the "Conversion Price").

c) Mechanics of Conversion.

i. Conversion Shares Issuable Upon Conversion. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 4(b) shall be determined by dividing (x) 120% of such Conversion Amount by (y) the Conversion Price (the "Conversion Rate").

ii. Delivery of Conversion Shares Upon Conversion. Not later than the earlier of (i) one (1) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the "Share Delivery Date"), the Company shall deliver, or cause to be delivered, to the Holder (A) the Conversion Shares which, on or after the earlier of (i) the Rule 144 Date or (ii) the Effective Date, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Securities Purchase Agreement) representing the number of Conversion Shares being acquired upon the conversion of this Debenture and (B) a bank check in the amount of accrued and unpaid interest (if the Company has elected or is required to pay accrued interest in cash). On or after the earlier of (i) the six-month anniversary of the Issuance Date or (ii) the Effective Date, the Company shall deliver any Conversion Shares required to be delivered by the Company under this Section 4(c) electronically through The Depository Trust Company (the "DTC") or another established clearing corporation performing similar functions. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

iii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Debenture delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

iv. Obligation Absolute; Partial Liquidated Damages. The Company's obligations to issue and deliver the Conversion Shares upon conversion of this Debenture in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such

Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action the Company may have against the Holder. In the event the Holder of this Debenture shall elect to convert any or all of the Conversion Amount of this Debenture, the Company may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Debenture shall have been sought and obtained, and the Company posts a surety bond for the benefit of the Holder in the amount of 150% of the outstanding Conversion Amount of this Debenture, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Holder to the extent it obtains judgment. In the absence of such injunction, the Company shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If the Company fails for any reason to deliver to the Holder such Conversion Shares pursuant to Section 4(c)(ii) by the Share Delivery Date (a "Conversion Failure"), the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Conversion Amount being converted, $10 per Trading Day (increasing to $20 per Trading Day on the fifth (5th) Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion (the "Liquidated Damages Amount"). Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for the Company's failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law. The Company shall pay any Liquidated Damages Amount to the Holder as soon as commercially practicable after the occurrence of a Conversion Failure, but in no event later than the thirtieth (30th) calendar day after the applicable Conversion Date with respect to such Conversion Failure hereunder. Notwithstanding the foregoing, but solely with respect to the initial Conversion Failure that occurs hereunder after the date hereof (if any), and not with respect to any other Conversion Failure hereunder (if any), no Liquidated Damages Amount shall be deemed to have accrued hereunder with respect to such initial Conversion Failure if such initial Conversion Failure is cured prior to the fifth (5th) calendar day after the Share Delivery Date of such initial Conversion Failure.

v. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if a Conversion Failure occurs, and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or

otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Company shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) (the "Buy-In Payment Amount") and (B) at the option of the Holder, either reissue (if surrendered) this Debenture in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 4(c)(ii). For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of this Debenture with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon conversion of this Debenture as required pursuant to the terms hereof. The Company shall pay any Buy-In Payment Amount to the Holder as soon as commercially practicable after the occurrence of a Conversion Failure, but in no event later than the thirtieth (30th) calendar day after the applicable Conversion Date with respect to such Conversion Failure hereunder.

vi. Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of this Debenture and payment of interest on this Debenture, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Debentures), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Securities Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding Conversion Amount of this Debenture. The Company covenants that all shares of Common Stock that

shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if a registration statement is then effective under the Securities Act, shall be registered for public resale in accordance with such registration statement.

vii. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Debenture. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

viii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Debenture shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holder of this Debenture so converted and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the DTC (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Holder's Conversion Limitations. The Company shall not effect any conversion of this Debenture, and a Holder shall not have the right to convert any portion of this Debenture, to the extent that after giving effect to the conversion set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of this Debenture with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, unconverted Conversion Amount of this Debenture beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, any other Debentures) beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as

set forth in the preceding sentence, for purposes of this Section 4(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 4(d) applies, the determination of whether this Debenture is convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which Conversion Amount of this Debenture is convertible shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Debenture may be converted (in relation to other securities owned by the Holder together with any Affiliates or Attribution Parties) and which Conversion Amount of this Debenture is convertible, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4(d), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company, or (C) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Debenture, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of this Debenture. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 4(d), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Debenture held by the Holder and the Beneficial Ownership Limitation provisions of this Section 4(d) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The Beneficial Ownership Limitation provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein 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 amended, modified or waived and shall apply to a successor holder of this Debenture.

e) Issuance Limitations. Notwithstanding anything herein to the contrary, if the Company has not obtained Stockholder Approval (as defined in the Securities Purchase Agreement), then the Company may not issue, upon conversion of this Debenture, a number of shares of Common Stock which, when aggregated with any shares of Common Stock issued on or after the Issuance Date and prior to such Conversion Date (i) in connection with the conversion of any Debentures issued pursuant to the Securities Purchase Agreement and (ii) in connection with the conversion of any Series A Preferred Stock in accordance with the Certificate of Designations for Series A Preferred Stock and/or the Second Amendment and Exchange Agreement, dated November 4, 2024, by and among the Company and the signatory party thereto, as applicable, that would otherwise breach the Company's obligations under the rules or regulations of the Principal Market (the number of shares which may be issued without violating such rules and regulations, including rules related to the aggregate of offerings under NASDAQ Listing Rule 5635(d) (such applicable number of shares, the "Issuable Maximum")). Each Holder shall be entitled to a portion of the Issuable Maximum equal to the quotient obtained by dividing (x) the original principal amount of the Holder's Debenture by (y) the aggregate original principal amount of all Debentures issued on the Issuance Date to all Holders. In addition, each Holder may allocate its pro-rata portion of the Issuable Maximum among Debentures and Senior Convertible Debt held by it in its sole discretion. Such portion shall be adjusted upward ratably in the event a Holder no longer holds any Debentures or Senior Convertible Debt and the amount of shares issued to the Holder pursuant to the Holder's Debentures and Senior Convertible Debt was less than the Holder's pro-rata share of the Issuable Maximum. At any time after the Stockholder Meeting Deadline (as defined in the Securities Purchase Agreement), in the event that the Company is prohibited from issuing shares of Common Stock pursuant to this Section 4(e) (the "Exchange Cap Shares"), the Company shall pay cash in exchange for the cancellation of such portion of this Debenture convertible into such Exchange Cap Shares at a price equal to the sum of (i) the product of (x) such number of Exchange Cap Shares and (y) the greatest closing sale price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Notice of Conversion with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 4(e) and (ii) to the extent of any Buy-In related thereto, payment amount with respect to any such Buy-In hereunder, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith (collectively, the "Exchange Cap Share Cancellation Amount").

f) Right of Alternate Conversion.

i) General.

1) Alternate Optional Conversion. Subject to Sections 4(d) and 4(e), at any time after the Issuance Date, at the option of the Holder, the Holder may convert (each, an "Alternate Optional Conversion", and the date of such Alternate Optional Conversion, an "Alternate Optional Conversion Date") all, or any part, of this Debenture into shares of Common Stock (such portion of the Conversion

Amount subject to such Alternate Optional Conversion, the "Alternate Optional Conversion Amount") at the Alternate Conversion Price.

2) Alternate Conversion Upon an Event of Default. Subject to Section Sections 4(d) and 4(e), at any time after the occurrence of an Event of Default (regardless of whether such Event of Default has been cured, or if the Company has delivered an notice of the occurrence of such Event of Default to the Holder or if the Holder has delivered notice to the Company electing to redeem this Debenture, in whole or in part, or otherwise notified the Company that an Event of Default has occurred), the Holder may, at the Holder's option, convert (each, an "Alternate Event of Default Conversion" and together with each Alternate Optional Conversion, each, an "Alternate Conversion", and the date of such Alternate Event of Default Conversion, each, an "Alternate Event of Default Conversion Date", and together with each Alternate Optional Conversion Date, each, an "Alternate Conversion Date") all, or any part of, the Conversion Amount (such portion of the Conversion Amount subject to such Alternate Conversion, the "Alternate Event of Default Conversion Amount" and together with each Alternate Optional Conversion Amount, each, an "Alternate Conversion Amount") into shares of Common Stock at the Alternate Conversion Price.

ii) Mechanics of Alternate Conversion. On any Alternate Conversion Date, the Holder may voluntarily convert any Alternate Conversion Amount pursuant to Section 4(a) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and, solely with respect to the calculation of the number of shares of Common Stock issuable upon conversion of any Conversion Amount in an Alternate Event of Default Conversion, with "such portion of the Mandatory Default Amount subject to conversion" replacing "Conversion Amount" with respect to such Alternate Conversion, *mutatis mutandis*) by designating in the Notice of Conversion delivered pursuant to this Section 4(f) of this Debenture that the Holder is electing to use the Alternate Conversion Price for such conversion; provided that in the event of the Conversion Floor Price Condition, on the applicable Alternate Conversion Date the Company shall pay a cash amount to the Holder equal to the applicable Alternate Conversion Floor Amount. Notwithstanding anything to the contrary in this Section 4(f), but subject to Sections 4(d) and 4(e), until the Company delivers shares of Common Stock representing the applicable Alternate Conversion Amount to the Holder, such Alternate Conversion Amount may be converted by the Holder into shares of Common Stock pursuant to Section 4(a) without regard to this Section 4(f).

Section 5. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Company, at any time while this Debenture is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any Convertible Securities (as defined in the Securities Purchase Agreement) (which, for

avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of, or payment of interest on, the Debentures), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If and whenever on or after the Subscription Date the Company grants, issues or sells (or enters into any agreement to grant, issue or sell), or in accordance with this Section 5(b) is deemed to have granted, issued or sold, any shares of Common Stock (including the granting, issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities granted, issued or sold or deemed to have been granted, issued or sold) for a consideration per share (the "New Issuance Price") less than a price equal to the Conversion Price in effect immediately prior to such granting, issuance or sale or deemed granting, issuance or sale (such Conversion Price then in effect is referred to herein as the "Applicable Price") (the foregoing a "Dilutive Issuance"), then, immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Conversion Price and the New Issuance Price under this Section 5(b)), the following shall be applicable:

(i) Issuance of Options. If the Company in any manner grants, issues or sells (or enters into any agreement to grant, issue or sell) any Options and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting, issuance or sale of such Option for such price per share. For purposes of this Section 5(b)(i), the "lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting,

issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof, minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person), if any, with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration (including, without limitation, consideration consisting of cash, debt forgiveness, assets or any other property) received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale (or the time of execution of such agreement to issue or sell, as applicable) of such Convertible Securities for such price per share. For the purposes of this Section 5(b)(ii), the "lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person), if any, with respect to any one share of Common Stock upon the issuance or sale (or the agreement to issue or sell, as applicable) of such

Convertible Security plus the value of any other consideration received or receivable (including, without limitation, any consideration consisting of cash, debt forgiveness, assets or other property) by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 5(b).

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 5(a) above), the Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 5(b)(i), if the terms of any Option or Convertible Security (including, without limitation, any Option or Convertible Security that was outstanding as of the Subscription Date) are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 5(b) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Holder, the "Primary Security", and such Option and/or Convertible Security and/or Adjustment Right, the "Secondary Securities"), together comprising one integrated transaction (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Company either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing), the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of

Common Stock was issued (or was deemed to be issued pursuant to Section 5(b)(i) or 5(b)(ii) above, as applicable) in such integrated transaction solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (I) the Black Scholes Consideration Value of each such Option, if any, (II) the fair market value (as determined by the Holder in good faith) or the Black Scholes Consideration Value, as applicable, of such Adjustment Right, if any, and (III) the fair market value (as determined by the Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 5(b)(iv). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Securities, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(v) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in

Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 5(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

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

portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) Fundamental Transaction. If, at any time while this Debenture is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Debenture, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Sections 4(d) or 4(e) on the conversion of this Debenture), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Debenture is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Sections 4(d) or 4(e) on the conversion of this Debenture). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Debenture following such Fundamental Transaction. The Company

shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Debenture and the other Transaction Documents (as defined in the Securities Purchase Agreement) in accordance with the provisions of this Section 5(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Debenture, deliver to the Holder in exchange for this Debenture a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Debenture which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Debenture (without regard to any limitations on the conversion of this Debenture) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Debenture immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Debenture and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 5, if the Company in any manner issues or sells or enters into any agreement to issue or sell, any shares of Common Stock, Options or Convertible Securities (other than with respect to a Permitted ATM) (any such securities, "Variable Price Securities"), after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares Common Stock, including by way of one or more reset(s) to a fixed price, but exclusive of such formulations reflecting customary anti-dilution provisions (such as share splits, share combinations, share dividends and similar transactions) (each of the formulations for such variable price being herein referred to as, the "Variable Price"), the Company shall provide written notice thereof via electronic mail and overnight courier to the Holder on the date of such agreement and the issuance of such shares of Common Stock, Convertible Securities or Options. From and after the date the Company enters into such agreement or issues any such Variable Price Securities, the Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of this Debenture by designating in the Notice of

Conversion delivered upon any conversion of this Debenture that solely for purposes of such conversion the Holder is relying on the Variable Price rather than the Conversion Price then in effect. The Holder's election to rely on a Variable Price for a particular conversion of this Debenture shall not obligate the Holder to rely on a Variable Price for any future conversion of this Debenture.

g) Stock Combination Event Adjustments. If at any time and from time to time on or after the Subscription Date there occurs any share split, share dividend, share combination recapitalization or other similar transaction involving the shares of Common Stock (each, a "Stock Combination Event", and such date thereof, the "Stock Combination Event Date") and the Event Market Price is less than the Conversion Price then in effect (after giving effect to the adjustment in Section 5(a) above), then on the sixteenth (16^{th}) Trading Day immediately following such Stock Combination Event Date, the Conversion Price then in effect on such sixteenth (16^{th}) Trading Day (after giving effect to the adjustment in Section 5(a) above) shall be reduced (but in no event increased) to the Event Market Price. For the avoidance of doubt, if the adjustment in the immediately preceding sentence would otherwise result in an increase in the Conversion Price hereunder, no adjustment shall be made.

h) Other Events. In the event that the Company (or any Subsidiary) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 5 but not expressly provided for by such provisions (including, without limitation, the granting of share appreciation rights, phantom share rights or other rights with equity features), then the Company's board of directors shall in good faith determine and implement an appropriate adjustment in the Conversion Price so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 5(h) will increase the Conversion Price as otherwise determined pursuant to this Section 5, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company's board of directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding absent manifest error and whose fees and expenses shall be borne by the Company.

i) Calculations. All calculations under this Section 5 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 5, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

j) Notice to the Holder.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after

such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company(and all of its Subsidiaries, taken as a whole) is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Debenture, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Debenture Register, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert this Debenture during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

k) Voluntary Adjustment by Company. Subject to the rules and regulations of the Company's principal Trading Market, the Company may at any time during the term of this Debenture, with the prior written consent of the Required Holders (as defined in the Securities Purchase Agreement), reduce the then current Conversion Price of each of

the Debentures to any amount and for any period of time deemed appropriate by the board of directors of the Company.

Section 6. Redemption.

a) Optional Redemption at Election of Company. Subject to the provisions of this Section 6(a), at any time after the earlier of (x) the Rule 144 Date and (y) the Effective Date, the Company may deliver a notice to the Holder (an "Optional Redemption Notice" and the date such notice is deemed delivered hereunder, the "Optional Redemption Notice Date") of its irrevocable election to redeem some or all of the then outstanding Conversion Amount of this Debenture for cash in an amount equal to the Optional Redemption Amount on the 60th Trading Day following the Optional Redemption Notice Date (such date, the " Optional Redemption Date", such 60 Trading Day period, the "Optional Redemption Period" and such redemption, the "Optional Redemption"). The Optional Redemption Amount is payable in full on the Optional Redemption Date. Additionally, upon any Optional Redemption the Company shall also issue to the Holder a Common Stock purchase warrant to purchase up to a number of shares of Common Stock equal to 60% of the Conversion Amount of this Debenture being redeemed divided by the then Conversion Price, with an exercise price equal to the then Conversion Price and a term of exercise equal to 10 years from the date of issuance thereof, otherwise in the form of last warrant to purchase Common Stock issued by the Company to the Holder prior to the Subscription Date. Such warrant certificate shall be issued within 3 Trading Days of such redemption and shall have customary piggyback registration rights reasonably acceptable to the Holder. The Company may only effect an Optional Redemption if each of the Equity Conditions shall have been met (unless waived in writing by the Holder) on each Trading Day during the period commencing on the Optional Redemption Notice Date through to the Optional Redemption Date and through and including the date payment of the Optional Redemption Amount is actually made in full. If any of the Equity Conditions shall cease to be satisfied at any time during the Optional Redemption Period, then the Holder may elect to nullify the Optional Redemption Notice by notice to the Company within 3 Trading Days after the first day on which any such Equity Condition has not been met (provided that if, by a provision of the Transaction Documents, the Company is obligated to notify the Holder of the non-existence of an Equity Condition, such notice period shall be extended to the third Trading Day after proper notice from the Company) in which case the Optional Redemption Notice shall be null and void, ab initio. The Company covenants and agrees that it will honor all Notices of Conversion tendered from the time of delivery of the Optional Redemption Notice through the date all amounts owing thereon are due and paid in full. The Company's determination to pay an Optional Redemption in cash shall be applied ratably to all of the holders of the then outstanding Debentures based on their (or their predecessor's) initial purchases of Debentures pursuant to the Securities Purchase Agreement.

b) Redemption Procedure. The payment of cash or issuance of Common Stock, as applicable, pursuant to an Optional Redemption or shall be payable on the

Optional Redemption Date. If any portion of the payment pursuant to an Optional Redemption shall not be paid by the Company by the applicable due date, interest shall accrue thereon at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law until such amount is paid in full. Notwithstanding anything herein contained to the contrary, if any portion of the Optional Redemption Amount remains unpaid after such date, the Holder may elect, by written notice to the Company given at any time thereafter, to invalidate such Optional Redemption, ab initio, and, with respect to the Company's failure to honor the Optional Redemption, the Company shall have no further right to exercise such Optional Redemption. Notwithstanding anything to the contrary in this Section 6, the Company's determination to redeem in cash or its elections under Section 6(b) shall be applied ratably among the holders of Debentures. The Holder may elect to convert the Conversion Amount of this Debenture pursuant to Section 4 prior to actual payment in cash for any redemption under this Section 6 by the delivery of a Notice of Conversion to the Company.

Section 7. Negative Covenants. As long as any portion of this Debenture remains outstanding, unless the Required Holders shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of $100,000 for all officers and directors during the term of this Debenture;

e) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than (i) the Debentures if on a pro-rata basis, (ii) regularly scheduled principal and interest payments as such terms are in effect as of the Subscription Date, (iii) payments (whether of principal, interest, or otherwise) in respect of the First Lien Loan Indebtedness pursuant to the terms thereof (to the extent not in contravention of the First Lien Loan ICA), and (iv) regularly scheduled principal and interest payments of

Permitted Indebtedness (other than unsecured Permitted Indebtedness incurred pursuant to clause (e) of the definition of "Permitted Indebtedness" and the First Lien Loan Indebtedness) pursuant to the terms thereof; provided that payments pursuant to the foregoing clause (ii) shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exists or occurs;

f) pay cash dividends or distributions on any equity securities of the Company;

g) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval);

h) sell or grant any right to reprice any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights which entitles such Person to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price;

i) issue any securities, directly or indirectly, (i) that would cause a breach or default under this Debenture, or (ii) at a New Issuance Price less than 100% of the Floor Price then in effect.

j) engage in any line of business substantially different from (i) those lines of business conducted by the Company on the date hereof or (ii) any business substantially related or incidental, complementary, corollary, synergistic or ancillary thereto or reasonable extensions thereof; or

k) enter into any agreement with respect to any of the foregoing.

Section 8. Events of Default.

a) "Event of Default" means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of any Debenture or (B) interest, liquidated damages and other amounts owing to a Holder on any Debenture, as and when the same shall become due and payable (whether on a Conversion Date or the Maturity Date or by acceleration or

otherwise) which default, solely in the case of an interest payment or other default under clause (B) above, is not cured within 3 Trading Days;

ii. the Company shall fail to observe or perform any other covenant or agreement contained in the Debentures (other than a breach by the Company of its obligations to deliver shares of Common Stock to the Holder upon conversion, which breach is addressed in clause (xi) below) or in any Transaction Document, which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such failure;

iii. a default or event of default, which such default is not cured, if possible to cure, within the earlier of (A) 5 Trading Days after notice of such default or event of default sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such default or event of default, shall occur under (A) any of the Transaction Documents or (B) any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below);

iv. any representation or warranty made in this Debenture, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made, which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such failure;

v. the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than $500,000 whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within five Trading Days;

viii. the Company (and all of its Subsidiaries, taken as a whole) shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of 33% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

xi. the Company shall fail for any reason to deliver Conversion Shares to a Holder prior to the fifth Trading Day after a Conversion Date pursuant to Section 4(c) or the Company shall provide at any time notice to the Holder, including by way of public announcement, of the Company's intention to not honor requests for conversions of any Debentures in accordance with the terms hereof;

xii. the electronic transfer by the Company of shares of Common Stock through the DTC or another established clearing corporation is no longer available or is subject to a "chill";

xiii. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than $500,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days; or

xiv. a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company that the Equity Conditions are satisfied or that there has been no Equity Conditions Failure or as to whether any Event of Default has occurred.

b) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding principal amount of this Debenture, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. Commencing 5 days after the occurrence of any Event of Default that results in the eventual acceleration of this Debenture, the interest rate on this Debenture shall accrue at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Debenture to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be

rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Debenture until such time, if any, as the Holder receives full payment pursuant to this Section 8(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 9. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, by email attachment, or sent by a nationally recognized overnight courier service, addressed to the Company, at the address set forth above, or such other facsimile number, email address, or address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 9(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, by email attachment, or sent by a nationally recognized overnight courier service addressed to the Holder at the facsimile number, email address or address of the Holder appearing on the books of the Company, or if no such facsimile number or email attachment or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Securities Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment to the email address set forth on the signature pages attached hereto prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment to the email address set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Debenture at the time, place, and rate, and in the coin or currency, herein prescribed. This Debenture is a direct debt obligation of the Company. This Debenture (i) shall rank pari passu with all other Debentures now or hereafter issued under the terms set forth herein and (ii) shall be senior to all other Indebtedness of the Company and its Subsidiaries.

c) Lost or Mutilated Debenture. If this Debenture shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Debenture, or in lieu of or in substitution for a lost, stolen or destroyed Debenture, a new Debenture for the principal amount of this

Debenture so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Debenture, and of the ownership hereof, reasonably satisfactory to the Company.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Debenture shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without giving effect to any provision of law or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the Wilmington, Delaware (the "Delaware Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Delaware Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Delaware Courts, or such Delaware Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Debenture and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Debenture or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Debenture, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Company or the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture on any other occasion. Any waiver by the Company or the Holder must be in writing.

f) Severability. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall 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 or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

g) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Debenture. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Debenture.

h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Debenture and shall not be deemed to limit or affect any of the provisions hereof.

j) Secured Obligations. The obligations of the Company under this Debenture are secured by all assets of the Company and each Subsidiary pursuant to (i) the Pledge and Security Agreement, dated as of the date hereof, by and among the Company and the other debtors from time to time party thereto, the Agent (as defined therein) and the Creditors (as defined therein) (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Pledge and Security Agreement"), (ii) the Intellectual Property Security Agreement, dated as of the date hereof by and among the Company and the other pledgors from time to time party thereto, and the Agent (as defined therein) (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Intellectual Property Security Agreement"), and (iii) the other Security Documents (as defined in the Pledge and Security Agreement).

k) Guaranteed Obligations. The obligations of the Company under this Debenture are guaranteed by each Subsidiary pursuant to the Subsidiary Guarantee, dated as the date hereof, by and among the Subsidiaries of the Company (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "Subsidiary Guarantee").

Section 10. New Subsidiaries.

a) If the Company or any Subsidiary (other than an Excluded Subsidiary) forms or acquires any new direct or indirect Subsidiary (other than an Excluded Subsidiary), or any Subsidiary merges, amalgamates, or consolidates with or into any other Person and such Subsidiary is not the surviving entity as a result of such merger, amalgamation, or consolidation and such surviving entity is not an Excluded Subsidiary (any such surviving entity, a "Surviving Entity"), the Company agrees to, or to cause such Subsidiary or Surviving Entity to, concurrently with such formation, acquisition, merger, amalgamation or consolidation, (i) provide notice to the Holder of such formation, acquisition, merger, amalgamation or consolidation, (ii) amend the Pledge and Security Agreement pursuant to a pledge and security agreement addendum attached as Exhibit B to the Pledge and Security Agreement to reflect the addition of such capital stock and pledge the applicable capital stock to Agent as additional collateral for the obligations of the Company under this Debenture, (iii) cause such newly formed or acquired Subsidiary or Surviving Entity to (A) become a party to the Subsidiary Guarantee pursuant to an assumption agreement in the form set forth on Annex 1 thereto, (B) become a party to the Pledge and Security Agreement pursuant to a joinder in form satisfactory to Agent for the purposes of granting a security interest in such Subsidiary's or Surviving Entity's assets as additional security for the obligations of the Company under this Debenture and (C) become a party to the Intellectual Property Security Agreement pursuant to a joinder in form satisfactory to Agent for the purposes of

granting a security interest in such Subsidiary's or Surviving Entity's intellectual property as additional security for the obligations of the Company under this Debenture, (iv) deliver to Agent an opinion of counsel in form and substance acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to such Subsidiary or Surviving Entity and (v) to execute or deliver such other agreements, documents requested by the Agent in connection therewith.

b) If the Company or any Subsidiary forms or acquires any new direct or indirect Excluded Subsidiary, or any Subsidiary merges, amalgamates, or consolidates with or into any other Person and such Subsidiary is not the surviving entity as a result of such merger, amalgamation, or consolidation and such surviving entity is an Excluded Subsidiary (any such surviving entity, a "Excluded Surviving Entity"), the Company agrees to, or to cause such Subsidiary or Excluded Surviving Entity to, concurrently with such formation, acquisition, merger, amalgamation or consolidation, (i) provide notice to the Holder of such formation, acquisition, merger, amalgamation or consolidation, (ii) amend the Pledge and Security Agreement pursuant to a pledge and security agreement addendum attached as Exhibit B to the Pledge and Security Agreement to reflect the addition of such capital stock and pledge the applicable capital stock (in accordance with the Pledge and Security Agreement) to Agent as additional collateral for the obligations of the Company under this Debenture, (iii) take such other actions as Agent deems necessary or reasonably advisable to perfect the Agent's security interest therein (including without limitation, executing and/or delivering to Agent foreign law pledge agreements and such other documents requested by the Agent in connection therewith together with opinions of counsel (including foreign counsel, if applicable) in form and substance acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to the pledge of the equity interest in such Excluded Surviving Entity). If any existing Excluded Subsidiary ceases to be an Excluded Subsidiary for any reason (including without limitation by operation of a change in applicable law) then, the Debtors agree to, within ten (10) Business Days (or such longer period as may be agreed to by the Agent in its reasonable discretion) after such existing Excluded Subsidiary ceases to be an Excluded Subsidiary, (i) amend the Pledge and Security Agreement to reflect the pledge of the additional equity interests not pledged prior to such time due to the operation of the Foreign Collateral Exclusion (as defined in the Pledge and Security Agreement) (such that 100% of the equity interests held by the Debtors (as defined in the Pledge and Security Agreement) shall then be pledged to Agent as Collateral pursuant to the Pledge and Security Agreement), (ii) cause such former Excluded Subsidiary to (A) become a party to the Subsidiary Guarantee pursuant to an assumption agreement in the form set forth on Annex 1 thereto, (B) become a party to the Pledge and Security Agreement pursuant to a joinder in form satisfactory to Agent for the purposes of granting a security interest in such former Excluded Subsidiary's assets as additional security for the obligations of the Company under this Debenture and (C) become a party to the Intellectual Property Security Agreement pursuant to a joinder in form satisfactory to Agent for the purposes of granting a security interest in such former Excluded

Subsidiary's intellectual property as additional security for the obligations of the Company under this Debenture, (iii) deliver to Agent opinions of counsel (including foreign counsel, if applicable) form and substance acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to such former Excluded Subsidiary and (iv) to execute or deliver such other agreements, documents requested by the Agent in connection therewith.

Section 11. Disclosure. Upon receipt or delivery by the Company or any Subsidiary of any notice in accordance with the terms of this Debenture, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within two (2) Business Days after such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

Section 12. Amending the Terms of this Debenture. Except for Section 4(d) and this Section 12, which may not be amended, modified or waived by the parties hereto, the prior written consent of the Required Holders shall be required for any amendment, modification or waiver to this Debenture. Any amendment, modification or waiver so approved shall be binding upon all existing and future holders of this Debenture and any other Debentures; provided, however, that no such change, waiver or, as applied to any of the Debentures held by any particular holder of Debentures, shall, without the written consent of that particular holder, (i) reduce the amount of principal, reduce the amount of accrued and unpaid Interest, or extend the Maturity Date, of the Debentures, (ii) disproportionally and adversely affect any rights under the Debentures of any holder of Debentures; or (iii) modify any of the provisions of, or impair the right of any holder of Debentures under, this Section 12.

****

(Signature Page Follows)

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

NAUTICUS ROBOTICS, INC.

By:
Name:
Title:

E-mail address for delivery of Notices:

ANNEX A

NOTICE OF CONVERSION

The undersigned hereby elects to convert the Original Issue Discount Senior Secured Convertible Debenture due _____ 20__ (the "Debenture") of Nauticus Robotics, Inc., a Delaware corporation (the "Company"), into shares of common stock (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any. Capitalized terms not defined herein shall have the meaning as set forth in the Debenture.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that, after giving effect to the conversion of the Debenture contemplated below, its beneficial ownership of the Common Stock does not exceed the amounts specified under Section 4(d) of the Debenture, as determined in accordance with Section 13(d) of the Exchange Act.

Date of Conversion: _____

Aggregate principal to be converted: _____

Aggregate accrued and unpaid Interest, and accrued and unpaid Late Fees with respect to such portion of the aggregate principal and such aggregate Interest to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

☐ If this Conversion Notice is being delivered with respect to an Alternate Conversion, check here if Holder is electing to use the following Alternate Conversion Price:_____

Please issue the Common Stock into which the Debenture is being converted to Holder, or for its benefit, as follows:

☐ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

☐ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____ __, __

__
Name of Registered Holder

By: __
Name:
Title:

Tax ID:_____

E-mail Address:

Schedule 1

CONVERSION SCHEDULE

The Original Issue Discount Senior Secured Convertible Debentures due on _____20__ in the aggregate principal amount of $_____ are issued by Nauticus Robotics, Inc., a Delaware corporation. This Conversion Schedule reflects conversions made under Section 4 of the above referenced Debenture.

Dated:

Date of Conversion (or for first entry, Issuance Date)	Amount of Conversion	Aggregate Principal Amount Remaining Subsequent to Conversion (or original Principal Amount)	Company Attest

4869-3989-5794v.7

PLEDGE AND SECURITY AGREEMENT

PLEDGE AND SECURITY AGREEMENT, dated as of November 4, 2024 (this " Agreement"), among ATW SPECIAL SITUATIONS MANAGEMENT LLC, as collateral agent (the "Agent") on behalf of the Buyers now or hereafter party to the Securities Purchase Agreement (defined below), NAUTICUS ROBOTICS, INC. (F/K/A CLEANTECH ACQUISITION CORP.), a Delaware corporation (together with its successors and assigns, the "Company"), NAUTICUS ROBOTICS HOLDINGS, INC. (F/K/A NAUTICUS ROBOTICS, INC.), a Texas corporation (together with its successors and assigns, "Nauticus Sub"), NAUTIWORKS LLC, a Delaware limited liability company (together with its successors and assigns, "NautiWorks"), NAUTICUS ROBOTICS FLEET LLC, a Delaware limited liability company (together with its successors and assigns, " Nauticus Fleet"), NAUTICUS ROBOTICS USA LLC, a Delaware limited liability company (together with its successors and assigns, " Nauticus USA", and together with the Company, Nauticus Sub, NautiWorks, Nauticus Fleet and any other debtor parties joined to this Agreement from time to time pursuant to Section 8, collectively, the "Debtors", and each individually, a "Debtor").

WITNESSETH:

WHEREAS, the Company has entered into a Securities Purchase Agreement dated as of the date hereof (as it may hereafter be amended or restated, the "Securities Purchase Agreement"), with the Agent and the buyers party thereto;

WHEREAS, it is a condition to the obligations of the Buyers (as defined in the Securities Purchase Agreement) under the Securities Purchase Agreement that this Agreement be duly executed and delivered; and

WHEREAS, each of the Debtors derives financial benefit from the financing being made available to the Company pursuant to the Securities Purchase Agreement.

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

1 SECURITY INTEREST. The Debtors hereby assign and grant to the Agent on behalf of the Buyers, a security interest in all of the following assets of the Debtors, now owned or hereafter created or acquired (the "Collateral"):

(a) All accounts, contract rights, chattel paper, instruments, deposit accounts, letter of credit rights, payment intangibles and general intangibles, including all amounts owing to each Debtor from a factor and choses in action; and all returned or repossessed goods which, on sale or lease, resulted in an account or chattel paper.

(b) All inventory, including all materials, work in process and finished goods.

(c) All goods, including, without limitation, all machinery, equipment, computers, motor vehicles, trucks, tanks, boats, ships, vessels (including, for the avoidance of doubt, any Collateral Ships (including without limitation any autonomous underwater vehicle or AUV listed in Part C of Schedule II and, to the extent owned by a Debtor, all materials used or to be used in the construction and equipping a Collateral Ship, all equipment, outfitting, engines and appliances installed or to be installed on a Collateral Ship, all rights related to a Collateral Ship, and all

proceeds therefrom, and any and all present and future parts, accessories, attachments, additions, accessions, substitutions and replacements to and for any of the foregoing collateral)), appliances, furniture, special and general tools, fixtures, test and quality control devices, all Titled Collateral (as defined below), and other equipment of every kind and nature and wherever situated, together with all documents of title and documents representing the same, all additions and accessions thereto, replacements therefor, all parts therefor, and all substitutes for any of the foregoing and all other items used and useful in connection with any Debtor's businesses and all improvements thereto.

(d) All instruments, notes, chattel paper, documents, certificates of deposit, securities and investment property of every type, including, all Equity Interests in any and all Persons owned or hereafter acquired by any Debtor. The Collateral shall include all liens, security agreements, leases and other contracts securing or otherwise relating to the foregoing.

(e) Subject to the Foreign Collateral Exclusion, all Equity Interests, regardless of class or designation, owned or hereafter acquired by any Debtor in any and all Persons including without limitation each of the issuing entities described in Schedule I hereto, and any warrants, options, purchase rights, conversion or exchange rights, voting, managerial and control rights, calls or claims of any character with respect to any such Equity Interests (collectively, including the Additional Pledged Interests (as defined below), the "Pledged Interests"), and all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, including (i) the right to request, after the occurrence and during the continuation of an Event of Default, that the Pledged Interests (including the Additional Pledged Interests) be registered in the name of Agent or any of its nominees, (ii) any certificates representing the Pledged Interests (including the Additional Pledged Interests), (iii) the right to receive any certificates representing any of the Pledged Interests (including any certificates representing any of the Additional Pledged Interests), (iv) the right to require that same be delivered to Agent together with undated powers or assignments of investment securities with respect thereto, duly endorsed in blank by the applicable Debtor, (v) all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof and (vi) all economic rights, dividends, distributions of income, profits, surplus or other compensation by way of income or liquidating distributions, in cash or in kind, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in addition to, in substitution of, on account of or in exchange for any or all of the Pledged Interests (including the Additional Pledged Interests), whether now owned or hereafter acquired by such Debtor (the Pledged Interests and any other collateral pledged pursuant to this Section 1(e) are referred to herein, collectively, as the "Pledged Collateral").

(f) All general intangibles, including, but not limited to: (i) all patents, and all unpatented or unpatentable inventions, (ii) all trademarks, service marks, and trade names, (iii) all copyrights and literary rights, (iv) all computer software programs, (v) all mask works of semiconductor chip products, and (vi) all trade secrets, proprietary information, customer lists, manufacturing, engineering and production plans, drawings, specifications, processes and systems. The Collateral shall include all good will connected with or symbolized by any of such general intangibles, all contract rights, documents, applications, licenses, materials and other matters related to such general intangibles; all tangible property embodying or incorporating any such general intangibles; and all chattel paper and instruments relating to such general intangibles.

(g) All negotiable and nonnegotiable documents of title covering any Collateral.

(h) All accessions, attachments and other additions to the Collateral, and all tools, parts and equipment used in connection with the Collateral.

(i) All substitutes or replacements for any Collateral, all cash or non-cash proceeds, product, rents and profits of any Collateral, all income, benefits and property receivable on account of the Collateral, all rights under warranties, indemnities and insurance contracts, letters of credit, guaranties or other supporting obligations covering the Collateral, and any causes of action relating to the Collateral.

(j) All Collateral Ship Earnings.

(k) All books and records pertaining to any Collateral, including but not limited to any computer-readable memory and any computer hardware or software necessary to process such memory ("Books and Records").

(l) All Marine Insurances.

(m) All contracts (including Charters), other agreements or undertakings between a Debtor and one or more additional parties, including, without limitation for the construction of any Collateral Ship or any refurbishment, refitting, redesign or other improvement to an existing Collateral Ship or any bareboat charter, time or voyage charter, contract of affreightment or other contract for the use or employment of a Collateral Ship.

(n) All Construction Contracts (including, without limitation (i) all rights to purchase, to take title to, and to be named the Buyer in any bill of sale for, any Collateral Ship, (ii) all claims for damages in respect of a Collateral Ship arising as a result of any default by the Builder (including, without limitation, all warranty and indemnity claims), (iii) all rights to any software, data, or intellectual property imbedded in the Vessel or essential to its operation, (iv) any and all rights of a Debtor to compel performance by the Builder, and (v) all rights related to a Collateral Ship, which rights, in each case, include but are not limited to (a) all present and future options to sell, lease or charter of a Collateral Ship or any interest therein, (b) all of a Debtor's accounts, general intangibles and contract rights in any way related to a Collateral Ship (including those arising pursuant to a Construction Contract) and/or the construction and equipping thereof, (c) all of a Debtor's rights under any present and future construction, architectural and engineering drawings, plans, specifications, contracts or agreements with regard to the construction and outfitting of a Collateral Ship, including all rights under a Construction Contract, all rights with respect to any plans and specifications, and any and all surety or performance bonds, letters of credit and guaranties in connection therewith of every nature and kind whatsoever, including, without limitation, the rights of Assignor and its remedies to enforce and/or to receive payments or damages under any such construction, engineering or architectural contracts and surety or performance bonds, letters of credits and/or guaranties, as provided therein, or as otherwise provided under applicable law, and (d) all of a Debtor's present and future contract rights, instruments, permits, and documents necessary for use or useful in connection with the ownership and/or operation of a Collateral Ship).

(o) All proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all proceeds of any insurances (including without limitation Marine Insurances),

indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.

To the extent any Collateral Ship is subject to and covered by a valid and enforceable Collateral Ship Mortgage in favor of the Agent, the provisions of such Collateral Ship Mortgage shall prevail in the event of any conflict between such Collateral Ship Mortgage and this Agreement. Subject to the foregoing, if any item of Collateral also constitutes collateral granted to Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, Agent, in its sole discretion, shall select which provision or provisions shall control.

Notwithstanding anything to the contrary in this Agreement, (A) the pledge by any Debtor of the Equity Interests in any Excluded Subsidiary that is a Direct Foreign Subsidiary of such Debtor shall be limited to a pledge by such Debtor of 65% of the voting securities and related interests and rights owned by such Debtor in such Excluded Subsidiary that is a Direct Foreign Subsidiary, and (B) Excluded Subsidiaries shall not pledge their assets hereunder (including Equity Interests in any Foreign Subsidiaries owned by such Excluded Subsidiaries) (the exclusion in clauses (A) and (B) of this paragraph are referred to herein as the "Foreign Collateral Exclusion"); provided, the Foreign Collateral Exclusion shall only apply to Excluded Subsidiaries and, with respect to any particular Excluded Subsidiary, only for so long as such Excluded Subsidiary remains an Excluded Subsidiary. Accordingly, in the event an existing Excluded Subsidiary ceases to be an Excluded Subsidiary for any reason (including without limitation by operation of a change in applicable law), 100% of the Equity Interests owned by the Debtors in such former Excluded Subsidiary shall be pledged hereunder by the applicable Debtor(s) (such pledge being automatically deemed effective upon and simultaneously with such former Excluded Subsidiary's ceasing to be an Excluded Subsidiary) and such former Excluded Subsidiary shall be required to join this Agreement as a Debtor in order to pledge all of its assets as Collateral, as provided further herein.

2 DEFINITIONS. Capitalized terms used, but not defined, in this Agreement have the meaning set forth in the Securities Purchase Agreement. All other capitalized terms contained in this Agreement and not defined in this Agreement or the Securities Purchase Agreement shall have, when the context so indicates, the meanings provided for by the UCC. In addition, when used in this Agreement, including in any Schedule, Exhibit or Annex hereto, the defined terms contained in Exhibit C to this Agreement shall have the meanings set forth therein and the following terms shall have the following meanings:

"Bankruptcy Code" means (i) the Bankruptcy Code of the United States, (ii) all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, arrangement, receivership, insolvency, administration, reorganization, or similar debtor relief legal requirements of the United States or other applicable jurisdictions from time to time in effect which permit a debtor to obtain a stay or a compromise of the claims of its creditors or which otherwise affect the rights of creditors generally, and (iii) any provisions of corporate statutes of like effect where such statutes are used by a Person to propose an arrangement of such Person's debts.

"Debtor Laws" means (i) all applicable liquidation, conservatorship, bankruptcy, moratorium, arrangement, receivership, insolvency, reorganization or similar laws including the Bankruptcy Code, and (ii) general equitable principles from time to time in effect affecting the rights of creditors generally.

"Deposit Account Control Agreement " shall mean an agreement in writing, in form and substance reasonably satisfactory to Agent, by and among Agent, and any Debtor with a deposit account at any bank and the bank at which such deposit account is at any time maintained which provides that such bank will comply with instructions originated by Agent directing disposition of the funds in the deposit account without further consent by such Debtor and such other terms and conditions as Agent may reasonably require.

"Direct Foreign Subsidiary" means any subsidiary of a Debtor, or of a Domestic Subsidiary of a Debtor, (i) a majority of whose voting securities are directly owned by a Debtor or Domestic Subsidiary of a Debtor and (ii) that is not a Domestic Subsidiary.

"Domestic Subsidiary" means any direct or indirect subsidiary of a Debtor that is organized under the laws of the United States, any state thereof, or the District of Columbia.

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

"Excluded Subsidiary" means any Foreign Subsidiary for which (i) the provision of a guarantee by such Foreign Subsidiary of any indebtedness or other obligations incurred by any Debtor hereunder or under any other Transaction Document, (ii) the pledge by such Foreign Subsidiary of any assets of such Debtor as security for payment of any indebtedness or other obligations incurred by any Debtor hereunder or any other Transaction Document, (iii) the pledge by any Debtor of 100% of the voting capital stock of such Foreign Subsidiary as security for the payment of the indebtedness or other obligations incurred by any Debtor hereunder or under any Transaction Document, would result in material adverse tax consequences to any Debtor (as reasonably determined by such Debtor in consultation with the Agent) under Section 956 of the United States Internal Revenue Code, and the regulations promulgated thereunder, as amended ("Section 956") or (iv) any Subsidiary formed solely in connection with a Subsidiary Acquisition that is merged out of existence upon consummation of the Subsidiary Acquisition; provided that, concurrently with such consummation of the Subsidiary Acquisition, the Company agrees to, or to cause such surviving entity, to become a Guarantor and execute a Joinder to this Agreement.

"Foreign Subsidiary" means any Direct Foreign Subsidiary of a Debtor, and any directly or indirectly owned subsidiary (other than a Domestic Subsidiary) of a Direct Foreign Subsidiary.

"Intellectual Property Security Agreements" means one or more intellectual property security agreements duly executed by any Debtor, in form and substance reasonably satisfactory to the Collateral Agent.

"Investment Property Control Agreement " shall mean an agreement in writing, in form and substance reasonably satisfactory to Agent, by and among Agent, any Debtor, and any bank, securities intermediary, commodity intermediary, financial institution or other Person who has custody, control or possession of any investment property of such Debtor acknowledging that such bank, securities intermediary, commodity intermediary, financial institution or other Person who has custody, control or possession of such investment property on behalf of Agent, that it will comply with entitlement orders originated by Agent with respect to such investment

property, or other instructions of Agent, or (as the case may be) apply any value distributed on account of any commodity contract as directed by Agent, in each case, without the further consent of such Debtor and including such other terms and conditions as Agent may reasonably require.

"Obligations" means and includes each Debtor's and each other Subsidiary's obligations under th Securities Purchase Agreement, the Notes (as defined in the Securities Purchase Agreement), the Security documents and the other Transaction Documents including all unpaid principal and accrued and unpaid interest and any premium (including, without limitation, interest that accrues during the pendency of, or premiums that become owed upon the occurrence of, any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) under the Transaction Documents, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of each Debtor and each Subsidiary to any Buyer and/or the Collateral Agent arising under this Agreement and the other Transaction Documents.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Pledged Securities" means any and all certificates and other instruments representing or evidencing all of the capital stock and other equity interests of the Subsidiaries.

"Subsidiary Acquisition" means any acquisition by a Debtor (other than the Company) of (i) all of substantially all of the assets of another Person (each a "Target") (or all or substantially all of a line or lines of business or a division or divisions of a Target) or (ii) more than 50% of the capital stock or other equity interests of a Target.

"Subsidiary Guarantee" means the Subsidiary Guarantee dated as of the Closing Date, by each Subsidiary in favor of the Buyers, in form and substance satisfactory to the Buyers in their sole discretion.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Agent's security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

"Security Documents" shall mean this Agreement, the Intellectual Property Security Agreements, the Subsidiary Guarantee, the original Pledged Securities (as defined in the Purchase Agreement), along with medallion guaranteed executed blank stock powers to the Pledged Securities, the Deposit Account Control Agreements, Investment Property Control Agreements, any Other Instruments any Pre-delivery Security, Collateral Ship Mortgage, Deed of Covenant and any other documents and filings required, executed or delivered hereunder and/or thereunder in order to grant the Agent on behalf of the Buyers a first priority security interest in the assets of the Debtors as provided herein or therein, as applicable, including without limitation all UCC-1 filing receipts, each in form and substance satisfactory to the Buyers.

3 THE SECURED OBLIGATIONS. The Collateral secures and will secure (i) all Obligations (as defined in the Securities Purchase Agreement) and (ii) all obligations of the Debtors under this Agreement (collectively, the "Secured Obligations"). The Debtors have fully completed and delivered to the Agent the attached Perfection Certificate, attached hereto as Exhibit A ("Perfection Certificate"). Each Debtor represents and warrants as of the date hereof that, to its knowledge, (i) the written information provided for in the Perfection Certificate is true and correct and (ii) the Perfection Certificate does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements or information therein, in the light of the circumstances under which they were made, not materially misleading, taken as a whole.

4 DELIVERY OF COLLATERAL; FILING AUTHORIZATION.

(a) Within thirty (30) days following the date hereof (or such later time as the Agent may agree in its sole discretion), each Debtor shall have delivered to the Agent all certificates, if any, representing the Pledged Interests owned by such Debtor to the extent such Pledged Interests are represented by certificates, and undated powers endorsed in blank with respect to such certificates. From and after the date hereof, each Debtor will promptly and in any event within five (5) Business Days of such Debtor's receipt thereof (or such later time as the Agent may agree in its sole discretion), deliver to the Agent the applicable certificates in accordance with Section 5. The Debtors agree that all property comprising part of the Collateral shall be accompanied by proper instruments of assignment duly executed by the applicable Debtor, and by any such other instruments or documents as Agent may request.

(b) Each Debtor irrevocably authorizes Agent at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements, amendments or modifications thereto or continuations thereof that (a) indicate the Collateral (i) as all assets of such Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code, 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 Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, in order to and as necessary or appropriate (as determined by the Agent in its sole discretion) perfect the security interests in the Collateral granted herein. Each Debtor hereby further irrevocably authorizes Agent to file intellectual property security agreements with respect to the Collateral with the United States Patent and Trademark Office or United States Copyright Office (or any successor office), as applicable, in order to and as necessary or appropriate (as determined by the Agent in its sole discretion) perfect the security interests in the Collateral granted herein.

5 ADDITIONAL PLEDGED INTERESTS; OTHER INSTRUMENTS.

(a) Subject to the Foreign Collateral Exclusion, during the term of this Agreement, in the event that any Debtor shall receive any additional Equity Interests of any Person or any warrants, options, purchase rights, conversion or exchange rights, voting rights, calls or claims of any character with respect to any Equity Interests of any Person, including without limitation (i) any Equity Interests (including without limitation any options, warrants, subscriptions or other rights, whether as an addition to, in substitution for, or in exchange for any of the Pledged Interests or otherwise) in any direct or indirect subsidiaries of such Debtor formed or acquired after the date hereof, and/or any Equity Interests received through a dividend or a distribution in connection with any reclassification, increase or reduction of capital, merger, consolidation, sale of assets, combination or other reorganization by virtue of such Debtor having been an owner of any of the Pledged Collateral (all of such additional Equity Interests, collectively, the "Additional

Pledged Interests"), or (ii) any original promissory note, chattel paper, documents, certificates of deposit, securities or other investment property not constituting Equity Interests (collectively "Other Instruments"), such Debtor agrees to deliver promptly and in any event within five (5) Business Days of such Debtor's receipt thereof (or such later time as the Agent may agree in its sole discretion), to Agent at the address specified in Section 4, the following: (1) with respect to any such Additional Pledged Interests or other Pledged Collateral represented by a certificate or other instrument, or any such Other Instruments received, such certificate or Other Instrument, together with undated powers or assignment endorsed in blank by such Debtor; and (2) a duly executed Pledge and Security Agreement Addendum in substantially the form of Exhibit B hereto (a "Pledge and Security Agreement Addendum") identifying the Additional Pledged Interests, Other Instrument or other Pledged Collateral which are pledged by such Debtor pursuant to this Agreement.

(b) During the term of this Agreement, in the event that any distribution of any Equity Interests or other securities of any Person, regardless of class or designation, or any warrants, options, purchase rights, conversion or exchange rights, voting rights, calls or claims of any character with respect to any of the foregoing, shall be made on or in respect of the Pledged Collateral or any property shall be distributed to any Debtor upon or with respect to the Pledged Collateral pursuant to the recapitalization or reclassification of the Equity Interests or other securities of the issuer thereof or pursuant to the reorganization thereof, the property so distributed shall be delivered promptly and in any event within five (5) Business Days of such Debtor's receipt thereof (or such later time as the Agent may agree in its sole discretion) by such Debtor to Agent to be held by it as additional collateral security for the Secured Obligations. All such Equity Interests or other securities so distributed in respect of the Pledged Collateral which are received by any Debtor shall, until paid or delivered to Agent, be held such Debtor in trust for the benefit of Agent on behalf of the Buyers, segregated from such Debtor's other property, and Debtor shall deliver it forthwith to Agent in the exact form received, together with the authorization to file any necessary UCC financing statements or any necessary endorsement or appropriate stock or other powers or assignments duly endorsed in blank by such Debtor.

6 MARINE INSURANCES, CONSTRUCTION CONTRACTS, CHARTER CONTRACTS AND EARNINGS.

(a) With respect to any Marine Insurances, the Debtors shall deliver in writing to all of the underwriters or marine insurance brokers of Marine Insurance of each Debtor a notice of assignment substantially in the form attached hereto as Exhibit F (or such other form as acceptable to the Agent), and the Debtors shall deliver, or cause to be delivered, to the Agent with respect to each policy of Marine Insurance, a letter of undertaking from the applicable underwriter or a marine insurance broker attaching the cover notes and certificate of entry evidencing such Marine Insurance, together with notices of assignment and loss payee clauses, and letters of undertaking issued by the protection and indemnity association, each of which shall be reasonable satisfactory to the Agent.

(b) With respect to a Permitted Charter in excess of 12 months of a Collateral Ship constituting Collateral (or that would constitute Collateral if the succeeding actions were undertaken) where the charterer thereunder is not a Debtor, the Debtors shall promptly deliver to such charterer a notice in writing substantially in the form attached hereto as Exhibit G-1 (or such other form acceptable to the Agent) of the assignment of such Charter granted hereunder and

deliver to the Agent a consent and agreement from the charterer under such Charter substantially in the form attached hereto as Exhibit G-2 (or such other form acceptable to the Agent).

(c) With respect to any Construction Contract constituting Collateral (or that would constitute Collateral if the succeeding actions were undertaken), the Debtors shall use (ii) commercially reasonable efforts with respect to any such Construction Contract executed on or before the date hereof, and (ii) best efforts with respect to any such Construction Contract executed after the date hereof, to deliver to the Agent a consent and agreement from the Builder under such Construction Contract substantially in the form attached hereto as Exhibit I (or such other form reasonably acceptable to the Agent).

(d) Notwithstanding the foregoing, at the request of the Agent, at any time after the occurrence of and during the continuance of any Event of Default, each Debtor shall promptly notify in writing substantially in the form attached hereto as Exhibit H each of such Debtor's agents and representatives into whose hand or control may come any earnings and moneys to be paid to such Debtor in respect of the Collateral Ship, instructing such addressee to remit promptly to a specified account all such earnings and money which may come into such Persons' hands or control and continue to make such remittances until such time as such Person may receive written notice or instruction to the contrary directly from the Agent.

7 TITLED COLLATERAL.

(a) Each Debtor shall (i) cause all Collateral, now owned or hereafter acquired by such Debtor, which under applicable law are required to be registered, to be properly registered as required by applicable law in the name of the Debtor, (ii) cause all Titled Collateral, to be properly titled in the name of such Debtor, and if requested by the Agent, with the Agent's lien noted thereon and (iii) if reasonably requested by the Agent, promptly, and in any event within five (5) Business Days of Agent's reasonable request therefor (or such later time as the Agent may agree in its sole discretion), deliver to the Agent (or its custodian) originals of all such Certificates of Title or certificates of ownership for such Titled Collateral unless such originals are required to be kept with the Titled Collateral in which case copies shall be provided, with the Agent's lien noted thereon or upon appropriate abstract of title or other documentation issued by a governmental authority. Notwithstanding the foregoing, if any Debtor owns any Collateral Ship on the date hereof that is registered in the State of Texas, within sixty (60) days following the date hereof (or such later time as the Agent may agree in its sole discretion), such Debtor shall file a notice of lien, or such other form reasonably necessary to record the security interest granted hereunder over such Collateral Ship, with the appropriate Texas state authorities, and substantially concurrently with the registration of such Collateral Ship with any other Approved Jurisdiction, such Debtor shall execute, deliver and record a Collateral Ship Mortgage over such Collateral Ship in such jurisdiction and any other documents and other evidence listed in Exhibit E hereto, as applicable, in form and substance satisfactory to the Agent.

(b) Upon the acquisition after the date hereof by any Debtor of any Titled Collateral, such Debtor shall promptly and in any event within five (5) Business Days of any such acquisition (or such later time as the Agent may agree in its sole discretion), notify the Agent of such acquisition, set forth a description of such Titled Collateral acquired and a good faith estimate of the current value of such Titled Collateral, and if so requested by the Agent, promptly deliver to the Agent (or its custodian) originals of the Certificates of Title or certificates of

ownership for such Titled Collateral, together with the manufacturer's statement of origin, and an application duly executed by the Debtor to evidence the Agent's lien thereon.

(c) Notwithstanding the foregoing, if (i) any Debtor acquires any Collateral Ship, the Debtors agree to, concurrently with Delivery Date in respect of such Collateral Ship, execute and deliver the documents and other evidence listed in Exhibit E hereto, as applicable, in form and substance satisfactory to the Agent, and (ii) an AUV (or any other Collateral Ship) becomes capable of registration with an Approved Jurisdiction, register such AUV (or other Collateral Ship) in such Approved Jurisdiction and concurrently with such registration record a Collateral Ship Mortgage over such AUV.

(d) Each Debtor hereby appoints the Agent as its attorney-in-fact, effective the date hereof (but with the Agent's powers as such attorney-in-fact as provided for in this paragraph only being exercisable after the occurrence and during the continuance of any Event of Default) and terminating upon the termination of this Agreement, for the purpose of (i) executing on behalf of the Debtor title or ownership applications for filing with appropriate governmental authority to enable Titled Collateral now owned or hereafter acquired by the Debtor to be amended to reflect the Agent listed as lienholder thereof, (ii) filing such applications with such governmental authority, and (iii) executing such other documents and instruments on behalf of, and taking such other action in the name of, such Debtor as the Agent may deem necessary or advisable to accomplish the purposes of this Section 7 (including, without limitation, for the purpose of creating in favor of the Agent a perfected lien on such Titled Collateral and exercising the rights and remedies of the Agent hereunder). This appointment as attorney-in-fact is coupled with an interest which shall remain in effect during the continuance of any Event of Default until Agent has confirmed in writing that such Event of Default has been cured or waived.

(e) With respect to motor vehicles, any Certificates of Title or ownership delivered pursuant to the terms hereof shall be accompanied by odometer statements for each motor vehicle covered thereby.

(f) As used herein, the term "Titled Collateral" means all Collateral for which the title to such Collateral is governed by a Certificate of Title or certificate of ownership, including, without limitation, all motor vehicles (including, without limitation, all trucks, trailers, tractors, service vehicles, automobiles and other mobile equipment) and all ships and vessels (including without limitation the Collateral Ships), and similar equipment for which the title to such motor vehicles, ships, vessels, and other similar equipment is governed by a Certificate of Title or certificate of ownership.

8 DEBTORS' COVENANTS, REPRESENTATIONS AND WARRANTIES . Each Debtor represents, covenants and warrants that unless, compliance is waived by the Agent in writing:

(a) Upon the filing of financing statements relating to the Collateral with the Secretary of State of the State of Delaware (with respect to the Company, NautiWorks, Nauticus Fleet and Nauticus USA) and with the Secretary of State of the State of Texas (with respect to Nauticus Sub), Agent will have a valid and perfected first priority security interest in the Collateral (to the extent a security interest therein may be perfected by the filing of a financing statement), subject to Permitted Liens (as defined in the Notes).

(b) As of the date hereof, Part A of Schedule II attached hereto sets forth any and all motor vehicles owned by such Debtor, together with (a) the unit and VIN numbers, (b) the state where such vehicles are titled, (c) any existing lienholders and (d) the make, model and year of such vehicles. As of the date hereof, Part B of Schedule II attached hereto sets forth any and all aircraft and boats (other than Collateral Ships) and all other inventory, equipment and other goods owned by such Debtor which are subject to any certificate of title or other registration statute of the United States, any state or any other jurisdiction, and provides a description of such goods and indicates the registration system and jurisdiction of such goods. As of the date hereof, Part C of Schedule II attached hereto sets forth any and all Collateral Ships owned by a Debtor, Construction Contracts and MOAs to which a Debtor is a party, and provides (i) with respect to each such Collateral Ship, a description of such Collateral Ship (including the intended use of such Collateral Ship, whether such Collateral Ship is a surface or sub-surface vessel, whether such Collateral Ship is manned, remote operated or both, and the Approved Jurisdiction, port of registration and IMO number of such Collateral Ship), the Debtor's good faith estimate of the value of such Collateral Ship and a representation by the Debtor as to whether such Collateral Ship is capable of registration, (ii) and in the case of any Construction Contract or MOA, a description of such agreement. As of the date hereof, Part D of Schedule II attached hereto sets forth any and all Charters in respect of a Collateral Ship, along with a description of such Charter.

(c) Each Debtor will use its commercially reasonable efforts properly preserve the Collateral (except for any thereof that is sold in the ordinary course of business or with Agent's written consent), defend the Collateral against any adverse claims and demands, and keep accurate Books and Records.

(d) As of the date hereof, such Debtor's chief executive office is located at the address specified in Schedule IV-1 hereto. In addition, as of the date hereof, each Debtor is incorporated in, or organized under, the laws of the state specified on Schedule IV-1. Each Debtor shall promptly (and in any event, within five (5) Business Days of any such change) notify the Agent, in writing, after any change such Debtor's or any Excluded Subsidiary's chief executive office address or state of incorporation or organization.

(e) As of the date hereof, each Debtor's exact legal name is as set forth in on Schedule IV-1 attached hereto. Each Debtor will promptly (and in any event, within five (5) Business Days of any such change) notify the Agent, in writing, after any change in such Debtor's name, identity or material change in its business structure.

(f) Schedule IV-2 attached hereto includes a list of all Excluded Subsidiaries existing as of the date hereof and includes, with respect to each Excluded Subsidiary (i) the exact legal name of such Excluded Subsidiary, (ii) the registered office address and chief executive office address of such Excluded Subsidiary, (iii) the jurisdiction of incorporation or organization of such Excluded Subsidiary, (iv) the type of company of such Excluded Subsidiary (as defined under its jurisdiction of incorporation or organization), (v) the date of incorporation, formation or organization of such Excluded Subsidiary, (vi) any Debtor or other Subsidiary that owns the Equity Interests of such Foreign Subsidiary and (vii) an indication as to whether such Excluded Subsidiary is a Direct Foreign Subsidiary. Each Debtor shall promptly (and in any event, within five (5) Business Days of any such change) notify the Agent, in writing, after any change in the name, identity, registered office address, chief executive office address, jurisdiction of incorporation or organization or any material change in the business structure of any Excluded Subsidiary. If any Debtor forms or acquires any new direct or indirect subsidiary that is an

Excluded Subsidiary, the Debtors agree to, concurrently with the acquisition or formation thereof, notify the agent in writing of such acquisition or formation and amend Schedule IV-2 to include such newly formed or acquired Excluded Subsidiary including all of the information with respect to such Excluded Subsidiary described in clauses (i) through (vii) of the foregoing sentence.

(g) Except as otherwise specifically contemplated by this Agreement or unless otherwise agreed, each Debtor has not granted and will not grant any security interest in any of the Collateral except to the Agent, and will keep the Collateral free of all liens, claims, security interests and encumbrances of any kind or nature except the security interest of the Agent, in each case, other than Permitted Liens (as defined in the Securities Purchase Agreement).

(h) Each Debtor will promptly (and in any event, within five (5) Business Days of any such event) notify the Agent, in writing, of any event which materially affects the value of the Collateral or the ability of the Debtors to dispose of the Collateral, including, but not limited to, the levy of any legal process against any Collateral and the adoption of any marketing order, arrangement or procedure affecting the Collateral, whether governmental or otherwise.

(i) Each Debtor shall pay all costs necessary to preserve, defend, enforce and, to the extent practical, collect, the Collateral, including but not limited to taxes, assessments, insurance premiums, repairs, rent, storage costs and expenses of sales and any costs to perfect the security interest of the Agent (collectively, the "Collateral Costs"). Without waiving such Debtor's Event of Default (if any) for failure to make any such payment, the Agent, following any such failure, at its option may pay any such Collateral Costs, and discharge encumbrances on the Collateral (other than Permitted Liens), and such Collateral Costs payments shall be a part of the Obligations and bear interest at the rate set out in the Notes. Each Debtor agrees to reimburse the Agent and the Buyers on demand for any Collateral Costs reasonably incurred.

(j) Until the Agent exercises its rights to make collection, the Debtors will use their commercially reasonable efforts to diligently collect all Collateral consisting of accounts receivables consistent with their customary business practices.

(k) If any Collateral is or becomes the subject of any registration certificate, certificate of deposit or negotiable document of title, including any warehouse receipt or bill of lading, each Debtor shall promptly and in any event within five (5) Business Days of such Debtor's receipt thereof (or such later time as the Agent may agree in its sole discretion) deliver such document to the Agent on behalf of the Buyers, together with any necessary endorsements.

(l) No Debtor shall sell, lease, agree to sell or lease, or otherwise dispose of any Collateral (each, a "Disposition") except for (i) Dispositions consisting of leases of equipment or sales of inventory in the ordinary course of business or any Permitted Charter, (ii) Dispositions in the ordinary course of business of obsolete or worn out Collateral with a fair market value not to exceed $1,000,000 in the aggregate per calendar year, (iii) Dispositions of Collateral with a fair market value not to exceed $500,000 in the aggregate per calendar year or (iv) Dispositions not prohibited by the Transaction Documents.

(m) Each Debtor will maintain and keep in force commercial risk insurance (i) covering the customary risks for the business that the Debtors are engaged in, (ii) insuring the Collateral against loss by fire, flood and wind and such other hazards as are customary in the area where such Collateral is located and (iii) naming the Agent and its successors or assigns as their

interests may appear as Buyer loss payee (in the case of property insurance) and an additional insured (in the case of liability insurance), and the Debtors will maintain insurance of similar types and coverages as maintained on the date hereof and consistent with past practice, with financially sound and reputable insurance companies and associations acceptable to the Agent based on the Agent's reasonable judgment (or as to workers' compensation or similar insurance, in an insurance fund or by self-insurance authorized by the jurisdiction in which its operations are carried on). Notwithstanding anything to the contrary set forth herein, the Debtors (i) represent and warrant that as of the date hereof, the Company, NautiWorks, Nauticus Fleet and Nauticus USA are is insured under all of the insurance policies of Nauticus Sub, and (ii) agree that the Company, NautiWorks, Nauticus Fleet and Nauticus USA shall at all times be insured under all of the insurance policies of Nauticus Sub and each other direct and/or indirect subsidiary of the Company. On or before the date that is fifteen (15) Business Days following the date hereof (or such other later date to which Agent may agree to in writing in its sole and absolute discretion), the Debtors shall deliver to Agent certificates of insurance evidencing that the required insurance is in force, together with satisfactory additional insured or Buyer loss payee, as the case may be, endorsements, each in form and substance satisfactory to the Agent in its sole discretion. Upon the request of the Agent, from time to time, the Debtors shall deliver to the Agent a copy of each insurance policy required to be maintained hereunder together with certificates of insurance evidencing that the required insurance is in force, together with satisfactory additional insured or Buyer loss payee, as the case may be, endorsements, each in form and substance satisfactory to the Agent in its sole discretion.

(n) The Debtors will not attach any Collateral to any real property or fixture in a manner which might cause such Collateral to become a part thereof unless the Debtor first obtains the written consent of any owner, holder of any lien on the real property or fixture, or other Person having an interest in such property to the removal by the Agent of the Collateral from such real property or fixture; provided that this paragraph (n) shall not prohibit any Debtor from acquiring or owning real property. Such written consent shall be in form and substance acceptable to the Agent and shall provide that the Agent have no liability to such owner, holder of any lien, or any other Person.

(o) As of the date hereof, the Perfection Certificate includes a complete list of all patents, trademark and service mark registrations, copyright registrations, mask work registrations, and all applications therefore, in which each Debtor has any right, title, or interest, throughout the world. Each Debtor will promptly notify the Agent of any acquisition (by adoption and use, purchase, license or otherwise) of any patent, trademark or service mark registration, copyright registration, mask work registration, and applications therefore, and unregistered trademarks and service marks and copyrights, throughout the world, which are granted or filed or acquired by any Debtor after the date hereof or which are not listed on the Perfection Certificate.

(p) Each Debtor will at its expense, use its commercially reasonable efforts to diligently prosecute all patent, trademark or service mark or copyright applications pending on or after the date hereof that it deems appropriate in its business judgment, will maintain in effect all issued patents and will renew all trademark and service mark registrations, including payment of any and all maintenance and renewal fees relating thereto, except for such patents, service marks and trademarks that are being sold, donated or abandoned by the Debtors pursuant to the terms of its intellectual property management program. Each Debtor also will promptly make application on any patentable but unpatented inventions, registerable but unregistered trademarks and service marks, and copyrightable but uncopyrighted works that it deems appropriate in its business

judgment. Each Debtor will at its expense protect and defend all rights in the Collateral against any material claims and demands of all Persons other than the Agent and the Buyers or the holders of Permitted Liens and will, at its expense, enforce all rights in the Collateral against any and all infringers of the Collateral where such infringement would materially impair the value or use of the Collateral to the Debtors or the Buyers. No Debtor will license or transfer any of the Collateral constituting patents, trademarks, service marks, or copyright applications, except for such licenses or transfers as are customary in the ordinary course of the Debtors' business, or except with the prior written consent of the Agent, which consent shall not be unreasonably withheld.

(q) The Equity Interests owned by the Debtors as of the date hereof (i) are not dealt in or traded on securities exchanges or in securities markets, (ii) do not constitute investment company securities and (iii) are not held by any Person in an investment account, securities account, commodity account or other similar account as the date hereof, except as disclosed in Schedule III-1 hereto.

(r) If any Debtor forms or acquires any new direct or indirect subsidiary (other than an Excluded Subsidiary), the Debtors agree to, concurrently with the acquisition or formation thereof, (i) amend this Agreement to reflect the addition of such Equity Interests and pledge the applicable Equity Interests to Agent as additional Collateral in accordance with Section 5, (ii) cause such newly formed or acquired subsidiary to become a party to this Agreement as a Debtor pursuant to a joinder in form satisfactory to Agent for the purposes of granting a security interest in such subsidiary's assets as additional Collateral, (iii) deliver to Agent an opinion of counsel in form and substance acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to such subsidiary and (iv) to execute or deliver such other agreements, documents requested by the Agent in connection therewith.

(s) Subject to the Foreign Collateral Exclusion, if any Debtor forms or acquires any Direct Foreign Subsidiary that is an Excluded Subsidiary, the Debtors agree to, concurrently with the acquisition or formation thereof, (i) amend this Agreement to reflect the addition of the applicable Equity Interests and pledge the applicable Equity Interests to Agent as additional Collateral in accordance with Section 5 and the last paragraph of Section 1, and (ii) take such other actions as Agent deems necessary or reasonably advisable to perfect the Agent's security interest therein, including without limitation, executing and/or delivering to Agent foreign law pledge agreements and such other documents requested by the Agent in connection therewith together with opinions of counsel to the Debtors and/or the applicable Excluded Subsidiary (including foreign counsel, if applicable) in form and substance reasonably acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to the pledge of the Equity Interest in such Direct Foreign Subsidiary that is an Excluded Subsidiary. If any existing Excluded Subsidiary ceases to be an Excluded Subsidiary for any reason (including without limitation by operation of a change in applicable law) then, the Debtors agree to, within ten (10) Business Days (or such longer period as may be agreed to by the Agent in its reasonable discretion) after such existing Excluded Subsidiary ceases to be an Excluded Subsidiary, (i) amend this Agreement to reflect the pledge of the additional Equity Interests not pledged prior to such time due to the operation of the Foreign Collateral Exclusion (such that 100% of the Equity Interests held by the Debtors shall then be pledged to Agent as Collateral, in accordance with Section 5), (ii) cause such former Excluded Subsidiary become a party to this Agreement pursuant to a joinder in form satisfactory

to Agent for the purposes of granting a security interest in such former Excluded Subsidiary's assets as additional Collateral, (iii) deliver to Agent opinions of counsel to the Debtors and/or the applicable Excluded Subsidiary (including foreign counsel, if applicable) form and substance acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to such former Excluded Subsidiary and (iv) to execute or deliver such other agreements, documents reasonably requested by the Agent in connection therewith. Subject to the Foreign Collateral Exclusion, the Debtors shall promptly, and in any event no later than the date that is forty-five (45) days following the date hereof (or such other later date to which Agent may agree to in writing in its reasonable discretion), take such actions as Agent deems necessary or reasonably advisable to perfect the Agent's security interest in the applicable Equity Interests owned by a Debtor in any Excluded Subsidiary that is a Direct Foreign Subsidiary existing as of the date hereof, as set forth on Schedule I and Schedule IV-2 hereto, including without limitation, executing and/or delivering to Agent foreign law pledge agreements and such other documents requested by the Agent in connection therewith together with opinions of counsel to the Debtors and/or the applicable Excluded Subsidiary (including foreign counsel, if applicable) in form and substance reasonably acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to the pledge of the Equity Interest in such Direct Foreign Subsidiary that is an Excluded Subsidiary.

(t) If any Debtor enters into or becomes a party to any Pre-Delivery Contract or MOA, concurrently with becoming a party thereto, it shall execute and deliver Pre-delivery Security and such other documents, and provide such other evidence satisfactory to the Agent, in order to assign to the Agent for the benefit of the Buyers all of its right, title and interest in such Pre-Delivery Contract or MOA in a form acceptable to the Agent, together with such consents to such assignments from counterparties thereto as the Agent may reasonably require.

(u) Each Debtor makes the representations, warranties and covenants set out in Exhibit D hereto to the Agent and each other Buyer in respect any Collateral Ship. In the event of any conflict between the provisions of this Section 8 and the provisions of Exhibit D, the provisions of Exhibit D shall prevail as it relates to any Collateral Ship.

(v) The Debtors agree that the Debtors and the Foreign Subsidiaries shall, and shall cause each of their respective subsidiaries to, use commercially reasonable efforts to (i) exclude from any potential commercial contract or other agreement to be entered into with any customer of any Debtor, Foreign Subsidiary or any subsidiary of a Debtor or Foreign Subsidiary any provision that a change of control of any Debtor, or of any of such Debtor's direct or indirect subsidiaries, gives rise to a right to terminate such agreement or other contract, and (ii) exclude from any potential employment agreement or any other contract for the performance of services by any employee or other individual any provision that a change of control of any Debtor, or of any of such Debtor's direct or indirect subsidiaries, gives rise to a right to terminate such agreement or other contract.

(w) The Debtors agree that (i) no intellectual property of any Debtor shall be sold, assigned, or otherwise transferred to any Excluded Subsidiary, (ii) and that no intellectual property shall be owned, acquired or held in the name of an Excluded Subsidiary; provided that, to the extent that any intellectual property is hereafter developed by a Excluded Subsidiary, the Debtors shall, promptly, and in any event within five (5) Business Days following the date such intellectual property is developed by such Excluded Subsidiary (or such other later date to which Agent may

agree to in writing in its sole and absolute discretion), notify the Agent in writing and cause such intellectual property to be assigned to a Debtor hereunder to be pledged as additional Collateral of such Debtor hereunder, delivering any documents requested by the Agent to evidence such assignment, in form and substance satisfactory to the Agent.

(x)

(i) The Debtors agree that, without the prior written consent of Agent (which consent shall not be unreasonably withheld, conditioned, or delayed), the Excluded Subsidiaries shall not own any Collateral Ships (including any AUVs), except that the consolidated Excluded Subsidiaries, shall be permitted to own collectively, without the prior written consent of Agent, up to five (5) Collateral Ships consisting of not more that two (2) "Hydronauts" and not more than three (3) "Aquanauts", in each case, which will not be subject to a lien in favor of the Agent for so long as any such Collateral Ship is owned by an Excluded Subsidiary (the "Collateral Ship Limit"); provided that, for the avoidance of doubt, the Collateral Ship Limit is a limit on the total number of Collateral Ships permitted to be owned collectively by the consolidated Excluded Subsidiaries considered as a whole, without the prior written consent of the Agent, at any time.

(ii) If at any time, any Excluded Subsidiary (1) in order to satisfy a requirement by any potential or existing customer of any Debtor or any Excluded Subsidiary to permit such Debtor or Excluded Subsidiary to secure a potential contract with such customer (a "Customer Requirement") or (2) in order to comply with applicable law in connection with satisfying any such Customer Requirement (or to otherwise perform services required to be performed under any potential or existing customer contract), such Excluded Subsidiary, in either case, is required to own a Collateral Ship that would, when added to the total amount of Collateral Ships then owned by the collective Excluded Subsidiaries without the prior consent of the Agent, cause the total number of Collateral Ships owned by the collective Excluded Subsidiaries to exceed the Collateral Ship Limit (any such Collateral Ship, an "Excess Ship"), the Debtors may, in addition to seeking consent of the Agent as set forth in paragraph (ii) above, seek the consent of the Agent for such Excluded Subsidiary to own such Excess Ship, and such consent of the Agent shall be deemed granted, as applicable, pursuant to clause (iii) below.

(iii) The Company shall provide reasonable notice to the Agent prior to entry by any Debtor or Excluded Subsidiary into any contract containing a Customer Requirement requiring any Excluded Subsidiary to own any Excess Ship or a Customer Requirement that would require any Excluded Subsidiary to own any Excess Ship in order for such Excluded Subsidiary to comply with applicable law as result of such Customer Requirement, and shall provide Agent (1) prior to entry into any such contract a current draft copy of such proposed contract and (2) a certificate executed by an officer of the Company certifying that the conditions set forth in clause (1) or clause (2) of Section 8(x)(ii) are applicable (i.e. that the failure of such Excluded Subsidiary to own such Excess Ship would result in failure to secure the applicable potential customer contract or a breach of applicable law in complying with a Customer Requirement contained in such potential customer contract). Upon receipt by the Agent of the items

set forth in clauses (1) and (2) of the foregoing sentence, the Agent shall be deemed to have consented to the applicable Excluded Subsidiary owning such Excess Ship.

(iv) Notwithstanding anything set forth to the contrary set forth herein, the Debtors and the Excluded Subsidiaries shall use commercially reasonable efforts in negotiating with potential customers to exclude Customer Requirements requiring any Excluded Subsidiary to own any Excess Ship and Customer Requirements that would require any Excluded Subsidiary to own any Excess Ship in order for such Excluded Subsidiary to comply with applicable law as result of such Customer Requirement.

(y) Without limiting the foregoing, no Foreign Subsidiary shall, and no Debtor shall permit and Subsidiary to, create or permit to subsist any mortgage, charge, pledge, lien or other encumbrance upon any or all of its present or future assets to secure any present or future indebtedness for borrowed money without the prior written consent of the Agent.

(z) No Debtor shall voluntarily prepay or repurchase any Indebtedness if, at such time, or after giving effect to such payment, any Event of Default exists or occurs.

9 CONTROL AGREEMENTS.

(a) Each Debtor represents, covenants and warrants that such Debtor does not have or maintain any deposit accounts (other than Excluded Deposit Accounts) as the date hereof except as set forth in Schedule III-1 hereto. The Debtors shall not, directly or indirectly, after the date hereof, establish or maintain any deposit account unless each of the following conditions is satisfied: (i) Agent shall have received not less than five (5) Business Days' prior written notice of the intention of any Debtor to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Agent the name of the account, the owner of the account, the name and address of the bank at which such account is to be opened or established, the individual at such bank with whom such Debtor is dealing and the purpose of the account, (ii) the bank where such account is opened or maintained shall be acceptable to Agent, and (iii) in the case of any deposit account that is not an Excluded Deposit Account, on or before the opening of such deposit account, such Debtor shall deliver to Agent a Deposit Account Control Agreement with respect to such deposit account duly authorized, executed and delivered by such Debtor and the bank at which such deposit account is opened and maintained. No later than forty-five (45) days after the date hereof (or such later time as the Agent may agree in its sole discretion), each Debtor shall cause each deposit account (other than Excluded Deposit Accounts) held or maintained by such Debtor on the date hereof to be subject to a Deposit Account Control Agreement duly executed by such Debtor and the bank at which such deposit account is maintained and delivered to Agent.

(b) All income earned or proceeds received by any Debtor and any direct or indirect Domestic Subsidiary thereof during the term of this Agreement shall be deposited promptly upon (and in any event within one Business Day of) receipt thereof by such Debtor in a deposit account that is subject to a fully executed Deposit Account Control Agreement, except for such income earned or proceeds permitted to be deposited in an Excluded Deposit Account or the Frost Bank Excluded Account in accordance with this Agreement . Each Debtor shall take all steps to ensure that all of its account debtors forward all items of payment to a deposit account that is subject to a fully executed Deposit Account Control Agreement, and in no event shall any Debtor direct any account debtor to forward any item of payment to any account other than a deposit account that is

subject to a fully executed Deposit Account Control Agreement. As used herein, the term "Excluded Deposit Account" means any deposit account established and used exclusively for payroll, payroll taxes and similar employment taxes or other employee wage and benefit payments in the ordinary course of business to or for the benefit of any Debtor's employees and identified to Agent as being an Excluded Deposit Account. Each Debtor represents and warrants that as of the date hereof, all of the Excluded Deposit Accounts maintained by any Debtor are as set forth on Schedule III-2 hereto. Each Debtor covenants and agrees that during the term of this Agreement (i) each Excluded Deposit Account shall at all times be used exclusively for payroll, payroll taxes and similar employment taxes or other employee wage and benefit payments in the ordinary course of business to or for the benefit of any Debtor's employees, and (ii) such Debtor will not make or cause any of its direct or indirect subsidiaries to make any deposits in any Excluded Deposit Account other than those necessary to fund payroll, payroll taxes and similar employment taxes or other employee wage and benefit payments in the ordinary course of business to or for the benefit of any Debtor's employees. As used herein, the term "Frost Bank Excluded Account" means the deposit account maintained by Nauticus Sub with Frost Bank (Acct No. 00001007) with a CD securing obligations under corporate credit cards and listed in Schedule III-3 hereto. Each Debtor covenants and agrees that during the term of this Agreement the aggregate amount of deposits contained in the Frost Bank Excluded Account shall not exceed $750,000 at any time.

(c) No later than sixty (60) days after the end of each fiscal quarter of the Company, the Company shall deposit all income and proceeds received by a Foreign Subsidiary in a deposit account that is subject to a fully executed Deposit Account Control Agreement in excess of amounts used by such Foreign Subsidiary in the immediately preceding fiscal quarter of the Company (i) use to pay local taxes and (ii) used by such Foreign Subsidiary for working capital and to finance local operations in the ordinary course of business, in the case of this clause (c), solely to the extent repatriation of such funds from any such Foreign Subsidiary into the United States of America would not result in any material adverse tax consequences.

(d) Each Debtor represents, covenants and warrants that such Debtor does not have or maintain any investment account, securities account, commodity account or other similar account as the date hereof, in each case except as set forth in Schedule III-1 hereto, and has delivered to Agent a fully executed Investment Property Control Agreement in form and substance satisfactory to the Agent with respect to any and all such investment accounts, securities accounts, commodity accounts or other similar accounts maintained by such Debtor as of the date hereof. The Debtors shall not, directly or indirectly, after the date hereof, establish or maintain any investment account, securities account, commodity account or other similar account with any bank, securities intermediary, commodity intermediary or other financial institution unless each of the following conditions is satisfied: (i) Agent shall have received not less than five (5) Business Days' prior written notice of the intention of such Debtor to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Agent the name of the account, the owner of the account, the name and address of the bank, securities intermediary, commodity intermediary or other financial institution at which such account is to be opened or established, the individual at such intermediary with whom such Debtor is dealing and the purpose of the account, (ii) the bank, securities intermediary, commodity intermediary or other financial institution (as the case may be) where such account is opened or maintained shall be acceptable to Agent, and (iii) on or before the opening of such investment account, securities account, commodity account or other similar account, such Debtor shall deliver to Agent an Investment Property Control Agreement with respect thereto duly authorized, executed and

delivered by such Debtor and such bank, securities intermediary, commodity intermediary or other financial institution at which such account is to be opened or established.

10 ADDITIONAL OPTIONAL REQUIREMENTS . Each Debtor agrees that the Agent may, at its option twice per calendar year, whether or not an Event of Default has occurred and is continuing and, if an Event of Default has occurred and is continuing, at its option any number of times:

(a) Require the Debtors to deliver to the Agent (i) copies of or extracts from the Books and Records, and (ii) information on any contracts or other matters affecting the Collateral.

(b) Examine the Collateral, including the Books and Records, and make copies of or extracts from the Books and Records, and for such purposes enter at any reasonable time, with or without prior notice, upon the property where any Collateral or any Books and Records are located.

11 EVENTS OF DEFAULT. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Any Event of Default (under and as defined in the Notes) shall occur.

(b) (i) Any warranty or representation under this Agreement is untrue or incorrect in any material respect or (ii) any Debtor breaches or fails to perform any covenant or agreement in this Agreement, in each case, which is not cured within five (5) Business Days of the earlier of (A) notice thereof being given by Agent to such Debtor or (B) such Debtor becoming aware of such breach.

(c) Any Debtor shall enter into any agreement or arrangement to sell, dispose, assign, exchange, gift, lease, pledge, hypothecate or otherwise transfer, directly or indirectly, in one transaction or a series of transactions, all or substantially all of the assets of such Debtor in violation of the terms herein or without prior written consent of the Agent.

(d) Any Debtor transfers or otherwise encumbers any portion of the Collateral in violation of the provisions of this Agreement.

(e) This Agreement or any other Transaction Document or any interest of the Agent or Buyers thereunder shall, for any reason, be terminated, invalidated, void or unenforceable, other than due to the action or inaction of the Agent or the Buyers, or any Debtor shall fail to perform any obligation thereunder, subject to applicable cure periods.

(f) Any custodian, receiver or trustee is appointed to take possession, custody or control of all or a material portion of the Collateral.

(g) Any involuntary lien of any kind or character attaches to any Collateral, except for Permitted Liens.

12 AGENT'S REMEDIES DURING EVENT OF DEFAULT. In the event that an Event of Default has occurred and is continuing, the Agent may do any one or more of the following on behalf of the Buyers:

(a) Enforce the security interest given hereunder pursuant to the UCC and any other applicable law and exercise with reference to the Collateral any or all of the rights and remedies of a secured party under the UCC and as otherwise granted herein or under any other applicable law, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of, or otherwise utilize the Collateral and any part or parts thereof in any manner authorized or permitted under the UCC or any other applicable law after the occurrence and during the continuation of an Event of Default debtor, and to apply the proceeds in accordance with Section 14 hereof. To the extent permitted by law, the Debtors expressly waive any notice of sale or other disposition of the Collateral and all other rights or remedies of the Debtors or formalities prescribed by law relative to sale or disposition of the Collateral or exercise of any other right or remedy of Agent existing after the occurrence and during the continuation of an Event of Default; and to the extent any such notice is required and cannot be waived, the Debtors agree that if such notice is given in the manner provided in Section 17 hereof at least five (5) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice. Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Agent may adjourn any public or private sale.

(b) Require the Debtors to obtain the Agent's prior written consent to any sale, lease, agreement to sell or lease, or other disposition of any Collateral consisting of inventory or equipment.

(c) Require the Debtors to segregate all collections and proceeds of the Collateral so that they are capable of identification and deliver daily such collections and proceeds to the Agent on behalf of the Buyers in kind.

(d) Require the Debtors, to the extent not previously required, to direct all account debtors to forward all payments and proceeds of the Collateral to a post office box or account under the Agent's exclusive control.

(e) Require the Debtors to assemble the Collateral, including the Books and Records, and make them available to the Agent at a place designated by the Agent.

(f) Enter upon the property where any Collateral, including any Books and Records, are located and take possession of such Collateral and such Books and Records, and use such property (including any buildings and facilities) and any of the Debtors' equipment, if the Agent deems such use necessary or advisable in order to take possession of, hold, preserve, process, assemble, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral.

(g) Demand and collect any payments on and proceeds of the Collateral. In connection therewith, each Debtor irrevocably authorizes the Agent to endorse or sign each Debtor's name on all checks, drafts, collections, receipts and other documents, and to take possession of and open the mail addressed to such Debtor and remove therefrom any payments and proceeds of the Collateral.

(h) Grant extensions and compromise or settle claims with respect to the Collateral for less than face value, all without prior notice to any Debtor.

(i) Use or transfer any of the Debtors' rights and interests in any Intellectual Property now owned or hereafter acquired by any Debtor, if the Agent deems such use or transfer necessary or advisable in order to take possession of, hold, preserve, process, assemble, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral. The Debtors agree that any such use or transfer shall be without any additional consideration to any Debtor. As used in this paragraph, "Intellectual Property" includes, but is not limited to, all trade secrets, computer software, service marks, trademarks, trade names, trade styles, copyrights, patents, applications for any of the foregoing, customer lists, working drawings, instructional manuals, and rights in processes for technical manufacturing, packaging and labeling, in which any Debtor has any right or interest, whether by ownership, license, contract or otherwise.

(j) Have a receiver appointed by any court of competent jurisdiction to take possession of the Collateral. Each Debtor hereby consents to the appointment of such a receiver and agrees not to oppose any such appointment.

(k) Take possession of, hold, preserve, process, assemble, insure, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral, and take such measures as the Agent may deem necessary or advisable to do any of the foregoing, and each Debtor hereby irrevocably constitutes and appoints the Agent as the Debtors' attorney-in-fact to perform all acts and execute all documents in connection therewith. The appointment of Agent as attorney-in-fact is coupled with an interest and shall be irrevocable until the termination of this Agreement.

(l) Exercise any other remedies available to the Agent and/or the Buyers at law or in equity.

13 SPECIAL PROVISIONS. Each of the Debtors hereby acknowledges that the sale by Agent of any Pledged Interests resulting from an exercise by Agent of its rights hereunder must, if the Securities Act is applicable to the Pledged Interests, be made in compliance with the Securities Act of 1933 (the "Securities Act"), as well as any applicable Blue Sky or other state or provincial securities laws that may impose limitations as to the manner in which Agent or any other Person may dispose of securities. Each of the Debtors acknowledges that any sale or disposition contemplated pursuant hereto may be at prices and on terms less favorable to Agent than those obtainable through a public sale without any applicable restrictions, and, notwithstanding such circumstances, each of the Debtors agrees that any such sale or other disposition shall be deemed to have been made in a commercially reasonable manner. Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Collateral for any period of time; and each of the Debtors waives any claims against Agent arising by reason of the fact that the price that might have been obtainable in a public sale was greater than the price obtained in any such sale or disposition pursuant hereto, even if Agent accepts the first offer received and does not offer the Collateral to more than one offeree.

14 APPLICATION OF PROCEEDS. In the event Agent sells or otherwise disposes of the Collateral in the course of exercising the remedies provided for in this Agreement, any amounts held, realized or received by Agent pursuant to the provisions hereof, including the proceeds of the sale of any of the Collateral or any part thereof, shall be applied by Agent first toward the payment of any costs and expenses incurred by Agent in enforcing or defending its rights and claims under this Agreement, in realizing on or protecting or preserving any Collateral and in enforcing or

collecting any Secured Obligations or any guaranty thereof, including, without limitation, the actual attorneys' fees and expenses incurred by Agent, all of which costs and expenses the Debtors agree to pay, and then to such other Secured Obligations in such order as Agent may elect. Any amounts and any Collateral remaining after such application and after payment to Agent on behalf of the Buyers of satisfaction of all of the Secured Obligations in full, shall be paid or delivered to the Debtors, their successor or assigns, or as a court of competent jurisdiction may direct.

15 ENVIRONMENTAL MATTERS.

(a) Each Debtor represents and warrants: (i) it is not in any material violation of any health, safety, or environmental law or regulation regarding Hazardous Substances and (ii) it is not the subject of any material claim, proceeding, notice, or other communication regarding Hazardous Substances. As used herein, "Hazardous Substances" means any substance, material or waste that is or becomes designated or regulated as "toxic," "hazardous," "pollutant," or "contaminant" or a similar designation or regulation under any current or future federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including without limitation petroleum or natural gas.

(b) Each Debtor shall deliver to the Agent, promptly upon receipt, copies of all notices, orders, or other communications regarding (i) any enforcement action by any governmental authority relating to health, safety, the environment, or any Hazardous Substances with regard to the Debtors' property, activities, or operations, or (ii) any claim against the Debtors regarding Hazardous Substances.

(c) The Agent and its agents and representatives will have the right at any reasonable time, after giving reasonable notice to the Debtors, to enter and visit any locations where the Collateral is located for the purposes of observing the Collateral, taking and removing environmental samples, and conducting tests. The Debtors shall reimburse the Agent on demand for the costs of any such environmental investigation and testing. The Agent will make reasonable efforts during any site visit, observation or testing conducted pursuant to this paragraph to avoid interfering with the Debtors' use of the Collateral. The Agent is under no duty to observe the Collateral or to conduct tests, and any such acts by the Agent will be solely for the purposes of protecting the Buyers' security and preserving the Buyers' rights under this Agreement. No site visit, observation or testing or any report or findings made as a result thereof ("Environmental Report") will (i) result in a waiver of any Event of Default, if applicable, of the Debtors, (ii) impose any liability on the Buyers, or (iii) be a representation or warranty of any kind regarding the Collateral (including its condition or value or compliance with any laws) or the Environmental Report (including its accuracy or completeness). In the event that the Agent or any Buyer has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to the Debtors or any other party, the Debtors authorize the Agent and the Buyers to make such a disclosure. The Agent and the Buyers may also disclose an Environmental Report to any regulatory authority, and to any other parties as necessary or appropriate in the Agent and/or Buyers' judgment. Each Debtor further understands and agrees that any Environmental Report or other information regarding a site visit, observation or testing that is disclosed to such Debtors by Agent or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of the Debtors) by the Debtors without advice or assistance from the Agent or the Buyers.

(d) The Debtors will indemnify and hold harmless the Agent and each Buyer from any loss or liability the Agent or any Buyer incurs in connection with or as a result of this Agreement, which directly or indirectly arises out of the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance, other than to the extent resulting from the Agent's or Buyers' gross negligence or willful misconduct. These indemnities will apply whether the Hazardous Substance is on, under or about the Debtors' property or operations or property leased to any Debtor. The indemnities include but are not limited to attorneys' fees (including the reasonable estimate of the allocated cost of in-house counsel and staff). The indemnities, subject to any limitations set forth herein, extend to the Agent, the Buyers, their parent (if any), subsidiaries and all of their directors, officers, employees, agents, successors, attorneys and assigns.

16 INDEMNITY. The Debtors agree, jointly and severally, to indemnify the Agent from and against any and all claims, losses and liabilities growing out of or resulting from this Agreement (including, without limitation, enforcement of any rights under this Agreement, and any claims or demands of any Persons at any time claiming the Collateral or any interest therein), except for those determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction to have resulted solely from the Agent's own gross negligence or willful misconduct.

17 NOTICES. All notices, communications or deliveries provided for hereunder must be in writing and will be deemed to have been duly given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via email prior to 5:30 p.m. (New York City time) on any Trading Day; (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via email on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day; (c) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given, addressed as follows:

if to the Company and/or
any other Debtor: Nauticus Robotics, Inc.
17146 Feathercraft Lane, Suite 450
Webster, TX 77598
Attention:
Email:

if to the Agent: ATW Special Situations Management LLC
17 State Street, Suite 2130,
New York, N.Y. 10004
Attention:
Email:
and
notice@atwpartners.com

or as to the Company and the other Debtors or the Agent, at such other address as shall be designated by such party in a written notice to the other parties delivered in accordance with this Section 17.

18 DISCLOSURE. Upon receipt or delivery by the Company or any other Debtor of any notice in accordance with the terms of this Agreement or any other Security Document, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its subsidiaries, the Company shall

within two (2) Business Days after such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that any such notice contains material, non-public information relating to the Company or its subsidiaries, the Company so shall indicate to the Agent contemporaneously with delivery of such notice, and in the absence of any such indication, the Agent and shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its subsidiaries.

19 MISCELLANEOUS.

(a) Any waiver, express or implied, of any provision hereunder and any delay or failure by Agent or any Buyer to enforce any provision shall not preclude Agent or any Buyer from enforcing any such provision thereafter.

(b) The Debtors shall, at the request of the Agent, execute such other agreements, documents, instruments, or financing statements in connection with this Agreement as the Agent may reasonably deem necessary to create, preserve, perfect or validate Agent's security interest in the Collateral, or to enable Agent to exercise or enforce its rights under this Agreement with respect to the Collateral, including but not limited to additional intellectual property security agreements.

(c) This Agreement shall be governed by and construed according to the laws of the State of New York, to the jurisdiction of which the parties hereto submit.

(d) All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law. Any single or partial exercise of any right or remedy shall not preclude the further exercise thereof or the exercise of any other right or remedy.

(e) Upon the occurrence and during the continuation of an Event of Default, in the event of any action by the Agent or the Buyers to enforce this Agreement or to protect the security interest of the Agent in the Collateral, or to take possession of, hold, preserve, process, assemble, insure, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral, the Debtors agree to immediately pay the costs and expenses thereof, together with attorneys' fees and allocated costs for in-house legal services to the extent permitted by law.

(f) Upon the occurrence and during the continuation of an Event of Default, in the event the Agent or any of the Buyers seeks to take possession of any or all of the Collateral by judicial process, the Debtors hereby irrevocably waive any bonds and any surety or security relating thereto that may be required by applicable law as an incident to such possession, and waive any demand for possession prior to the commencement of any such suit or action.

(g) The Buyers' and the Agent's rights hereunder shall inure to the benefit of their successors and assigns. In the event of any assignment or transfer by any Buyers of any of the Secured Obligations or the Collateral, such Buyers thereafter shall be fully discharged from any responsibility with respect to the Collateral so assigned or transferred, but such Buyers shall retain all rights and powers hereby given with respect to any of the Secured Obligations or the Collateral not so assigned or transferred. All representations, warranties and agreements of the Debtors shall be binding upon the successors and assigns of the Debtors.

(h) Upon the occurrence and during the continuation of an Event of Default, Debtors agree that the Collateral may be sold as provided for in this Agreement and expressly waive any rights of notice of sale, advertisement procedures, or related provisions granted under applicable law, including the New York Lien Law.

(i) None of the terms or provisions of this Agreement amended or otherwise modified except in pursuant to a written agreement executed by the Agent and the Debtors.

20 TERMINATION AND RELEASE. Upon repayment of the Secured Obligations (including the Obligations) in full (other than contingent liabilities for which no claim is being asserted), this Agreement shall automatically terminate and the liens and security interests created hereby shall automatically be released and Agent shall, at the Debtors' expense, execute such documents, including lien terminations and UCC financing statement terminations, as Debtors may reasonably request to effect such termination and release; provided, however, that all indemnities of the Debtors contained in this Agreement shall survive, and remain in full force and effect regardless of the termination of the security interest or this Agreement. Notwithstanding the foregoing, this Agreement and the security interests granted hereunder shall be reinstated if at any time any payment or delivery pursuant to the Securities Purchase Agreement, in whole or in part, is rescinded or must otherwise be returned by the Agent or any Buyer under the application of the Bankruptcy Code or any other Debtor Law, all as though such payment or delivery had not been made.

[Signature Pages Follow]

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

DEBTORS:

NAUTICUS ROBOTICS, INC.
(F/K/A CLEANTECH ACQUISITON CORP.)

By:
Name:
Title:

NAUTICUS ROBOTICS HOLDINGS, INC.
(F/K/A NAUTICUS ROBOTICS, INC.)

By:
Name:
Title:

NAUTIWORKS LLC

By:
Name:
Title:

NAUTICUS ROBOTICS FLEET LLC

By:
Name:
Title:

NAUTICUS ROBOTICS USA LLC

By:__
Name:
Title:

AGENT:

ATW SPECIAL SITUATIONS MANAGEMENT LLC,
in its capacity as Agent

By:_____
Name:
Title:

[Signature Page to Pledge and Security Agreement]

SCHEDULE I

PLEDGED INTERESTS

Debtor	Issuing Entity of Pledged Interest	Class of Pledged Interests	Percentage of Class Owned	Percentage of Equity Interests Owned	Percentage of Equity Interests Pledged	Certificate Nos.
Nauticus Robotics, Inc.	Nauticus Robotics Holdings, Inc.	Common Stock	100%	100%	100%	1
Nauticus Robotics Holdings, Inc.	Nauticus Robotics International Ltd., a limited company incorporated under the laws of England and Wales	Ordinary Shares	100%	100%	65%	N/A
NautiWorks LLC	Nauticus Robotics Holdings, Inc.	Membership Interests	100%	100%	100%	1
Nauticus Robotics Fleet LLC	Nauticus Robotics Holdings, Inc.	Membership Interests	100%	100%	100%	1
Nauticus Robotics USA LLC	Nauticus Robotics Holdings, Inc.	Membership Interests	100%	100%	100%	1

1" = "1" "6060483-8" "" 6060483-8
1" = "1" "6060483-10" "" 6060483-10
168776.01000/150917043v.5

SCHEDULE II

A. MOTOR VEHICLES:

Debtor	VIN Number	Title State	Existing Lienholder	Make/Model/Year
Nauticus Sub	3C63RRHL8MG649107	Texas	N/A	Ram 3500 (Big Horn) / 2021

B. VEHICLES AND SIMILAR EQUIPMENT GOVERNED BY FEDERAL OR OTHER JURISDICTION STATUTE :

Debtor	Description	Registration System / Jurisdiction	Registration Number
Nauticus Sub	MERCURY / 2013	TX	1C250657
Nauticus Sub	MERCURY / 2015	TX	2B165528
Nauticus Sub	CATERPILLAR BOAT WK / HIKE METALS / 2003	TX	FLZAX606A403
Nauticus Sub	URK - RIBCRAFT / 4.8 / 2003	TX	URK48104D303
Nauticus Sub	RHIB TRAILER / 2003	TX	40YBF17116F000420
Nauticus Sub	SUNTRACKER / 2015	TX	BUJ17727L415
Nauticus Sub	SUNTRACKER TRAILER / 2015	TX	4TM13EN26FB002253
Nauticus Sub	CONTINENTAL TRAILER / 2017	TX	5NHUNSZ21JY032331

C. COLLATERAL SHIPS, CONSTRUCTION CONTRACTS, MOAS:

Collateral Ships:

Debtor	Collateral Ship	Type	Operation	Description	Build Cost / Value	Capable of Registration (Y/N)	Approved Jurisdiction	Port of Registration	IMO Number/ Registration Number
Nauticus Sub	Hydronaut 1	Surface Vessel	Manned	Caterpillar Boat WK 64ft Hike Metal Patrol vessel 2003 build, converted into a Hydronaut and outfit with a launch and recovery system Serial Number FLZAX606A403	$750,000	Y	State of Texas	Seabrook, Texas	TX-4466-KS
Nauticus Sub	Not Law Enforcement (NLE) URK - Ribcraft	RHIB (Rigid Inflatable)	Manned	URK-Ribcraft Serial Number: URK48104D303	$4,000	Y	State of Texas	N/A	TX-7873KL
Nauticus Sub	Suntracker Aluminum Craft	Pleasure Craft	Manned	Suntracker 22 foot aluminum craft	$18,000	Y	State of Texas	N/A	TX-4583DH
Nauticus Sub	Aquanaut MK 1.3 (Remote Operated Sub-Surface Robot)	AUV	Remote Operated	AUV	$3,000,000	N	N/A	N/A	N/A
Nauticus Sub	Aquanaut MK 2 - SN 001 (Remote Operated Sub-Surface Robot)	AUV	Remote Operated	AUV	$5,500,000	N	N/A	N/A	N/A
Nauticus Sub	iXBlue Drix Uncrewed Surface Vehicle (USV)	USV	Remote Operated	USV	$2,000,000	N	N/A	N/A	N/A

Construction Contracts:

Debtor	Construction Contract	Collateral Ship(s) to be Delivered	Type of Collateral Ship
Nauticus Sub	Agreement for the Construction of a New Vessel dated February 14, 2022 by and between Nauticus Robotics, Inc. and Diverse Marine Ltd., a limited company registered in England	'Hydronaut 2', Diverse Marine 18m Hydronaut Class, Yard Number DM-2341	Hydronaut
Nauticus Sub	Agreement for the Construction of a New Vessel dated February 14, 2022 by and between Nauticus Robotics, Inc. and Diverse Marine Ltd., a limited company registered in England	'Hydronaut 3', Diverse Marine 18m Hydronaut Class, Yard Number DM-2342	Hydronaut
Nauticus Sub	Fabrication Agreement (Time and Materials Contract) dated January 17, 2022 made between Nauticus Robotics, Inc. and International Submarine Engineering Ltd.	Remote Operated Sub-Surface Robots	Autonomous Sub-Surface Vehicle

A. CHARTERS/EMPLOYMENT CONTRACTS IN RESPECT OF THE COLLATERAL SHIPS:

None

SCHEDULE III-1

DEPOSIT ACCOUNTS

Debtor	Name of Bank	Type of Account	Account Number(s)
Nauticus Robotics Holdings, Inc.	Frost Bank	Control Commercial	502937654
Nauticus Robotics Holdings, Inc.	Frost Bank	Control Commercial	502873346
Nauticus Robotics Holdings, Inc.	PNC	Demand Deposit Account	4715258791

INVESTMENT, SECURITIES, COMMODITY AND OTHER ACCOUNTS

None.

SCHEDULE III-2

EXCLUDED DEPOSIT ACCOUNTS

Debtor	Name of Bank	Type of Account	Account Number(s)
Nauticus Robotics Holdings, Inc.	Frost Bank	Analyzed Checking (Payroll)	503143392

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SCHEDULE III-3

FROST BANK EXCLUDED ACCOUNT

Debtor	Name of Bank	Type of Account	Account Number(s)
Nauticus Robotics Holdings, Inc.	Frost Bank	CD	00001007

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SCHEDULE IV-1

DEBTOR INFORMATION

Debtor's Legal Name	Debtor's State of Incorporation/ Organization	Debtor's Chief Executive Office
Nauticus Robotics, Inc.	Delaware	17146 Feathercraft Lane, Suite 450 Webster, TX 77598
Nauticus Robotics Holdings, Inc.	Texas	17146 Feathercraft Lane, Suite 450 Webster, TX 77598
NautiWorks LLC	Delaware	17146 Feathercraft Lane, Suite 450 Webster, TX 77598
Nauticus Robotics Fleet LLC	Delaware	17146 Feathercraft Lane, Suite 450 Webster, TX 77598
Nauticus Robotics USA LLC	Delaware	17146 Feathercraft Lane, Suite 450 Webster, TX 77598

SCHEDULE IV-2

EXCLUDED SUBSIDIARY INFORMATION

Excluded Subsidiary's Legal Name	Excluded Subsidiary's Jurisdiction of Incorporation/ Organization	Excluded Subsidiary Company Type	Excluded Subsidiary's Company Number	Excluded Subsidiary's Date of Incorporation/ Organization	Excluded Subsidiary's Registered Office Address	Excluded Subsidiary's Chief Executive Office	Debtor or other Subsidiary directly holding the Equity Interests in Excluded Subsidiary	Direct Foreign Subsidiary (Y/N)
Nauticus Robotics International Ltd.	Incorporated under the laws of England and Wales	Private limited Company	14305630	August 19, 2022	100 Longwater Ave, Reading, England, RG2 6GP	N/A	Nauticus Robotics Holdings, Inc. (Debtor)	Y
Nauticus Robotics Scotland Ltd	Incorporated under the laws of Scotland	Private limited Company	743758	September 7, 2022	5 South Charlotte St, Edinburgh, Scotland, EH2 4AN	N/A	Nauticus Robotics International Ltd. (Excluded Subsidiary)	N
Nauticus Robotics Norway AS	Incorporated under the laws of Norway	Private limited Company	929 164 393	January 1, 2023 (via Share Purchase Agreement of Stinger Technology AS)	Dusavikveien 39 4007 Stavanger Norway	N/A	Nauticus Robotics International Ltd. (Excluded Subsidiary)	N
Nauticus Robotics Brazil Ltda.	Incorporated under the laws of Brazil	Private limited liability Company	35260618925	January 26, 2023	ALAMEDA RIO NEGRO 503, Sala 2020, ALPHAVILLE CENTRO INDUSTRIAL E EM PRESARIAL/ ALPHAV 06454000, BARUERI, SP	N/A	Nauticus Robotics International Ltd. (Excluded Subsidiary)	N

EXHIBIT A

PERFECTION CERTIFICATE

[See Attached]

EXHIBIT B

PLEDGE AND SECURITY AGREEMENT ADDENDUM

This Pledge and Security Agreement Addendum, dated as of _____, 20__, is delivered pursuant to Section 5 of the Pledge and Security Agreement referred to below. The undersigned hereby agrees that this Pledge and Security Agreement Addendum may be attached to that certain Pledge and Security Agreement, dated as of November 4, 2024 (as amended, restated, supplemented or otherwise modified from time to time, the "Pledge and Security Agreement"; the terms defined therein and not otherwise defined herein being used as therein defined), between the undersigned as Debtor, the other Debtors from time to time party thereto, ATW Special Situations Management LLC, as collateral agent (in such capacity, together with its successors and assigns in such capacity, the "Agent") on behalf of the Buyers now or hereafter party to the Securities Purchase Agreement (the "Buyers"), and that the additional interests listed on this Pledge and Security Agreement Addendum as set forth below shall be and become part of the Pledged Interests pledged by the undersigned to Agent on behalf of the Buyers in the Pledge and Security Agreement.

The undersigned hereby certifies that the representations and warranties set forth in Section 8 of the Pledge and Security Agreement of the undersigned are true and correct as to the Pledged Collateral listed herein on and as of the date hereof.

[DEBTOR NAME]

By: _____
Name:
Title:

Issuing Entity of Pledged Interest	Class of Pledged Interests	Percentage of Class Owned	Percentage of Equity Interests Owned	Certificate Nos.

EXHIBIT C

COLLATERAL SHIP SPECIFIC DEFINED TERMS

"**Applicable Sanctions**" means any applicable sanctions law, regulation, Executive Order, embargo, freezing provision, prohibition or other restrictive measure administered, enacted or enforced by any Sanctions Authority relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing), provided that such laws, regulations, embargoes, freezing provisions, prohibitions or restrictive measures shall be applicable only to the extent such laws, regulations, embargoes or restrictive measures are not in conflict with the laws of the United States of America.

"**Approved Appraiser**" means firm or firms of independent sale and purchase shipbrokers approved in writing by the Agent.

"**Approved Classification**" means, in relation to a Collateral Ship, the highest class for such Collateral Ship with an Approved Classification Society.

"**Approved Classification Society**" means, in relation to a Collateral Ship, any classification society which is a member of the International Association of Classification Societies.

"**Approved Commercial Manager**" means, in relation to a Collateral Ship, any Debtor or any other person approved in writing by the Agent as the commercial manager of that Collateral Ship.

"**Approved Insurance Broker**" means any firm or firms of insurance brokers approved in writing by the Agent.

"**Approved Jurisdiction**" means (i) in relation to a Collateral Ship that is capable of being registered in a flag state, the United States of America, the United Kingdom, the Republic of the Marshall Islands and the Republic of Liberia, and (ii) in relation to a Collateral Ship that is not capable of being registered in a flag state, but capable of being registered in a state of the United States, the states of Texas, or such other jurisdiction or registration state approved in writing by the Agent.

"**Approved Manager**" means, in relation to a Collateral Ship, the Approved Commercial Manager or the Approved Technical Manager of that Collateral Ship.

"**Approved Technical Manager**" in relation to a Collateral Ship, any Debtor or any other person approved in writing by the Agent as the technical manager of that Collateral Ship.

"**Authorization**" means an authorization, consent, approval, resolution, license, exemption, filing, notarization, legislation or registration.

"**AUV**" means autonomous underwater vehicle.

"**Builder**" means Diverse Marine Ltd., a limited company registered in England, or any other builder, fabricator or shipbuilder under any Construction Contract.

"**Charter Guarantee**" means any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter.

"**Collateral Ship**" means any vessel, including, without limitation, any registered or unregistered subsea or surface vessel (including but not limited to any AUV), owned by a Debtor, whether now owned or acquired or to be delivered to a Debtor in the future, whether or not such vessel is a vessel within the meaning of 46 U.S.C. §31322(a), and all rights of a Debtor therein, including all equipment, parts and accessories, including, but not limited to, all of the boilers, engines, generators, air compressors, machinery, masts, spars, sails, boats, anchors, cables, chains, fuel (to the extent owned by the Debtor), riggings, tackle, capstans, outfit, tools, pumps and pumping equipment, motors, apparel, furniture, drilling equipment, computer equipment, equipment used in connection with the operation of the vessel and belonging to the vessel, fittings and equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, supplies, spare parts, and all other appurtenances (which appurtenances shall include, for the avoidance of doubt, any AUV related to or carried aboard a registered Collateral Ship, so long as such AUV is not capable of being registered under an Approved Jurisdiction, provided that once any such AUV is capable of registration, such AUV shall be separately registered and subject to the requirements for recordation of a "Collateral Ship Mortgage" for the purposes of this Agreement) thereunto appertaining or belonging, whether now owned or hereafter acquired, whether or not on board said vessel, and also any and all extensions, additions, accessions, improvements, renewals, substitutions and replacements hereafter made in or to said vessel or any part thereof, including all items and appurtenances aforesaid.

"**Collateral Ship Earnings**" means, in relation to a Collateral Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to a Debtor or the Agent and which arise out of or in connection with or relate to the use or operation of that Collateral Ship, including (but not limited to):

(a) the following, save to the extent that any of them is, with the prior written consent of the Agent, pooled or shared with any other person:

(i) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter or a Charter Guarantee;

(ii) the proceeds of the exercise of any lien on sub-freights;

(iii) compensation payable to a Debtor or the Agent in the event of requisition of that Collateral Ship for hire or use;

(iv) remuneration for salvage and towage services;

(v) demurrage and detention moneys;

(vi) without prejudice to the generality of sub-paragraph (i) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Collateral Ship;

(vii) all moneys which are at any time payable under any Marine Insurances in relation to loss of hire;

(viii) all monies which are at any time payable to a Debtor in relation to general average contribution; and

(b) if and whenever that Collateral Ship is employed on terms whereby any moneys falling within sub-paragraphs (i) to (viii) of paragraph (a) above are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to that Collateral Ship.

"**Collateral Ship Mortgage**" means, in relation to a Collateral Ship, a first priority or preferred ship mortgage, as the case may be, granted by the Debtor who is the registered owner of such Collateral Ship over such Collateral Ship in favor of the Agent, in a form reasonably acceptable to the Agent, or such other documentation evidencing the security interest granted by the relevant Debtor in a Collateral Ship in a form reasonably acceptable to the Agent.

"**Collateral Ship Requirements**" means (i) a Hydronaut type vessel, (ii) any type of vessel ordered by a Debtor in the ordinary course of business in its reasonable business judgment, and (iii) to the extent it is capable of registration under an Approved Jurisdiction, any AUV type vessel.

"**Construction Contract**" means any shipbuilding or construction contract entered or to be entered into between (i) any Builder and (ii) any Debtor for the construction by the Builder of a Collateral Ship.
"**Charter**" means, in relation to a Collateral Ship, any charter relating to that Collateral Ship, or other contract for its employment, whether or not already in existence.

"**Commercial Management Agreement**" means the agreement entered into between a Debtor and the Approved Commercial Manager regarding the commercial management of a Collateral Ship.

"**Contract Price**" means the price payable for a Collateral Ship under the Construction Contact applicable to such Collateral Ship.

"**Contract Price Instalment**" means each instalment of the Contract Price payable under a Construction Contract.

"**Deed of Covenant**" means, in relation to a Collateral Ship, the deed of covenant collateral to the Collateral Ship Mortgage over that Collateral Ship, in favor of the Agent, in a form reasonably acceptable to the Agent.

"**Delivery Date**" means the date on which (a) a Collateral Ship is delivered by its seller to the relevant Debtor under any MOA, or (b) a Collateral Ship is delivered by the Builder to the relevant Debtor under any Construction Contract, as the context may require.

"**Document of Compliance**" has the meaning given to it in the ISM Code.

"**Environmental Approval**" means any present or future permit, ruling, variance or other Authorization required under Environmental Laws.

"**Environmental Claim**" means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, "claim" includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action; and any form of enforcement or regulatory action, including the arrest or attachment of any asset.

"**Environmental Incident**" means:

(a) any release, emission, spill or discharge into any Collateral Ship or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from any Collateral Ship; or

(b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water from a vessel other than any Collateral Ship and which involves a collision between any Collateral Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Collateral Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Collateral Ship and/or any Debtor and/or any operator or manager of a Collateral Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or

(c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from a Collateral Ship and in connection with which a Collateral Ship is actually or potentially liable to be arrested and/or where any Debtor and/or any operator or manager of a Collateral Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action, other than in accordance with an Environmental Approval.

"**Environmental Law**" means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

"**Environmentally Sensitive Material**" means and includes all contaminants, oil, oil products, toxic substances and any other substance (including any chemical, gas or other hazardous or noxious substance) which is (or is capable of being or becoming) polluting, toxic or hazardous.

"**Fair Market Value**" means, in relation to a Collateral Ship or any other vessel, at any date, the fair market value of that Collateral Ship or vessel shown by the average of two (2) valuations each prepared for and addressed to the Agent:

(a) as at a date not more than 14 days previously;

(b) by Approved Appraisers selected by the Agent;

(c) with or without physical inspection of that Collateral Ship or vessel (as the Agent may require); and

(d) on the basis of (i) a sale for prompt delivery for cash on normal arm's length commercial terms as between a willing seller and a willing buyer, free of any Charter or other contract of employment (and with no value to be given to any pooling arrangements), and, if such Collateral Ship is eligible to operate in the coastwise trade of the United States, (ii) the Collateral Ship continuing to trade in the U.S. coastwise trade after deducting the estimated amount of the usual and reasonable expenses which would be incurred in connection with the sale,

provided that (i) if a range of values is provided in a particular appraisal, then the fair market value in such appraisal shall be deemed to be the mid-point within such range and (ii) if a third appraisal is obtained, the fair market value of such Collateral Ship or other vessel shall be the average of the three appraisals obtained.

"**ISM Code**" means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organization, as the same may be amended or supplemented from time to time.

"**ISPS Code**" means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization's (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

"**ISSC**" means an International Ship Security Certificate issued under the ISPS Code.

"**Jones Act**" means the U.S. Shipping Act, 1916, as amended (46 U.S.C. § 50501).

"**Major Casualty**" means, in relation to a Collateral Ship, any casualty to that Collateral Ship in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds $500,000 or the equivalent in any other currency.

"**Management Agreement**" means a Technical Management Agreement or a Commercial Management Agreement.

"**MOA**" means any memorandum of agreement made between (i) any Debtor as buyer and (ii) any seller for the purchase of a Collateral Ship.

"**Marine Insurances**" means, in relation to a Collateral Ship:

(a) all policies and contracts of insurance, including entries of that Collateral Ship, the Collateral Ship Earnings, or otherwise in relation to that Collateral Ship in any protection and indemnity or war risks association, effected in relation to that Collateral Ship whether before, on or after the date of this Agreement; and

(b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

"**Permitted Charter**" means, in relation to a Collateral Ship, a Charter:

(a) which is a time, voyage or consecutive voyage charter;

(b) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months plus a redelivery allowance of not more than 30 days;

(c) which is entered into on a *bona fide* arm's length terms at the time at which that Collateral Ship is fixed; and

(d) in relation to which not more than two months' hire is payable in advance,

and any other Charter which is approved in writing by the Agent.

"**Permitted Ship Security**" means, in relation to a Collateral Ship:

(a) liens for unpaid master's and crew's wages in accordance with first class ship ownership and management practice and not being enforced through arrest;

(b) liens for salvage;

(c) liens for master's disbursements incurred in the ordinary course of trading in accordance with first class ship ownership and management practice and not being enforced through arrest; and

(d) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of that Collateral Ship:

(i) not as a result of any default or omission by a Debtor; and

(ii) not being enforced through arrest; and

(iii) subject, in the case of liens for repair or maintenance, to Clause 5.16 (*Restrictions on chartering, appointment of managers etc.*),

and provided such lien does not secure amounts more than 30 days overdue (unless the overdue amount is being contested in good faith by appropriate steps and for the payment of which adequate reserves are held and provided further that such proceedings do not give rise to a material risk of that Collateral Ship or any interest in it being seized, sold, forfeited or lost).

"**Pre-delivery Contracts**" means the any Construction Contract and any Refund Guarantee.

"**Pre-delivery Security**" means a document creating a security interest in favor of the Agent over the Pre-Delivery Contracts in a form reasonably satisfactory to the Agent.

"**Purchase Price**" means, in relation to a Collateral Ship, the total price payable for it under any MOA or Construction Contract.

"**Refund Guarantee**" means the guarantee issued or to be issued by any refund guarantor in favor of any Debtor pursuant to any Construction Contract in the form set out in the Construction Contract (or in such other form as the relevant Debtor and the Agent shall agree).

"**Requisition**" means, in relation to a Collateral Ship:

(a) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) or acquisition of that Collateral Ship, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected (whether *de jure* or *de facto*) by any government or official authority or by any person or persons claiming to be or to represent a government or official authority; and

(b) any capture or seizure of that Collateral Ship (including any hijacking or theft) by any person whatsoever.

"**Requisition Compensation**" includes all compensation or other moneys payable to a Debtor by reason of any Requisition or any arrest or detention of a Collateral Ship in the exercise or purported exercise of any lien or claim.

"**Restricted Person**" means a person that is:

(a) listed on any Sanctions List or against whom Sanctions are directed (whether designated by name or by reason of being included in a class of persons);

(b) located in or incorporated under the laws of a country or territory that is the target of comprehensive, country-wide or territory-wide Sanctions;

(c) directly or indirectly owned or controlled by, or acting on behalf, at the direction or for the benefit of, a person referred to in (a) and/or (to the extent relevant under Sanctions) (b) above; or

(d) with whom a person subject to the jurisdiction of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities.

"**Safety Management Certificate**" has the meaning given to it in the ISM Code.

"**Safety Management System**" has the meaning given to it in the ISM Code.

"**Sanctions Authorities**" means:

(a) the United States of America;

(b) the European Union;

(c) the United Kingdom;

(d) the United Nations; and

(e) with regard to (a) - (d) above, the respective governmental institutions and agencies of any of the foregoing, including without limitation OFAC, the U.S. Department of State, and Her Majesty's Treasury ("**HMT**").

"**Sanctions List**" means the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, the "Consolidated List of Financial Sanctions Targets" maintained by HMT, or any other list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities.

"**Technical Management Agreement**" means the agreement entered into between a Debtor and the Approved Technical Manager regarding the technical management of a Collateral Ship.

"**Total Loss**" means, in relation to a Collateral Ship:

(a) actual, constructive, compromised, agreed or arranged total loss of that Collateral Ship; or

(b) any Requisition of that Collateral Ship unless that Collateral Ship is returned to the full control of a Debtor within 30 days of such Requisition.

"**Total Loss Date**" means, in relation to the Total Loss of a Collateral Ship:

(a) in the case of an actual loss of that Collateral Ship, the date on which it occurred or, if that is unknown, the date when that Collateral Ship was last heard of;

(b) in the case of a constructive, compromised, agreed or arranged total loss of that Collateral Ship, the earlier of:

(i) the date on which a notice of abandonment is given (or deemed or agreed to be given) to the insurers; and

(ii) the date of any compromise, arrangement or agreement made by or on behalf of the relevant Debtor with that Collateral Ship's insurers in which the insurers agree to treat that Collateral Ship as a total loss; and

in the case of any other type of Total Loss, the date (or the most likely date) on which it appears to the Facility Agent that the event constituting the total loss occurred.

EXHIBIT D

COLLATERAL SHIP-RELATED REPRESENTATIONS AND UNDERTAKINGS

1. REPRESENTATIONS

1. General

Each Debtor makes the representations and warranties set out in this Section 1 to the Agent and each Buyer on the date of this Agreement and as of each Delivery Date of a Collateral Ship.

2. No Charter

No Collateral Ship is subject to any Charter other than a Permitted Charter.

3. Compliance with Environmental Laws

All Environmental Laws relating to the ownership, operation and management of each Collateral Ship and the business of each Debtor (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

4. No Environmental Claim

No Environmental Claim has been made or threatened against any Collateral Ship which might reasonably be expected to have a Material Adverse Effect.

5. No Environmental Incident

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

6. ISM and ISPS Code compliance

All requirements of the ISM Code and the ISPS Code as they relate to each Debtor, each Approved Manager and each Collateral Ship have been complied with.

7. Good title to assets

(a) It has good, valid and marketable title to, or valid leases or licenses of, and all appropriate Authorizations to use, the assets necessary to carry on its business as presently conducted.

(b) It has not created and is not contractually bound to create any Lien on or with respect to any of its assets, properties, rights or revenues, except for Permitted Ship Security, and except as provided in this Agreement, it is not restricted by contract, applicable law or regulation or otherwise from creating any Lien on any of its assets, properties, rights or revenues.

8. Validity and completeness of MOA and Pre-delivery Contracts

(a) Each MOA constitutes a legal, valid, binding and enforceable obligation of the seller party thereto.

(b) Each Construction Contract and Refund Guarantee constitutes a legal, valid, binding and enforceable obligation of the Builder or refund guarantor party thereto, respectively.

(c) The copies of the MOAs and Pre-delivery Contracts delivered to the Agent before the date of this Agreement are true and complete copies.

9. Ownership

(a) Each Debtor is the sole legal and beneficial owner of all rights and interests which each of the Pre-delivery Contracts to which it is a party creates in favor of such Debtor.

(b) Each Debtor is, or with effect on and from the Delivery Date of a Collateral Ship will be, the sole legal and beneficial owner of such Collateral Ship (including if such Collateral Ship is registered in its name), such Collateral Ship's Collateral Ship Earnings and such Collateral Ship's Marine Insurances.

10. Collateral Ship Requirements

Each Collateral Ship meets or upon its Delivery Date shall meet the Collateral Ship Requirements unless otherwise agreed to by the Agent.

11. Immunity; enforcement; submission to jurisdiction; choice of law

(a) It is subject to civil and commercial law with respect to its obligations under any Security Document, and the execution, delivery and performance by it of any Security Document to which it is a party constitute private and commercial acts rather than public or governmental acts.

(b) Neither it nor any of its properties has any immunity from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment, set-off, execution of a judgment or from any other legal process in relation to any Security Document.

(c) It is not necessary under the laws of its jurisdiction of incorporation or formation, in order to enable any secured party to enforce its rights under any Security Document, or by reason of the execution of any Security Document or the performance by it of its obligations under any Security Document that such secured party should be licensed, qualified or otherwise entitled to carry on business in such Debtor's jurisdiction of incorporation or formation.

(d) Other than the recording of the Collateral Ship Mortgages in accordance with the laws of the relevant flag state and such filings as may be required in a relevant jurisdiction in respect of certain of the Collateral Ship Mortgages, and the payment of fees consequent thereto, it is not necessary for the legality, validity, enforceability or admissibility into evidence of this Agreement or Security Document that any of them or any document relating thereto be registered, filed recorded or enrolled with any court or authority in any relevant jurisdiction.

(e) Under the law of its jurisdiction of incorporation or formation, the choice of the law of New York to govern this Agreement and the other Security Documents and Transaction Documents to which New York law is applicable is valid and binding.

21 GENERAL UNDERTAKINGS

1. General

The undertakings in this Section 2 remain in force so long as the Secured Obligations remain outstanding except as the Agent may otherwise permit.

2. Compliance with laws

Each Debtor shall, and shall procure that each other Debtor will, comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

3. Environmental compliance

Each Debtor shall, with respect to each Collateral Ship owned by it:

(a) comply with all Environmental Laws;

(b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;

(c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

4. Environmental Incidents

Each Debtor shall take, or cause to be taken, such actions as may be reasonably required to mitigate potential liability to it arising out of Environmental Incidents or as may be reasonably required to protect the interests of the Agent and the Buyers with respect thereto.

5. Title

(a) Each Debtor shall hold or with effect on and from the Delivery Date of a Collateral Ship will hold, the legal title to, and own the entire beneficial interest in each Collateral Ship (including if such Collateral Ship is registered in its name), and such Collateral Ship's Collateral Ship Earnings and its Marine Insurances;

(b) With effect on and from its creation or intended creation, each Debtor shall hold the legal title to, and own the entire beneficial interest in any other assets, including but not limited to any MOA or Construction Contracts, the subject of any security created or intended to be created by such Debtor.

22 INSURANCE UNDERTAKINGS

1. General

The undertakings in this Section 3 shall remain in force so long as the Secured Obligations remain outstanding except as the Agent may otherwise permit.

2. Construction of insurance terms

For the purposes of this Section 3:

"**approved**" means, for the purposes of Section 3, approved in writing by the Agent.

"**excess risks**" means, the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of a Collateral Ship in consequence of its insured value being less than the value at which such Collateral Ship is assessed for the purpose of such claims.

"**obligatory insurances**" means all insurances effected, or which a Debtor is obliged to effect, under Section 3 or any other provision of this Agreement.

"**policy**" includes a slip, cover note, certificate of entry or other document evidencing the contract of insurance or its terms.

"**protection and indemnity risks**" means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the International Hull Clauses (1/11/02) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

"**war risks**" includes the risk of mines and all risks excluded by clauses 29, 30 or 31 of the International Hull Clauses (1/11/02), clauses 29 or 30 of the International Hull Clauses (1/11/03), clauses 24, 25 or 26 of the Institute Time Clauses (Hulls) (1/11/95) or clauses 23, 24 or 25 of the Institute Time Clauses (Hulls) (1/10/83) or any equivalent provision.

3. Maintenance of obligatory insurances

Each Debtor shall keep each Collateral Ship owned by it insured at its expense against:

(a) fire and usual marine risks (including hull and machinery and excess risks);

(b) war risks;

(c) protection and indemnity risks; and

(d) any other risks against which the Agent considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Debtor to insure and which are specified by the Agent by notice to that Debtor.

4. Terms of obligatory insurances

Each Debtor shall effect such insurances:

(a) in dollars;

(b) in the case of fire and usual marine risks and war risks, in an amount on an agreed value basis at least equal to the Fair Market Value of that Collateral Ship;

(c) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry and in the international marine insurance market;

(d) in the case of protection and indemnity risks, in respect of the full tonnage of its Collateral Ship;

(e) in the case of risk of loss of Collateral Ship Earnings insurance, in an amount carried by such Debtor in the ordinary course of business;

(f) on approved terms; and

(g) through Approved Insurance Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

5. Further protections for the secured parties

In addition to the terms set out in Section 3.4, each Debtor shall procure that the obligatory insurances effected by it shall:

(a) subject always to paragraph (b), name that Debtor as the sole named insured unless the interest of every other named insured is limited:

(i) in respect of any obligatory insurances for hull and machinery and war risks;

(A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and

(B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and

(ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Agent (in such form as it requires) that any deductible shall be apportioned between that Debtor and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

(b) whenever the Agent requires, name (or be amended to name) the Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Agent, but without the Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;

(c) name the Agent as loss payee with such directions for payment as the Agent may specify;

(d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Agent shall be made without set off, counterclaim or deductions or condition whatsoever;

(e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Agent or any other Buyer; and

(f) provide that the Agent may make proof of loss if that Debtor fails to do so.

6. Renewal of obligatory insurances

Each Debtor shall:

(a) at least 21 days before the expiry of any obligatory insurance effected by it:

(i) notify the Agent of the Approved Insurance Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and

(ii) obtain the Agents' approval to the matters referred to in sub-paragraph (i) above;

(b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Agent's approval pursuant to paragraph (a) above; and

(c) procure that the Approved Insurance Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Agent in writing of the terms and conditions of the renewal.

7. Copies of policies; letters of undertaking

Each Debtor shall ensure that the Approved Insurance Brokers provide the Agent with:

(a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and

(b) a letter or letters or undertaking in a form required by the Agent and including undertakings by the Approved Insurance Brokers that:

(i) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment;

(ii) they will hold such policies, and the benefit of such insurances, to the order of the Agent in accordance with such loss payable clause;

(iii) they will advise the Agent immediately of any material change to the terms of the obligatory insurances;

(iv) they will, if they have not received notice of renewal instructions from the relevant Debtor or its agents, notify the Agent not less than 14 days before the expiry of the obligatory insurances;

(v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Agent of the terms of the instructions;

(vi) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by that Debtor under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive

any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and

(vii) they will arrange for a separate policy to be issued in respect of the Ship owned by that Debtor forthwith upon being so requested by the Agent.

8. Copies of certificates of entry

Each Debtor shall ensure that any protection and indemnity and/or war risks associations in which the Collateral Ship owned by it is entered provide the Agent with:

(a) a certified copy of the certificate of entry for that Collateral Ship;

(b) a letter or letters of undertaking in such form as may be required by the Agent; and

(c) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Collateral Ship.

9. Deposit of original policies

Each Debtor shall ensure that all policies relating to obligatory insurances effected by it are deposited with the Approved Insurance Brokers through which the insurances are effected or renewed.

10. Payment of premiums

Each Debtor shall punctually pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Agent or the Agent.

11. Guarantees

Each Debtor shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and remain in full force and effect.

12. Compliance with terms of insurances

(a) No Debtor shall do or omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part.

(b) Without limiting paragraph (a) above, each Debtor shall:

(i) take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Agent has not given its prior approval;

(ii) not make any changes relating to the classification or classification society or manager or operator of the Collateral Ship owned by it approved by the underwriters of the obligatory insurances;

(iii) make (and promptly supply copies to the Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Collateral Ship owned by it is entered to maintain cover for trading to the U.S. and the Exclusive Economic Zone (as defined in the U.S. Oil Pollution Act of 1990, as amended, or any other applicable legislation); and

(iv) not employ any Collateral Ship owned by it, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

13. Alteration to terms of insurances

No Debtor shall make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

14. Settlement of claims

Each Debtor shall:

(a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and

(b) do all things necessary and provide all documents, evidence and information to enable the Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

15. Provision of copies of communications

Each Debtor shall provide the Agent, at the time of each such communication, with copies of all written communications between that Debtor and:

(a) the Approved Insurance Brokers;

(b) the approved protection and indemnity and/or war risks associations; and

(c) the approved insurance companies and/or underwriters,

which relate directly or indirectly to:

(i) that Debtor's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and

(ii) any credit arrangements made between that Debtor and any of the persons referred to in paragraphs (a) or (b) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

16. Provision of information

Each Debtor shall promptly provide the Agent (or any persons which it may designate) with any information which the Agent (or any such designated person) requests for the purpose of:

(a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or

(b) effecting, maintaining or renewing any such insurances as are referred to in Section 3.17 or dealing with or considering any matters relating to any such insurances,

and the Debtors shall, forthwith upon demand, indemnify the Agent in respect of all fees and other expenses incurred by or for the account of the Agent in connection with any such report as is referred to in paragraph (a) above.

17. Mortgagee's interest and, additional perils and political risk insurances

(a) The Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance, and a mortgagee's interest additional perils insurance and a mortgagee's political risk insurance in such amounts, on such terms, through such insurers and generally in such manner as the Agent may from time to time consider appropriate.

(b) The Debtors shall upon demand fully indemnify the Agent in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any insurance referred to in paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

23 PRE-DELIVERY CONTRACT AND MOA UNDERTAKINGS

1. General

The undertakings in this Section 4 shall remain in force so long as the Secured Obligations remain outstanding except as the Agent may otherwise permit.

2. Performance of Pre-delivery Contracts

Each Debtor party to any Pre-delivery Contract (which term as used herein shall include but not be limited to Construction Contracts) shall:

(a) observe and perform all its obligations and meet all its liabilities under or in connection with each Pre-delivery Contract to which it is a party;

(b) use all reasonable endeavors to ensure performance and observance by the other parties of their obligations and liabilities under each Pre-delivery Contract to which it is a party; and

(c) take any action, or refrain from taking any action, which the Agent may specify in connection with any breach, or possible future breach, of a Pre-delivery Contract by that Debtor or any other party or with any other matter which arises or may later arise out of or in connection with a Pre-delivery Contract.

3. No variation, release etc. of Pre-delivery Contracts

Each Debtor party to any Pre-delivery Contract shall not, whether by a document, by conduct, by acquiescence or in any other way:

(a) vary any Pre-delivery Contract;

(b) release, waive, suspend, subordinate or permit to be lost or impaired any interest or right of any kind which such Debtor has at any time to, in or in connection with each of the Pre-delivery Contracts or in relation to any matter arising out of or in connection with any Pre-delivery Contract;

(c) waive any person's breach of any Pre-delivery Contract; or

(d) rescind or terminate any Pre-delivery Contract or treat itself as discharged or relieved from further performance of any of its obligations or liabilities under a Pre-delivery Contract.

4. Action to protect validity of Pre-delivery Contracts

Each Debtor party to any Pre-delivery Contract shall use all reasonable endeavors to ensure that all interests and rights conferred by each Pre-delivery Contract remain valid and enforceable in all respects and retain the priority which they were intended to have.

5. No assignment etc. of Pre-delivery Contracts

Save as permitted by the Transaction Documents, each Debtor party to any Pre-delivery Contract shall not assign, novate, transfer or dispose of any of its rights or obligations under any Pre-delivery Contract.

6. Provision of information relating to Pre-delivery Contracts

Each Debtor party to any Pre-delivery Contract shall:

(a) immediately inform the Agent if any breach of any Pre-delivery Contract occurs or a serious risk of such a breach arises and of any other event or matter affecting a Pre-delivery Contract which has or is reasonably likely to have a Material Adverse Effect;

(b) provide the Agent, promptly after service, with copies of all notices served on or by that Debtor under or in connection with any Pre-delivery Contract; and

(c) provide the Agent with any information which it requests about any interest or right of any kind which such Debtor has at any time to, in or in connection with, each of the Pre-delivery Contracts or in relation to any matter arising out of or in connection with any Pre-delivery Contract including the progress of the construction of a Collateral Ship.

7. Pre-delivery Insurance

Each Debtor party to any Pre-delivery Contract shall ensure that at all times during construction, the relevant Collateral Ship is insured in accordance with the provisions of a Construction Contract.

8. No variation, release etc. of MOA

Each Debtor party to an MOA shall not, whether by a document, by conduct, by acquiescence or in any other way:

(a) vary such MOA in a material manner; or

(b) release, waive, suspend, subordinate or permit to be lost or impaired any interest or right of any kind which such Debtor has at any time to, in or in connection with, such MOA or in relation to any matter arising out of or in connection with such MOA.

9. Provision of information relating to MOA

Each Debtor party to an MOA shall:

(a) immediately inform the Agent if any breach of such MOA occurs or a serious risk of such a breach arises and of any other event or matter affecting such MOA which has or is reasonably likely to have a Material Adverse Effect; and

(b) upon the reasonable request of the Agent, keep the Agent informed as to any notice of readiness of delivery of the Collateral Ship to which such MOA relates.

10. No assignment etc. of MOA

Each Debtor party to an MOA shall not assign, novate, transfer or dispose of any of its rights or obligations under such MOA.

24 GENERAL SHIP UNDERTAKINGS

1. General

The undertakings in this Section 5 shall remain in force so long as the Secured Obligations remain outstanding except as the Agent may otherwise permit.

2. Ships' names and registration

(a) Each Debtor shall, in respect of the Collateral Ship owned by it:

(i) to the extent such Collateral Ship is, or shall become, capable of registration, immediately register and keep that Collateral Ship registered in its name under the Approved Jurisdiction from time to time at its port of registration;

(ii) to the extent such Collateral Ship is capable of registration, not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperiled; and

(iii) not change the name of that Collateral Ship,

provided that any change of flag of a Collateral Ship shall be subject to:

(A) that Collateral Ship remaining subject to a lien in favor of the Agent securing the Secured Obligations created by a first priority or preferred ship mortgage on that Collateral Ship and, if appropriate, a first priority deed of covenant collateral to that mortgage (or equivalent first priority lien) on substantially the same terms as the Collateral Ship Mortgage on that Collateral Ship and related Deed of Covenant and on such other terms and in such other form as the Agent shall approve or require; and

(B) the execution of such other documentation amending and supplementing the Transaction Documents as the Agent shall approve or require.

(b) In respect of any AUV, if such AUV shall become capable of registration, the Debtor owning such AUV shall immediately register such AUV in its name under an Approved Jurisdiction and shall not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperiled.

3. Repair and classification

Each Debtor shall keep the Collateral Ship owned by it and, to the extent any AUV is capable of being classed, in a good and safe condition and state of repair:

(a) consistent with first class ship ownership and management practice; and

(b) so as to maintain the Approved Classification free of overdue recommendations and conditions affecting that Collateral Ship's class.

4. Classification society undertaking

If required by the Agent in writing each Debtor shall, in respect of the Collateral Ship owned by it and, to the extent an AUV is capable of being classed, instruct the relevant Approved Classification Society (and procure that the Approved Classification Society undertakes with the Agent):

(a) to send to the Agent, following receipt of a written request from the Agent, certified true copies of all original class records held by the Approved Classification Society in relation to that Collateral Ship;

(b) to allow the Agent (or its agents), at any time and from time to time, to inspect the original class and related records of that Debtor and that Collateral Ship at the offices of the Approved Classification Society and to take copies of them;

(c) to notify the Agent immediately in writing if the Approved Classification Society:

(i) receives notification from that Debtor or any person that that Collateral Ship's Approved Classification Society is to be changed; or

(ii) becomes aware of any facts or matters which may result in or have resulted in a change, suspension, discontinuance, withdrawal or expiry of that Collateral Ship's class under the rules or terms and conditions of that Debtor or that Collateral Ship's membership of the Approved Classification Society;

(d) following receipt of a written request from the Agent:

(i) to confirm that that Debtor is not in default of any of its contractual obligations or liabilities to the Approved Classification Society, including confirmation that it has paid in full all fees or other charges due and payable to the Approved Classification Society; or

(ii) to confirm that that Debtor is in default of any of its contractual obligations or liabilities to the Approved Classification Society, to specify to the Agent in reasonable detail the facts and circumstances of such default, the consequences of such default, and any remedy period agreed or allowed by the Approved Classification Society.

5. Modifications

No Debtor shall make any modification or repairs to, or replacement of, any Collateral Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Collateral Ship or materially reduce its value.

6. Removal and installation of parts

(a) Subject to paragraph (b) below, no Debtor shall remove any material part of any Collateral Ship, or any item of equipment installed on any Collateral Ship unless:

(i) the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed;

(ii) the replacement part or item is free from any lien in favor of any person other than the Agent; and

(iii) the replacement part or item becomes, on installation on that Collateral Ship, the property of that Debtor and subject to the security constituted by the Collateral Ship Mortgage on that Collateral Ship and the related Deed of Covenant.

(b) A Debtor may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Collateral Ship owned by that Debtor.

7. Surveys

Each Debtor shall submit the Collateral Ship owned by it regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Agent, provide the Agent, with copies of all survey reports.

8. Inspection

Each Debtor shall permit the Agent (acting through surveyors or other persons appointed by it for that purpose) to board the Collateral Ship owned by it at all reasonable times to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections.

9. Prevention of and release from arrest

(a) Each Debtor shall, in respect of the Collateral Ship owned by it, promptly discharge:

(i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against that Collateral Ship, its Collateral Ship Earnings or its Marine Insurances;

(ii) all Taxes, dues and other amounts charged in respect of that Collateral Ship, its Collateral Ship Earnings or its Marine Insurances; and

(iii) all other outgoings whatsoever in respect of that Collateral Ship, its Collateral Ship Earnings or its Marine Insurances.

(b) Each Debtor shall immediately and, forthwith upon receiving notice of the arrest of the Collateral Ship owned by it or of its detention in exercise or purported exercise of any lien or claim, procure its release by providing bail or otherwise as the circumstances may require.

10. Compliance with laws etc.

Each Debtor shall:

(a) comply, or procure compliance with all laws or regulations:

(i) relating to its business generally; and

(ii) relating to the Collateral Ship owned by it, its ownership, employment, operation, management and registration,

including but not limited to the ISM Code, the ISPS Code, all Environmental Laws, all Applicable Sanctions and the laws of the Approved Jurisdiction;

(b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and

(c) without limiting paragraph (a) above, not employ the Collateral Ship owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Applicable Sanctions.

11. ISPS Code

Without limiting paragraph (a) of Clause 5.10, each Debtor shall:

(a) procure that the Collateral Ship owned by it and the company responsible for that Collateral Ship's compliance with the ISPS Code comply with the ISPS Code; and

(b) maintain an ISSC for that Collateral Ship; and

(c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

12. Sanctions and Ship trading

Without limiting Section 5.10, each Debtor shall procure:

(a) that the Collateral Ship owned by it shall not be used by or for the benefit of a Restricted Person;

(b) that such Collateral Ship shall not be used in trading in any manner contrary to Applicable Sanctions;

(c) that such Collateral Ship shall not be traded in any manner which would trigger the operation of any sanctions' limitation or exclusion clause (or similar) in the Marine Insurances; and

(d) that each charterparty in respect of that Collateral Ship shall contain, for the benefit of that Debtor, language which gives effect to the provisions of paragraph (c) of Section 5.10 as regards Applicable Sanctions and of this Section 5.12 and which permits refusal of employment or voyage orders if compliance would result in a breach of Applicable Sanctions.

13. Trading in war zones

In the event of hostilities in any part of the world (whether war is declared or not), no Debtor shall cause or permit any Collateral Ship to enter or trade to any zone which is declared a war zone by any government or by that Collateral Ship's war risks insurers unless:

(a) the prior written consent of the Agent has been given; and

(b) that Debtor has (at its expense) effected any special, additional or modified insurance cover which the Agent may require.

14. Provision of information

Each Debtor shall, in respect of the Collateral Ship owned by it, promptly provide the Agent with any information which it requests regarding:

(a) that Collateral Ship, its employment, position and engagements;

(b) the Collateral Ship Earnings and payments and amounts due to its master and crew;

(c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Collateral Ship and any payments made by it in respect of that Collateral Ship;

(d) any towages and salvages; and

(e) its compliance, the Approved Manager's compliance and the compliance of that Collateral Ship with the ISM Code and the ISPS Code,

and, upon the Agent's request, provide copies of any current Charter relating to that Collateral Ship, of any current guarantee of any such Charter, the Collateral Ship's Safety Management Certificate and any relevant Document of Compliance.

15. Notification of certain events

Each Debtor shall, in respect of the Collateral Ship owned by it, immediately notify the Agent by email, confirmed forthwith by letter, of:

(a) any casualty to that Collateral Ship which is or is likely to be or to become a Major Casualty;

(b) any occurrence as a result of which that Collateral Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;

(c) any requisition of that Collateral Ship for hire;

(d) any requirement or recommendation made in relation to that Collateral Ship by any insurer or classification society or by any competent authority which is not immediately complied with;

(e) any arrest or detention of that Collateral Ship, any exercise or purported exercise of any lien on that Collateral Ship or the Collateral Ship Earnings or any requisition of that Collateral Ship for hire;

(f) any intended dry docking of that Collateral Ship;

(g) any material Environmental Claim made against that Debtor or in connection with that Collateral Ship, or any material Environmental Incident;

(h) any claim for breach of the ISM Code or the ISPS Code being made against that Debtor, an Approved Manager or otherwise in connection with that Collateral Ship; or

(i) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,

and each Debtor shall keep the Agent advised in writing on a regular basis and in such detail as the Agent shall require as to that Debtor's, any such Approved Manager's or any other person's response to any of those events or matters.

16. Restrictions on chartering, appointment of managers etc.

No Debtor shall, in relation to the Collateral Ship owned by it:

(a) let that Collateral Ship on demise charter for any period without the prior written consent of the Agent;

(b) enter into any time, voyage or consecutive voyage charter in respect of that Collateral Ship other than a Permitted Charter;

(c) amend, supplement or terminate a Management Agreement;

(d) appoint a manager of that Collateral Ship other than the Approved Commercial Manager and the Approved Technical Manager or agree to any alteration to the terms of an Approved Manager's appointment;

(e) de activate or lay up that Collateral Ship; or

(f) put that Collateral Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed $250,000 (or the equivalent in any other currency) unless that person has first given to the Agent and in terms satisfactory to it a written undertaking not to exercise any lien on that Collateral Ship or its Collateral Ship Earnings for the cost of such work or for any other reason.

17. Notice of Mortgage

Each Debtor shall keep the relevant Collateral Ship Mortgage registered against the Collateral Ship owned by it as a valid first priority or preferred mortgage, as the case may be, carry on board that Collateral Ship a certified copy of the relevant Collateral Ship Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Collateral Ship a framed printed notice stating that that Collateral Ship is mortgaged by that Debtor to the Agent.

EXHIBIT E

Conditions Precedent to the Delivery Date of a Collateral Ship

1 Debtors

1. A certificate of an authorized signatory of the relevant Debtor that each copy document which it is required to provide under this Exhibit E is correct, complete and in full force and effect as at the Delivery Date of the Collateral Ship.

2. If applicable, documentary evidence that the relevant Debtor is a "citizen of the United States" within the meaning of Section 2 of the Jones Act, duly qualified to own and operate vessels in the coastwise trade of the United States to the extent required by the Jones Act in connection with such Debtor's business and eligible to act as an owner in respect of United States flag vessels pursuant to Title 46, Section 12103(b) of the United States Code and any regulations promulgated thereunder.

2 Pre-delivery Contracts and other Documents

1. Copies of the Construction Contract and of all documents signed or issued by Debtor or the Builder (or both of them) under or in connection with it.

2. The original Refund Guarantee.

3. Copies of the MOA and of all documents signed or issued by the Debtor or the seller (or both of them) under or in connection with it.

4. Such documentary evidence as the Agent and its legal advisers may require in relation to the due authorization and execution of the Construction Contract, the MOA and the Refund Guarantee by each of the parties thereto.

3 Collateral Ship and other security

1. A duly executed original of the Collateral Ship Mortgage and, if applicable, Deed of Covenant in respect of the Collateral Ship and of each document to be delivered under or pursuant thereto together with documentary evidence that the Collateral Ship Mortgage in respect of such Collateral Ship has been duly registered as a valid first preferred or priority ship mortgage, as the case may be, in accordance with the laws of the jurisdiction of its Approved Jurisdiction.

2. Documentary evidence that the Collateral Ship:

(a) has been unconditionally delivered by the Builder or the seller, as applicable to, and accepted by, the relevant Debtor under the relevant Construction Contract or MOA, and that the full purchase price payable and all other sums due to the Builder or the seller, as the case may be under the applicable Construction Contract or MOA have been paid to the Builder or seller, as the case may be;

(b) is definitively and permanently registered in the name of relevant Debtor under the Approved Jurisdiction.

(c) is in the absolute and unencumbered ownership of the relevant Debtor;

(d) maintains the Approved Classification with the Approved Classification Society free of all overdue recommendations and conditions of the Approved Classification Society; and

(e) is insured in accordance with the provisions of this Agreement and all requirements in this Agreement in respect of insurances have been complied with.

3. Documents establishing that the Collateral Ship will, as from the Delivery Date, be managed commercially by its Approved Commercial Manager and managed technically by its Approved Technical Manager on terms acceptable to Agent acting with the authorization of all of the Buyers, together with copies of the relevant Approved Technical Manager's Document of Compliance and of the relevant Collateral Ship's Safety Management Certificate (together with any other details of the applicable Safety Management System which the Agent requires) and of any other documents required under the ISM Code and the ISPS Code in relation such Collateral Ship including without limitation an ISSC.

4. A copy of any Charter in respect of the Collateral Ship.

5. An opinion from an independent insurance consultant acceptable to the Agent on such matters relating to the Marine Insurances as the Agent may require.

6. A valuation of the Collateral Ship, addressed to the Agent on behalf of the Buyers, stated to be for the purposes of this Agreement and dated not earlier than 60 days before the Delivery Date from an Approved Appraiser.

4 Legal opinions

Legal opinions of the legal advisers to the Debtors in the jurisdiction of the Approved Jurisdiction of relevant Collateral Ship and such other relevant jurisdictions as the Agent may require, in each case in form and substance satisfactory to the Agent.

EXHIBIT F

FORM OF NOTICE OF ASSIGNMENT OF INSURANCES

The undersigned, [shipowner] (the "**Owner**"), the owner of the [●] registered vessel [vessel name], Official Number [official number], IMO Number [IMO number] (the "**Vessel**"), hereby gives notice that by a Pledge and Security Agreement dated as of November 4, 2024 (as amended, restated, supplemented or otherwise modified from time to time) entered into among ATW Special Situations Management LLC, in its capacity as collateral agent and mortgage trustee (the "**Agent**"), the Owner in its capacity as a debtor and the other debtors party thereto from time to time, there has been assigned by the Owner to the Agent all insurances effected and to be effected in respect of the Vessel including the insurances constituted by the policy whereon this Notice is endorsed. This Notice of Assignment and the applicable loss payable clauses in the form hereto attached as Annex I are to be endorsed on all policies and certificates of entry evidencing such insurance.

Dated:

[OWNER]

By: _____
Name:
Title:

Annex I

LOSS PAYABLE CLAUSES

Hull and War Risks

Loss, if any, payable to ATW Special Situations Management LLC, in its capacity as collateral agent and mortgage trustee (the " **Agent**") for distribution by the Agent to itself and [shipowner] (the "**Owner**"), as their respective interests may appear, or order,

EXCEPT THAT unless the underwriters have been otherwise instructed by notice in writing from the Agent, in the case of any loss involving damage to the Vessel, or liability of the Vessel, the underwriters may pay directly for the repair, salvage, liability or other charges involved or, if the Owner shall have first fully repaired the damage and paid the cost thereof, or discharged the liability or paid all of the salvage or other charges, then the underwriters may pay the Owner, as the case may be, as reimbursement therefor; provided, however, that if such damage involves a loss in excess of U.S.$5,000,000 or its equivalent the underwriters shall not make such payment without first obtaining the written consent thereto of the Agent. In the event of an actual or constructive total loss or compromise or arranged total loss or requisition of title, all insurance payments therefor shall be paid to the Agent for distribution in accordance with the terms of the debenture under which it acts as Agent.

Protection and Indemnity

Loss, if any, payable to ATW Special Situations Management LLC, in its capacity as agent and mortgage trustee (the " **Agent**") and [shipowner], as owner (the "**Owner**") , as their respective interests may appear or order, except that, unless and until the underwriters have been otherwise instructed by notice in writing from the Agent, any loss may be paid directly to the person to whom the liability covered by this insurance has been incurred, or to the Owner to reimburse them for any loss, damage or expenses incurred by them and covered by this insurance.

EXHIBIT G-1

FORM OF NOTICE OF ASSIGNMENT OF CHARTER

To: [Name]
[Address]

"[NAME OF VESSEL]"

Ladies and Gentlemen:

The undersigned, [NAME OF OWNER] as owner (the "**Owner**") of the [●] registered vessel "[VESSEL]" (the "**Vessel**"), hereby gives you notice that by a Pledge and Security Agreement dated as of November 4, 2024 (as amended, restated, supplemented or otherwise modified from time to time) entered into among ATW Special Situations Management LLC, in its capacity as collateral agent (the "**Agent**"), the Owner in its capacity as a debtor and the other debtors party thereto from time to time, the Owner has pledged and granted to the Agent all interests and rights which now or at any later time the Owner has or may have under, in or in connection with the charter-party dated [●] (as the same may be amended or supplemented from time to time, the "**Charter**") made between the Owner and you as charterer (the " **Charterer**") in respect of the Vessel, including:

(i) all claims, rights, remedies, powers and privileges for moneys due and to become due to the undersigned pursuant to the Charter;

(ii) all claims, rights, remedies, powers and privileges for failure of the Charterer to meet any of its obligations under the Charter;

(iii) the right to make all waivers, consents and agreements under the Charter;

(iv) the right to give and receive all notices and other instruments or communications under the Charter;

(v) the right to take such action, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Charter, or by law;

(vi) the right to do any and all other things whatsoever which the undersigned is, or may be, entitled to do under the Charter including, without limitation, termination of the Charter pursuant to the terms and conditions stated therein; and

(vii) any proceeds of the foregoing.

Please confirm your consent to the assignment by executing and returning the Charterer's Consent and Agreement attached hereto.

[NAME OF OWNER], as Owner

By: _____
Name:
Title:

EXHIBIT G-2

FORM OF CHARTERER'S CONSENT AND AGREEMENT

[VESSEL]

Official Number [NUMBER]

The undersigned, charterer of the [●] registered vessel [VESSEL] pursuant to a charter-party dated [●] (the "**Charter**"), does hereby acknowledge notice of the assignment by [SHIPOWNER] (the "**Owner**") of all the Owner's right, title and interest in the Charter to ATW Special Situations Management LLC, in its capacity as collateral agent (the "**Agent**"), pursuant to a Pledge and Security Agreement dated as of November 4, 2024 (as amended, restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") entered into among the Agent, the Owner in its capacity as a debtor and the other debtors party thereto from time to time, consents to such assignment and the exercise of remedies by the Agent in respect thereof, and agrees that:

(i) The Charter is in full force and effect and is the legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms.

(ii) it will make payment of all moneys due and to become due under the Charter, without setoff or deduction for any claim not arising under the Charter, (x) to the account of the Owner identified on Schedule 1 attached hereto or (y) direct to the Agent or such account specified by the Agent at such address as the Agent shall request the undersigned in writing, in each case, until receipt of written notice from the Agent that all obligations of the Owner to it have been paid in full.

(iii) Upon receipt by the undersigned of notice from the Agent that an event of default has occurred and is continuing under the Security Agreement:

(A) the undersigned acknowledges and agrees that the Agent shall have the right but not the obligation to perform the Owner's obligations under the Charter and to exercise the Owner's rights under the Charter;

(B) the undersigned shall deliver to the Agent at its address above copies of all notices and other instruments, certificates, reports and communications required or permitted to be given or made to the Owner pursuant to the Charter; and

(C) the undersigned shall fully cooperate with the Agent in exercising rights available to the Agent under this assignment.

Notwithstanding the foregoing, the undersigned agrees that it shall look solely to the Owner for performance of the Charter and that the Agent shall have no obligation or liability under or pursuant to the Charter arising out of this assignment, nor shall the Agent be required or obligated in any manner to perform or fulfill any obligations of the Owner under or pursuant to the Charter. This provision shall not be construed to relieve the Owner of any liability to the Charterer.

This agreement shall be governed by, and construed in accordance with, the law of the State of New York.

Dated: _____

[CHARTERER], as Charterer

By: _____
Name:
Title

EXHIBIT H

[NOTICE OF ASSIGNMENT OF EARNINGS]

To: [Name]
[Address]

"[NAME OF VESSEL]"

Ladies and Gentlemen:

The undersigned, [SHIPOWNER] (the "**Owner**"), the owner of the [●] registered vessel "[VESSEL]" (the "**Vessel**"), hereby gives you notice that by a pursuant to a Pledge and Security Agreement dated as of November 4, 2024 (as amended, restated, supplemented or otherwise modified from time to time) entered into among ATW Special Situations Management LLC, in its capacity as collateral agent (the " **Agent**"), the Owner in its capacity as a debtor and the other debtors party thereto from time to time, the Owner has pledged and granted to the Agent a security interest in all moneys due or to become due to the Owner arising from the use or employment of the Vessel.

Date:

[SHIPOWNER], as Owner

By: _____
Name:
Title:

EXHIBIT I

CONSENT AND AGREEMENT

THIS CONSENT AND AGREEMENT dated as of [●], is entered into by [●] (the "Builder") in favor of ATW Special Situations Management LLC (together with its successors and assigns, the "Assignee") on behalf of the Buyers under the Securities Purchase Agreement (as hereinafter defined).

RECITALS

[●] (the "Assignor") and the Builder have entered into a certain [Agreement for the Construction of a New Vessel] dated [●], a copy of which is attached hereto as Exhibit A (as it may be amended, amended and restated, supplemented or otherwise modified from time to time, the "Construction Contract"), pursuant to which the Builder has agreed to construct, test, launch and deliver one (1) [●]vessel assigned [Builder's Hull No. [●]][Yard Number [●]] (the "Collateral Vessel") for a total purchase price of $[●].

[The Assignor][Nauticus Robotics, Inc. (f/k/a Cleantech Acquisition Corp.)] has sold notes pursuant to the Securities Purchase Agreement dated November 4, 2024 (the "Securities Purchase Agreement").

As security for [the Assignor's][Nauticus Robotics, Inc.'s (f/k/a Cleantech Acquisition Corp.)] obligations under the Securities Purchase Agreement and other documents now or hereafter executed by the Debtors or any other party to evidence, secure or guarantee, the Securities Purchase Agreement (collectively, the "Transaction Documents"), the Assignor has agreed to collaterally assign to and grant the Assignee a continuing, first priority security interest in all of its rights, title and interests in and to, among other things, the Construction Contract, the Collateral Vessel to be constructed pursuant thereto and all cash and non-cash proceeds and products of any of the foregoing, subject to and upon the terms and conditions set forth in that certain Pledge and Security Agreement dated as of November 4, 2024, executed by the Debtors in favor of the Assignee (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Pledge and Security Agreement").

AGREEMENTS

The Builder hereby consents to the collateral assignment by the Assignor to the Assignee of all of its rights, title and interests in and to the Construction Contract, the Collateral Vessel to be constructed pursuant thereto and all proceeds and products thereof as contemplated in the Pledge and Security Agreement and hereby agrees as follows:

(a) The Builder agrees that, from and after the date hereof, it will not terminate or suspend its obligations under the Construction Contract without first giving the Assignee notice and opportunity to cure as provided below.

(b) If an event of default of the Construction Contract ("Default") shall occur and Builder shall have the right and desire to terminate or suspend its obligations under the Construction Contract, Builder first shall give written notice to the Assignee and the Assignor of such Default. If the Assignee elects to exercise its right to cure as provided herein, the Assignee shall, within ten (10) business days

after the receipt by it of the notice from Builder referred to in the preceding sentence, deliver to Builder a written notice stating that the Assignee has elected to (i) exercise such right to cure, or (ii) exercise such right to cure, and, subject to the Builder's compliance with its obligations thereunder, to assume responsibility for and complete performance of the Assignor's obligations under the Construction Contract in accordance with the terms thereof, including payment to the Builder of all sums as and when due by the Assignor thereunder, which notice in either case shall be given together with a written statement of the Assignee that it will promptly commence to cure the Default described in such notice and that it will, during the cure period, diligently attempt in good faith to complete the curing of such Default. For the sake of good order, in the event the Assignee provides a notice of exercise of its right to cure only (as referenced in item (i) of the preceding sentence), any curing of or attempt to cure any Default shall not be construed as an assumption by the Assignee of any covenants, agreements or obligations of the Assignor under or in respect of the Construction Contract. If neither of the above-referenced notices is given by the Assignee within such ten (10) business day period, Builder shall be free to exercise its rights under the Construction Contract, including any right to terminate the same or to suspend performance of the work thereunder without any further notice to the Assignee.

(c) The Assignee shall have a period of (i) fifteen (15) days in respect of any Default that is a payment default, or (ii) thirty (30) days in respect of any Default other than a payment default, in each case measured from the date of delivery of the notice by the Assignee referred to in paragraph (b) hereof, in which to cure the Default specified in the Builder's notice, provided in each case that the Assignee is diligently attempting in good faith to complete the curing of such Default. If such Default is not cured by the Assignee within such applicable period, the Builder shall be free to exercise its rights under the Construction Contract, including any right to terminate the same or to suspend performance of the work thereunder.

(d) The parties hereto hereby agree that the Assignee shall have no duty or liability to the Builder under the Construction Contract unless and until the Assignee agrees, in writing, to be bound by the terms of the Construction Contract as set forth above and that the Builder shall have no duty or liability to the Assignee under the Construction Contract or by virtue of the Pledge and Security Agreement until such time as the Builder receives notice in writing from the Assignee that the Assignor is in default of its obligations to the Assignee and that the Assignee has agreed to step into the shoes of the Assignor and be bound by the provisions of the Construction Contract.

(e) As of the date hereof, neither the Builder nor, to the knowledge of the Builder, the Assignor is in default under the Construction Contract. Notices hereunder shall be delivered via e-mail or United States mail to the appropriate party at the following address.

ASSIGNOR:
[●]

ASSIGNEE:
ATW Special Situations Management LLC
17 State Street, Suite 2130,
New York, N.Y. 10004
Attention: Alex LaViolette, Isaac Barber, Antonio Ruiz-Giminez
Email: notice@atwpartners.com

BUILDER:
[●]

(f) The Builder hereby further agrees that upon its receipt of payment in full of the purchase price of the Collateral Vessel, as provided for in the Construction Contract and performance by the Assignor or the Assignee (as the case may be) of all its other obligations thereunder, the Builder shall fully perform its obligations under the Construction Contract.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Agreement to be executed this ____ day of [●], 202[●].

[●], as Builder

By:_____
Name:
Title:

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), dated as of November 4, 2024 is entered into by NAUTICUS ROBOTICS, INC. (F/K/A CLEANTECH ACQUISITION CORP.), a Delaware corporation (together with its successors and assigns, the "Company"), NAUTICUS ROBOTICS HOLDINGS, INC. (F/K/A NAUTICUS ROBOTICS, INC.), a Texas corporation (together with its successors and assigns, "Nauticus Sub"), NAUTIWORKS LLC, a Delaware limited liability company (together with its successors and assigns, "NautiWorks"), NAUTICUS ROBOTICS FLEET LLC, a Delaware limited liability company (together with its successors and assigns, "Nauticus Fleet") NAUTICUS ROBOTICS USA LLC, a Delaware limited liability company (together with its successors and assigns, "Nauticus USA", and together with the Company, Nauticus Sub, NautiWorks, Nauticus Fleet and any other pledgor parties joined to this Agreement from time to time pursuant to Section 15, collectively, the "Pledgors", and each individually, a "Pledgor"), in favor of ATW SPECIAL SITUATIONS MANAGEMENT LLC, as collateral agent on behalf of the investors now or hereafter party to the Securities Purchase Agreement (defined below) (in such capacity, the "Agent").

WHEREAS, (i) the Company has entered into that certain Securities Purchase Agreement, dated as of the date hereof (as amended, amended and restated, or otherwise modified from time to time, the "Securities Purchase Agreement"), by and among the Company and the Buyers (as defined in the Securities Purchase Agreement) party thereto and (ii) the Pledgors have entered into that certain Pledge and Security Agreement, dated as of the date hereof (as it may hereafter be modified, supplemented, extended, or renewed and in effect from time to time, the "Pledge and Security Agreement"), by and among the Pledgors as debtors, the other debtors from time to time party thereto, and the Agent;

WHEREAS, it is a condition to the obligations of the Buyers under the Securities Purchase Agreement that this Agreement be duly executed and delivered;

WHEREAS, each of the Pledgors will directly benefit from the issuance of the Notes by the Company pursuant to the Securities Purchase Agreement; and

WHEREAS, pursuant to the Securities Purchase Agreement and the Pledge and Security Agreement, the Pledgors have agreed, among other things, to grant a security interest to the Agent for the benefit of the Buyers in certain patents, trademarks, copyrights and other intellectual property, to secure the Obligations (as defined in the Pledge and Security Agreement).

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. Defined Terms.

(a) Except as otherwise expressly provided herein, capitalized terms used in this Agreement shall have the respective meanings assigned to them in the Pledge and Security Agreement. Where applicable and except as otherwise expressly provided herein, terms used herein (whether or not capitalized) shall have the respective meanings assigned to them in the UCC (as defined in the Pledge and Security Agreement).

(b) "Copyrights" shall mean, collectively, with respect to each Pledgor, all copyrights (whether statutory or common law, whether established or registered in the United States or any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications for registration made by such Pledgor, in each case, whether now owned or hereafter created or acquired by or assigned to such Pledgor, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's ownership and/or of such copyrights, (ii) renewals and extensions thereof and amendments thereto, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

(c) "Intellectual Property Licenses" shall mean, collectively, with respect to each Pledgor, all written license agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright, whether such Pledgor is a licensor or licensee under any such license agreement, whether now or hereafter (in each case, to the extent a Pledgor is able to grant a security interest in Intellectual Property Licenses without breach, violation or termination thereof), together with any and all (i) renewals, extensions, and supplements thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements or violations thereof, and (iii) rights to sue for past, present and future violations thereof.

(d) "Patents" shall mean, collectively, with respect to each Pledgor, all patents issued or assigned to, and all patent applications and registrations made by, such Pledgor (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's ownership and/or use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

(e) "Patents, Trademarks and Copyrights" shall mean and include all of each Pledgor's present and future right, title and interest in and to the following: all Patents, Trademarks, and Copyrights, whether now owned or hereafter acquired by each Pledgor, including, without limitation, those listed on Schedule A hereto, including all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits) and the goodwill of the business to which any of the Trademarks relate.

(f) "Trademarks" shall mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locators (URL's), domain names, social media names, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Pledgor and all registrations and applications for registration for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof, but excluding intent-to-use trademark applications, until a statement of use is filed with the U.S. Patent & Trademark Office), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's ownership and use of any trademarks, (ii) extensions and renewals thereof and amendments thereto, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof.

(g) "Transaction Documents" shall have the meaning given to such term in the Securities Purchase Agreement.

2. Security Interest; Filing Authorization.

(a) To secure the full payment and performance of all Secured Obligations, each Pledgor hereby grants and conveys a security interest to Agent for the benefit of the Buyers in the entire right, title, and interest of such Pledgor in and to all of its Patents, Trademarks and Copyrights, wherever located and whether now existing or hereafter arising or acquired from time to time.

(b) Each Pledgor hereby authorizes the Agent to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country), including this Agreement or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Pledgor hereunder, without the signature of such Pledgor, and naming such Pledgor, as debtor, and the Agent, as secured party.

3. This Agreement supplements, but does not replace or extinguish the obligations evidenced by the Pledge and Security Agreement.

4. Each Pledgor jointly and severally covenants and warrants that:

(a) the Patents, Trademarks and Copyrights owned by such Pledgor are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) to the best of such Pledgor's knowledge, each of the Patents, Trademarks and Copyrights owned by such Pledgor is valid and enforceable (excluding pending applications for Patents, Trademarks and Copyrights);

(c) such Pledgor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of such Patents, Trademarks and Copyrights (to such Pledgor's knowledge with respect to unregistered Patents, Trademarks and Copyrights), free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, shop rights and covenants by Pledgor not to sue third persons (other than Permitted Liens (as defined in the Notes) and non-exclusive licenses granted by Pledgor in the ordinary course of business);

(d) such Pledgor has the corporate or other power and authority to enter into this Agreement and perform its terms;

(e) no claim has been made to such Pledgor in writing or, to the knowledge of such Pledgor verbally, by any person that the use of any of the Patents, Trademarks and Copyrights owned by such Pledgor does or may infringe, misappropriate or otherwise violate the Intellectual Property rights of any third party; and

(f) such Pledgor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture of products sold under the Trademarks owned by such Pledgor that are material to its business (as reasonably determined by such Pledgor) for so long as Pledgor offers such products as part of its regular business and for so long as such Trademarks are material to its business (as reasonably determined by such Pledgor).

5. On a continuing basis, each Pledgor shall, at its sole cost and expense, (i) promptly (and in any event, in the next filed periodic report required to be provided by such Pledgor under the Pledge and Security Agreement) following its becoming aware thereof, notify the Agent of any adverse determination in any proceeding or the institution of any proceeding in any federal, state or local court or administrative body or in the United States Patent and Trademark Office or the United States Copyright Office regarding any Patents, Trademarks and Copyrights that are material to such Pledgor's business (as determined by such Pledgor in its reasonable business judgment), such Pledgor's right to register such Patents, Trademarks and Copyrights or its right to keep and maintain such registration in full force and effect, (ii) maintain all issued and registered Patents, Trademarks and Copyrights as presently used and operated, unless Pledgor reasonably determines, in the general course of its business to allow any such

Patents, Trademarks or Copyrights to lapse or become abandoned, (iii) not permit to lapse or become abandoned any Patents, Trademarks and Copyrights, and not settle or compromise any pending or future litigation or administrative proceeding with respect to any such Patents, Trademarks and Copyrights, in either case except as shall be consistent with commercially reasonable business judgment, (iv) upon such Pledgor obtaining knowledge thereof, promptly (and in any event, within thirty (30) Business Days of such Pledgor's obtaining such knowledge) notify the Agent in writing of any event which may be reasonably expected to materially and adversely affect the value of any Patents, Trademarks and Copyrights including a levy or threat of levy or any legal process against any Patents, Trademarks and Copyrights, (v) not license any Patents, Trademarks and Copyrights other than licenses entered into by such Pledgor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the Intellectual Property Licenses granted by such Pledgor of any Patents, Trademarks and Copyrights in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of any Patents, Trademarks and Copyrights or the lien on and security interest in the Patents, Trademarks and Copyrights or such Intellectual Property Licenses created therein hereby, without the consent of the Agent, (vi) keep commercially reasonable records respecting all Patents, Trademarks and Copyrights and Intellectual Property Licenses and (vii) furnish to the Agent from time to time upon the Agent's reasonable request therefor reasonably detailed statements and amended schedules further identifying and describing the Patents, Trademarks and Copyrights and such other materials evidencing or reports pertaining to any Patents, Trademarks and Copyrights as the Agent may from time to time request.

6. Each of the obligations of each Pledgor under this Agreement is joint and several. The Agent and the Buyers may, in their sole discretion, elect to enforce this Agreement against any Pledgor without any duty or responsibility to pursue any other Pledgor and such an election by the Agent or the Buyers shall not be a defense to any action the Agent and the Buyers, or any of them, may elect to take against any Pledgor. Each of the Agent and the Buyers hereby reserves all right against each Pledgor.

7. Each Pledgor agrees that, until all of the Secured Obligations shall have been indefeasibly satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with such Pledgor's obligations under this Agreement, without the Agent's prior written consent which shall not be unreasonably withheld except Pledgor may license technology and Patents, Trademarks and Copyrights and enter into Intellectual Property Licenses in the ordinary course of business without the Agent's consent to suppliers and customers to facilitate the manufacture and use of such Pledgor's products.

8. If, before the Secured Obligations shall have been indefeasibly satisfied in full, any Pledgor shall at any time after the date hereof (i) obtain any rights to any additional Patents, Trademarks and Copyrights or (ii) become entitled to the benefit of any additional Patents, Trademarks and Copyrights or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Patents, Trademarks and Copyrights, or any improvement on any Patents, Trademarks and Copyrights, the provisions hereof shall

automatically apply thereto and any such item enumerated in the preceding clause (i) or (ii) shall automatically constitute Patents, Trademarks and Copyrights as if such would have constituted Patents, Trademarks and Copyrights at the time of execution hereof and be subject to the lien and security interest created by this Agreement in favor of the Agent on behalf of the Buyers without further action by any party. Each Pledgor shall promptly (and in any event, within five (5) Business Days) after any of the events described in clause (i) or (ii) above, provide to the Agent written notice of any of the foregoing and confirm the attachment of the lien and security interest created by this Agreement in favor of the Agent on behalf of the Buyers to any rights described in clauses (i) and (ii) above by execution of an instrument in form reasonably acceptable to the Agent and the filing of any instruments or statements as shall be reasonably necessary to create, preserve, protect or perfect the Agent's security interest in such Patents, Trademarks and Copyrights. Each Pledgor and the Agent agree, and each Pledgor authorizes the Agent, to modify this Agreement by amending Schedule A to include any such new Patent, Trademark or Copyright of such Pledgor acquired or arising after the date hereof and the provisions of this Agreement shall apply thereto.

9. Upon the occurrence and during the continuation of an Event of Default, the Agent shall have, in addition to all other rights and remedies given it by this Agreement and those rights and remedies set forth in the Pledge and Security Agreement, those allowed by applicable law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents, Trademarks and Copyrights may be located and, without limiting the generality of the foregoing, the Agent may immediately, without demand of performance and without other notice (except as set forth below) or demand whatsoever to Pledgors, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in a city that the Agent shall designate by notice to the Pledgors, the whole or from time to time any part of the Patents, Trademarks and Copyrights, or any interest which any Pledgor may have therein and, after deducting from the proceeds of sale or other disposition of the Patents, Trademarks and Copyrights all expenses (including reasonable fees and expenses for brokers and attorneys), shall apply the remainder of such proceeds toward the payment of the Secured Obligations in accordance with Section 14 of the Pledge and Security Agreement. Any remainder of the proceeds after payment in full of the Secured Obligations shall be paid over to Pledgors. To the extent permitted by law, the Pledgors expressly waive any notice of sale or other disposition of the Patents, Trademarks and Copyrights and all other rights or remedies of the Debtors or formalities prescribed by law relative to sale or disposition of the Patents, Trademarks and Copyrights or exercise of any other right or remedy of Agent existing after the occurrence and during the continuation of an Event of Default; and to the extent any such notice is required and cannot be waived, the Debtors agree that if such notice is given in the manner provided in Section 25 hereof at least five (5) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice. Agent shall not be obligated to make any sale of Patents, Trademarks and Copyrights regardless of notice of sale having been given. Agent may adjourn any public or private sale. At any such sale or other disposition, the Agent may, to the extent permissible under applicable law, purchase the whole or any part of the Patents,

Trademarks and Copyrights sold, free from any right of redemption on the part of Pledgor, which right is hereby waived and released.

10. If any Event of Default shall have occurred and be continuing, each Pledgor hereby grants to the Agent, to the extent assignable, an irrevocable, non-exclusive license for the duration of such Event of Default to use, assign, license or sublicense any of the Patents, Trademarks and Copyrights now owned or hereafter acquired by such Pledgor, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof; provided that with respect to Trademarks Agent shall maintain the quality of all goods and services identified by or associated with such Trademarks. Effective upon the occurrence of such an Event of Default, each Pledgor further hereby authorizes and empowers the Agent to make, constitute and appoint any officer or agent of the Agent, as the Agent may select in its exclusive discretion, as such Pledgor's true and lawful attorney-in-fact, with the power to endorse such Pledgor's name on all applications, documents, papers and instruments necessary for the Agent to use the Patents, Trademarks and Copyrights, or to grant or issue, on commercially reasonable terms, any exclusive or nonexclusive license under the Patents, Trademarks and Copyrights to any third person, or necessary for Agent to assign, pledge, convey or otherwise transfer title in or dispose, on commercially reasonable terms, of the Patents, Trademarks and Copyrights to any third Person. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable for the life of this Agreement.

11. At such time as Pledgors shall have indefeasibly paid in full all of the Secured Obligations, this Agreement shall terminate and the Agent shall execute and deliver to Pledgors (solely at the expense and cost of the Pledgors and upon their reasonable request) all releases, deeds, assignments and other instruments as may be reasonably necessary or proper to release all liens and other rights of Agent hereunder and re-vest in Pledgor full unencumbered title to the Patents, Trademarks and Copyrights, subject to any disposition thereof which may have been made by the Agent pursuant hereto.

12. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and expenses incurred by the Agent in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances, the protection, maintenance or preservation of the Patents, Trademarks and Copyrights, or the defense or prosecution of any actions or proceedings arising out of or related to the Patents, Trademarks and Copyrights, shall be borne and paid by Pledgors.

13. Pledgors shall have the duty, if commercially reasonable, to prosecute any applications for registration of the Patents, Trademarks and Copyrights pending as of the date of this Agreement or thereafter until the Secured Obligations shall have been indefeasibly paid in full, to make application on unpatented but patentable inventions (whenever it is commercially reasonable in the reasonable judgment of such Pledgor to do so) and to preserve and maintain all

rights in applications for patents and trademarks and patents of the Patents and registrations of the Trademarks, including without limitation the payment of all maintenance fees (whenever it is commercially reasonable in the reasonable judgment of such Pledgor to do so). Any expenses incurred in connection with such an application or maintenance of an issued Patent or registered Trademark shall be borne by Pledgors. Unless it is commercially reasonable to do so, no Pledgor shall abandon any Patent, Trademark or Copyright without the consent of the Agent, which shall not be unreasonably withheld.

14. Unless there shall occur and be continuing any Event of Default, each Pledgor shall have the right but in no way be obligated to commence and prosecute in its own name, as the party in interest, for its own benefit, and to join the Agent, if necessary, as a party to such suit so long as the Agent is satisfied that such joinder will not subject it to any risk of liability, to enforce the Patents, Trademarks and Copyrights and any licenses thereunder, and at the sole cost and expense of such Pledgor, such applications for protection of the Patents, Trademarks and Copyrights and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Patents, Trademarks and Copyrights. Upon the occurrence and during the continuance of any Event of Default, the Agent shall have the right but shall in no way be obligated to file applications for protection of the Patents, Trademarks and Copyrights and/or bring suit in the name of any Pledgor, the Agent or Buyers to enforce the Patents, Trademarks and Copyrights and any Intellectual Property License thereunder. In the event of such suit, each Pledgor shall, at the reasonable request of the Agent, do any and all lawful acts and execute any and all documents requested by the Agent in aid of such enforcement. In the event that the Agent shall elect not to bring suit to enforce any Patents, Trademarks and Copyrights that are material to the business of a Pledgor (as reasonably determined by such Pledgor), each Pledgor agrees, at the reasonable request of the Agent, to take commercially reasonable actions, as reasonably determined by such Pledgor, which may include suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Patents, Trademarks and Copyrights by any person.

15. If any Pledgor forms or acquires any new direct or indirect Domestic Subsidiary, the Pledgors agree to, concurrently with the acquisition or formation thereof, (i) cause such newly formed or acquired Domestic Subsidiary to become a party to this Agreement pursuant to a joinder in form satisfactory to Agent for the purposes of granting a security interest in such subsidiary's Patents, Trademarks and Copyrights, wherever located and whether now existing or hereafter arising or acquired from time to time, as additional Collateral, (ii) deliver to Agent an opinion of counsel in form and substance acceptable to Agent, addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to such subsidiary and (iii) to execute or deliver such other agreements, documents requested by the Agent in connection therewith.

16. No course of dealing between each Pledgor and the Agent, nor any failure to exercise nor any delay in exercising, on the part of the Agent, any right, power or privilege hereunder or under the Pledge and Security Agreement or any other Security Document or other

Transaction Document shall operate as a waiver of such right, power or privilege, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17. All of the Agent's rights and remedies with respect to the Patents, Trademarks and Copyrights, whether established hereby or by the Securities Purchase Agreement, Pledge and Security Agreement, any other Security Document or other Transaction Document or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

18. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any clause or provision of this Agreement in any jurisdiction.

19. This Agreement is subject to modification only by a writing signed by the parties, except as expressly provided in Section 8.

20. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties, provided, however, that Pledgors may not assign or transfer any of their rights or obligations hereunder or any interest herein and any such purported assignment or transfer shall be null and void.

21. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without regard to its conflicts of law principles.

22. EACH PLEDGOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER SECURITY DOCUMENT OR OTHER TRANSACTION DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER TRANSACTION DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT OR ANY BUYER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER SECURITY

DOCUMENT OR OTHER TRANSACTION DOCUMENT AGAINST ANY PLEDGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PLEDGOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT IN ANY COURT REFERRED TO ABOVE. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND AGREES NOT TO ASSERT ANY SUCH DEFENSE. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 25. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

23. This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Each Pledgor acknowledges and agrees that a facsimile or other electronic transmission to the Agent of the signature pages hereof purporting to be signed on behalf of any Pledgor shall constitute effective and binding execution and delivery hereof by such Pledgor.

24. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER SECURITY DOCUMENT OR OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER SECURITY DOCUMENTS AND OTHER TRANSACTION DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 24.

25. All notices, requests, demands, directions and other communications (collectively, "notices") given to or made upon any party hereto under the provisions of this Agreement shall be as set forth in Section 17 of the Pledge and Security Agreement.

26. Each Pledgor acknowledges and agrees that, in addition to the other rights of the Agent hereunder and under the other Security Documents and Transaction Documents, because the Agent's remedies at law for failure of such Pledgor to comply with the provisions hereof

relating to the Agent's rights (i) to inspect the books and records related to the Patents, Trademarks and Copyrights, (ii) to receive the various notifications such Pledgor is required to deliver hereunder, (iii) to obtain copies of agreements and documents as provided herein with respect to the Patents, Trademarks and Copyrights, (iv) to enforce the provisions hereof pursuant to which the such Pledgor has appointed the Agent its attorney-in-fact, and (v) to enforce the Agent's remedies hereunder, would be inadequate and that any such failure would not be adequately compensable in damages, such Pledgor agrees that each such provision hereof may be specifically enforced.

[Signature Pages Follow]

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

PLEDGORS:

NAUTICUS ROBOTICS, INC.
(F/K/A CLEANTECH ACQUISITON CORP.)

By:
Name:
Title:

NAUTICUS ROBOTICS HOLDINGS, INC.
(F/K/A NAUTICUS ROBOTICS, INC.)

By:
Name:
Title:

NAUTIWORKS LLC

By:
Name:
Title:

NAUTICUS ROBOTICS FLEET LLC

By:
Name:
Title:

NAUTICUS ROBOTICS USA LLC

By:__
Name:
Title:

Schedule A

Patents, Trademarks and Copyrights.

See attached.

SUBSIDIARY GUARANTEE

This SUBSIDIARY GUARANTEE (this "Guarantee") is made as of November 4, 2024, by NAUTICUS ROBOTICS HOLDINGS, INC. (F/K/A NAUTICUS ROBOTICS, INC.), a Texas corporation (together with its successors and assigns, "Nauticus Sub"), NAUTIWORKS LLC, a Delaware limited liability company (together with its successors and assigns, "NautiWorks"), NAUTICUS ROBOTICS FLEET LLC, a Delaware limited liability company (together with its successors and assigns, "Nauticus Fleet") and NAUTICUS ROBOTICS USA LLC, a Delaware limited liability company (together with its successors and assigns, "Nauticus USA", and together with Nauticus Sub, NautiWorks, Nauticus Fleet and any other entity that may become a party hereto as provided herein, collectively, the "Guarantors", and each, a "Guarantor"), in favor of the investors under the Securities Purchase Agreement (as defined below) (collectively, the "Buyers") and ATW Special Situations Management LLC, in its capacity as the collateral agent for the Buyers (the "Agent" and together with the Buyers and their respective successors, transferees and assigns, collectively, " Creditors", each individually, a "Creditor").

RECITALS:

WHEREAS, Nauticus Robotics, Inc. (f/k/a Cleantech Acquisition Corp.), a Delaware corporation (the " Company") has entered into a Securities Purchase Agreement dated as of the date hereof (the "Securities Purchase Agreement") with the Buyers from time to time party thereto; all capitalized terms used and not defined in this Guarantee shall have the meaning given to such terms in the Securities Purchase Agreement and/or the Notes, as applicable;

WHEREAS, pursuant to the Securities Purchase Agreement, the Company, the Guarantors, have entered into certain other Transaction Documents and this Guarantee is one of the Transaction Documents described in the Securities Purchase Agreement;

WHEREAS, each Guarantor will directly benefit from the issuance of the Notes by the Company pursuant to the Securities Purchase Agreement; and

WHEREAS, it is a condition to the obligations of the purchasers under the Securities Purchase Agreement that this Guarantee be duly executed and delivered.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to the Creditors to purchase the Notes from the Company, the Guarantors hereby guarantee to the Creditors the prompt and full payment and performance of the Guaranteed Obligations of the Company (defined below), this Guarantee being upon the following terms and conditions:

1. Guaranteed Obligations of the Company. Guarantors, jointly and severally, hereby unconditionally and irrevocably guarantee to the Creditors the punctual payment when due, and not merely the collectability thereof, whether by lapse of time, by acceleration of maturity, or otherwise, and at all times thereafter, of the Guaranteed Obligations of the Company. As used herein, the term "Guaranteed Obligations of the Company" means all debts, obligations or liabilities now or hereafter existing, other than contingent indemnification obligations, of the Guarantors owed to the Creditors under the Notes, the Securities Purchase Agreement and the other Transaction Documents.

1. Certain Agreements and Waivers by Guarantors.

(a) Notwithstanding anything in the Securities Purchase Agreement to the contrary, the Guarantors hereby agree that each of the following shall constitute "Events of Default" hereunder: (i) the occurrence of a default by any Guarantor in payment of the Guaranteed Obligations of the Company, or any part thereof, when such indebtedness becomes due and (ii) the bankruptcy and/or insolvency of any Guarantor.

(b) Upon the occurrence of any Event of Default hereunder, the Guaranteed Obligations of the Company, for purposes of this Guarantee, shall be deemed immediately due and payable at the election of the Creditors. Guarantors shall, on demand, pay the Guaranteed Obligations of the Company to the Creditors. It shall not be necessary for Agent, in order to enforce such payment, first to (i) institute suit or pursue or exhaust any rights or remedies against Company or others liable for the Obligations (as defined below) pursuant to the Transaction Documents (together with all interest accrued and unpaid thereon and all other sums due to Creditors in respect of such Obligations, the "Debt"), (ii) enforce any rights against any security that shall ever have been given to secure the Debt, (iii) join Company or any others liable for the payment or performance of the Guaranteed Obligations of the Company or any part thereof in any action to enforce this Guarantee and/or (iv) resort to any other means of obtaining payment or performance of the Guaranteed Obligations of the Company. As used herein, the term "Obligations" shall mean all of the obligations (including, without limitation, obligations of each of the Company, the Guarantors and each of their subsidiaries that is or may become a party to any Transaction Document, now or hereafter existing under the Transaction Documents (whether for principal, interest, fees, expenses, indemnification or otherwise).

(c) In the event any payment by Company or any other Person to any Creditor is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason any Creditor is required to refund such payment or pay the amount thereof to any other party, such payment by Company or any other party to any such Creditor, as applicable, shall not constitute a release of Guarantors from any liability hereunder and this Guarantee shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Creditors of this Guarantee or of Guarantors), as the case may be, with respect to, and this Guarantee shall apply to, any and all amounts so refunded by such Creditor, as applicable, or paid by Creditor, as applicable, to another Person (which amounts shall constitute part of the Guaranteed Obligations of the Company), and any interest paid by any Creditor and any attorneys' fees, costs and expenses paid or incurred by any Creditor in connection with any such event. If acceleration of the time for payment of any amount payable by Company under any Transaction Document is stayed or delayed by any law or tribunal, any amounts due and payable hereunder shall nonetheless be payable by Guarantors on demand by the Creditors.

2. Subordination. If, for any reason whatsoever, the Company is now or hereafter becomes indebted to any Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of the Company securing same shall, at all times, be subordinate in all respects to the Guaranteed Obligations of the Company and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations of the Company;

(b) upon the occurrence and during the continuance of any Event of Default hereunder or any Event of Default, such Guarantor shall not be permitted to enforce or receive payment, directly or

indirectly, of any such indebtedness of the Company to such Guarantor until the Guaranteed Obligations of the Company have been fully and finally paid and performed;

(c) each Guarantor hereby assigns and grants to Agent on behalf of Creditors a security interest in all such indebtedness and security therefor, if any, of the Company to such Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Company as debtor, Agent shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not an Event of Default shall have occurred or be continuing hereunder or under any of the other Transaction Documents), dividends and payments that are payable upon any obligation of the Company to such Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations of the Company have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, any Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 3, such Guarantor shall pay the same to Agent immediately, each Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Agent and shall have absolutely no dominion over the same except to pay it immediately to Agent; and

(d) Guarantors shall promptly upon reasonable request of Agent from time to time execute such documents and perform such acts as Agent may reasonably require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section.

3. Other Liability of Guarantors or Company. If any Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Company to Creditors other than under this Guarantee, such liability shall not be in any manner impaired or affected hereby, and the rights of Creditors hereunder shall be cumulative of any and all other rights that Creditors may have against such Guarantor.

4. Assignment. This Guarantee is for the benefit of Creditors and their respective successors and assigns, and in the event of an assignment of the Guaranteed Obligations of the Company, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations of the Company so assigned, may be transferred with such Guaranteed Obligations of the Company. Each Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations of the Company, or any part thereof, and agrees that failure to give notice will not affect the liabilities of such Guarantor hereunder.

5. Binding Effect. This Guarantee is binding not only on Guarantors, but also on each of the Guarantors' respective successors and assigns. Without limitation of any other term, provision or waiver contained herein, each Guarantor hereby acknowledges and agrees that it has been furnished true, complete and correct copies of the Transaction Documents and has reviewed the terms and provisions thereof (including, without limitation, the Guaranteed Obligations of the Company).

6. Nature of Guarantee. Each Guarantor hereby acknowledges and agrees that this Guarantee (a) is a guaranty of payment and not only of collection and that each Guarantor is liable hereunder as a primary obligor, (b) shall only be deemed discharged after the indefeasible satisfaction in full of the Guaranteed Obligations of the Company and the Debt, (c) shall not be reduced, released, discharged, satisfied or otherwise impacted in connection with (i) any act or occurrence that might, but for the provisions hereof, be deemed a legal or equitable reduction, satisfaction, discharge or release and/or

(ii) Creditors' enforcement of remedies under the Transaction Documents and (d) shall survive the foregoing and shall not merge with any resulting foreclosure deed, deed in lieu or similar instrument (if any).

7. Governing Law. This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely within such state without regards to the conflicts of laws principles thereof other than mandatory provisions of law.

8. Invalidity of Certain Provisions. If any provision of this Guarantee or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guarantee nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable legal requirements.

9. Attorneys' Fees, Costs and Expenses of Collection. Each Guarantor shall pay on demand all attorneys' fees, costs and expenses and all other costs and expenses incurred by Creditors in the enforcement of or preservation of Creditors' rights under this Guarantee including, without limitation, all court costs, whether or not suit is filed herein, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guarantee against any other Guarantor, if there be more than one. Each Guarantor's obligations and liabilities under this Section 10 shall survive any payment or discharge in full of the Guaranteed Obligations of the Company.

10. Payments. All sums payable under this Guarantee shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

11. Controlling Agreement. It is not the intention of Creditors or Guarantors to obligate Guarantors to pay interest in excess of that lawfully permitted to be paid by Guarantors under applicable legal requirements. Should it be determined that any portion of the Guaranteed Obligations of the Company or any other amount payable by any Guarantor under this Guarantee constitutes interest in excess of the maximum amount of interest that such Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable legal requirements, the obligation of such Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable legal requirements.

12. Notices. All notices, communications or deliveries provided for hereunder must be in writing and will be deemed to have been duly given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via email prior to 5:30 p.m. (New York City time) on any Trading Day; (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via email on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day; (c) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given, addressed as follows:

if to any Guarantor: at the applicable address set forth on Schedule 1 hereto

with a copy to: Nauticus Robotics, Inc.

17146 Feathercraft Lane, Suite 450
Webster, TX 77598
Attention: Mr. John Symington
Email: jsymington@nauticusrobotics.com

if to any Creditor: as set forth in the Securities Purchase Agreement

or as to the Guarantors or the Creditors, at such other address as shall be designated by such party in a written notice to the other parties delivered in accordance with this Section 13.

13. Cumulative Rights. The exercise by Creditors of any right or remedy hereunder or under any other Transaction Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Creditors shall have all rights, remedies and recourses afforded to Creditors by reason of this Guarantee or any other Transaction Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against each Guarantor or others obligated for the Guaranteed Obligations of the Company, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole discretion of Creditors, as applicable, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantors that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of any Guarantor or of any breach of any of the provisions of this Guarantee or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Creditors shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on any Guarantor in any case shall of itself entitle any Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guarantee or any right, remedy or recourse of Creditors with respect hereto, or any default or breach, can be waived, nor can this Guarantee or any Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guarantee) executed, and delivered to Guarantors, by Creditors.

14. Subrogation. Notwithstanding anything to the contrary contained herein, (a) Guarantors shall not have any right of subrogation in or under any of the Transaction Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Guaranteed Obligations of the Company, until the Guaranteed Obligations of the Company have been fully and finally paid, and (b) if any Guarantor is or becomes an "insider" (as defined in Section 101 of Title 11 of the United States Code (the "Bankruptcy Code")) with respect to the Company, then such Guarantor hereby irrevocably and absolutely waives any and all rights of contribution, indemnification, reimbursement or any similar rights against the Company with respect to this Guarantee (including any right of subrogation, except to the extent of collateral held by Agent), whether such rights arise under an express or implied contract or by operation of law. It is the intention of the parties that neither Guarantor shall be deemed to be a "creditor" (as defined in Section 101 of the Bankruptcy Code) of the Company by reason of the existence of this Guarantee in the event that the Company or any Guarantor becomes a

debtor in any proceeding under the Bankruptcy Code. This waiver is given to induce Creditors to advance the loans evidenced by the Securities Purchase Agreement to the Company.

15. Further Assurances. Each Guarantor at such Guarantor's expense will promptly execute and deliver to any Creditor upon such Creditor's reasonable request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of such Guarantor under this Guarantee.

16. No Fiduciary Relationship. The relationship between Creditors, respectively, and Guarantors, is solely that of lender and guarantor. No Creditor has a fiduciary or other special relationship with or duty to Guarantors and none are created hereby or may be inferred from any course of dealing or act or omission of any Creditor.

17. Interpretation. If this Guarantee is signed by more than one Person as "Guarantor", then the term "Guarantor" as used in this Guarantee shall refer to all such Persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guarantee are made by and shall be binding upon each and every such undersigned Person, jointly and severally and Creditors may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Securities Purchase Agreement or any other Transaction Documents.

18. Time of Essence. Time shall be of the essence in this Guarantee with respect to all of the Guarantors' obligations hereunder.

19. Execution. This Guarantee may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which together shall constitute one and the same agreement.

20. Entire Agreement. This Guarantee embodies the entire agreement between Creditors, respectively, and Guarantors with respect to the guaranty by Guarantors of the Guaranteed Obligations of the Company. This Guarantee supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations of the Company. No condition or conditions precedent to the effectiveness of this Guarantee exist. This Guarantee shall be effective upon execution by Guarantor and delivery to Creditors. This Guarantee may not be modified, amended or superseded except in a writing signed by the Creditors and Guarantors referencing this Guarantee by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. The Transaction Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

21. WAIVER OF JURY TRIAL. EACH GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR AND CREDITORS MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS GUARANTEE AND ANY OTHER TRANSACTION DOCUMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY EACH GUARANTOR, AND EACH GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY

JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

22. Consent to Jurisdiction. Each Guarantor irrevocably submits generally and unconditionally for itself and in respect of its property to the nonexclusive jurisdiction of the federal and state courts located in the City of New York, Borough of Manhattan over any suit, action or proceeding arising out of, or relating to, this Guarantee, and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such state or federal court. Each Guarantor irrevocably waives, to the fullest extent permitted by law, any objection that such Guarantor may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claims that any such suit, action or proceeding is brought in an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon each Guarantor and may be enforced in any court in which any Guarantor is subject to jurisdiction, by a suit upon such judgment provided that service of process is effected such Guarantor as provided in the Transaction Documents or as otherwise permitted by applicable legal requirements. Each Guarantor hereby releases, to the extent permitted by applicable legal requirements, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which such Guarantor may otherwise be entitled under the laws of the United States of America or of any state of possession of the United States of America now in force and which may hereinafter be enacted. The authority and power to appear for and enter judgment against any Guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdiction as often as Creditors shall deem necessary and desirable, for all of which this Guarantee shall be sufficient warrant.

23. Waivers.

(a) Each Guarantor hereby agrees that no Creditor's rights or remedies nor any Guarantor's obligations under the terms of this Guarantee shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of each Guarantor under this Guarantee shall be absolute and unconditional irrespective of (and each Guarantor hereby waives any rights or protections related to):

(i) any limitation of liability or recourse in any other Transaction Document or arising under any law;

(ii) any claim or defense that this Guarantee was made without consideration or is not supported by adequate consideration;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations of the Company;

(iv) any homestead exemption or any other similar exemption under applicable legal requirements and each Guarantor hereby waives the benefit of any such exemption as to the Guaranteed Obligations of the Company;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations of the Company, including any impairment of any Guarantor's recourse against any Person or collateral;

(vi) whether express or by operation of law, any partial release of the liability of any Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Creditors covering all or any part of the Guaranteed Obligations of the Company, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release or settlement of the Company or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations of the Company;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, amalgamation, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of the Company or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations of the Company;

(viii) either with or without notice to or consent of Guarantors: any renewal, extension, modification or rearrangement of the terms of any or all of the Guaranteed Obligations of the Company and/or any of the Transaction Documents;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of Creditors to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations of the Company, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Transaction Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations of the Company;

(x) any failure of Creditors to notify Guarantors of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations of the Company or any part thereof, or of any Transaction Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Creditors against the Company or any security or other recourse, or of any new agreement between Creditors and the Company, it being understood that no Creditor shall be required to give Guarantors any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations of the Company, any and all rights to notice Guarantor may have otherwise had being hereby waived by each Guarantor, and each Guarantor shall be responsible for obtaining for itself information regarding the Company, including, but not limited to, any changes in the business or financial condition of the Company, and each Guarantor acknowledges and agrees that no Creditors shall have any duty to notify any Guarantor of any information which Creditors may have concerning the Company;

(xi) if for any reason any Creditor is required to refund any payment by the Company to any other party liable for the payment or performance of any or all of the Guaranteed Obligations of the Company or pay the amount thereof to someone else;

(xii) the making of advances by any Creditor to protect its interest in the collateral under the Security Documents (as defined in the Pledge and Security Agreement) (the "Collateral"), preserve the value of the Collateral or for the purpose of performing any term or covenant contained in any of the Transaction Documents;

(xiii) the existence of any claim, counterclaim, set off, recoupment, reduction or defense based upon any claim or other right that any Guarantor may at any time have against the Company, Creditor, or any other Person, whether or not arising in connection with this Guarantee, the Securities Purchase Agreement or any other Transaction Document;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations of the Company against the Company, whether because the Guaranteed Obligations of the Company exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations of the Company, or any part thereof, is ultra vires, or because the officers or Persons creating same acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Transaction Documents, or because the Company has any valid defense, claim or offset with respect thereto, or because the Company' obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that each Guarantor shall remain liable hereon regardless of whether the Company or any other Person be found not liable on the Guaranteed Obligations of the Company, or any part thereof, for any reason (and regardless of any joinder of the Company or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations of the Company);

(xv) any order, ruling or plan of reorganization emanating from proceedings under any bankruptcy or similar insolvency laws with respect to the Company or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations of the Company, whether or not consented to by Creditors; and/or

(xvi) any partial or total transfer, pledge and/or reconstitution of the Company and/or any direct or indirect owner of the Company (regardless of whether the same is permitted under the Transaction Documents).

(b) This Guarantee shall be effective as a waiver of, and each Guarantor hereby expressly waives:

(i) any and all rights to which any Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Creditors to take prior recourse or proceedings against any collateral, security or Person whatsoever;

(ii) any other circumstance that may constitute a defense of the Company or any Guarantor hereunder and/or under the other Transaction Documents; and

(i) any right and/or requirement of or related to notice, presentment, protest, notice of protest, further notice of nonpayment, notice of dishonor, default, nonperformance, intent to accelerate, acceleration, existence of the Debt and/or any amendment or modification of the Debt.

24. Representations, Warranties and Covenants of Guarantors and the Company. Each Guarantor hereby makes the following representations and warranties as of the date hereof or as of the date such Guarantor joins this Guarantee:

(a) Organization and Qualification. Such Guarantor is duly organized, validly existing and in good standing under the laws of the applicable jurisdiction set forth on Schedule 1 attached hereto, with the requisite corporate or other power and authority to own and use its properties and assets and to carry on its business as currently conducted. Such Guarantor is duly qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not, individually or in the aggregate, (x) adversely affect the legality, validity or enforceability of any of this Guarantee in any material respect, (y) have a material adverse effect on the results of operations, assets, prospects, or financial condition of such Guarantor or (z) adversely impair in any material respect such Guarantor's ability to perform fully on a timely basis its obligations under this Guarantee (a "Material Adverse Effect").

(b) Authorization; Enforcement. Such Guarantor has the requisite corporate or other power and authority to enter into and to consummate the transactions contemplated by this Guarantee, and otherwise to carry out its obligations hereunder. The execution and delivery of this Guarantee by such Guarantor and the consummation by it of the transactions contemplated hereby have been duly authorized by all requisite corporate or other action on the part of such Guarantor. This Guarantee has been duly executed and delivered by such Guarantor and constitutes the valid and binding obligation of such Guarantor enforceable against such Guarantor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(c) No Conflicts. There is no existing event of default, and no event has occurred which with the passage of time or the giving of notice or both will constitute an event of default, under any agreement to which such Guarantor is a party, the effect of which event of default will impair performance by such Guarantor of such Guarantor's obligations pursuant to and as contemplated by the terms of this Guarantee, and neither the execution and delivery of this Guarantee nor compliance with the terms and provisions hereof (i) will violate any presently existing provision of law or any presently existing regulation, order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality, or (ii) will conflict or will be inconsistent with, or will result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind that creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the property or assets of such Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which such Guarantor is a party or by which such Guarantor or any of such Guarantor's property may be subject, or in the event of any such conflict, the required consent or waiver of the other party or parties thereto has been validly granted, is in full force and effect, is valid and sufficient therefor and has been approved in writing by Creditors.

(d) Consents and Approvals. Such Guarantor is not required to obtain any consent, waiver, authorization or order of, or make any filing or registration with, any court or other federal, state, local, foreign or other governmental authority or other person in connection with the execution, delivery and performance by such Guarantor of this Guarantee.

(e) Action. There are no actions, suits or proceedings pending or threatened in writing against such Guarantor before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind that will adversely affect performance by such Guarantor of such Guarantor's obligations pursuant to and as contemplated by the terms and provisions of this Guarantee.

(f) Securities Purchase Agreement. The representations and warranties of the Company set forth in the Securities Purchase Agreement as they relate to each Guarantor, each of which is hereby incorporated herein by reference, are true and correct as of each time such representations are deemed to be made pursuant to such Securities Purchase Agreement, and the Lenders shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Company's knowledge shall, for the purposes of this Section 25, be deemed to be a reference to such Guarantor's knowledge.

(g) Each of the representations and covenants of and/or relating to such Guarantor set forth in the other Transaction Documents are hereby re-made by such Guarantor and incorporated herein by reference as if fully set forth herein.

25. Additional Guarantors. The Company and each Guarantor shall cause each of its Subsidiaries formed or acquired on or subsequent to the date hereof to become a Guarantor for all purposes of this Guarantee by executing and delivering an Assumption Agreement in the form of Annex 1 hereto.

26. Solvency. On the date hereof and immediately following the effectiveness of this Guarantee, each Guarantor will be Solvent. As used in this paragraph, the term "Solvent" means, with respect to any Guarantor on a particular date, that on such date (i) the present fair market value (or present fair saleable value) of the assets of such Guarantor are not less than the total amount required to pay the probable liabilities of such Guarantor on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured, (ii) such Guarantor is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business, (iii) such Guarantor is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature and (iv) such Guarantor is not engaged in any business or transaction, and is not about to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Guarantor is engaged. In computing the amount of such contingent liabilities at any time, it is intended that such liabilities will be computed at the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected by such Guarantor to become an actual or matured liability.

27. Creditors. Any reference to an action that may be taken or not taken by "Creditors" in this Agreement shall be deemed to be a reference to an action that may be taken or not taken by the Required Holders.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Guarantors have duly executed this Subsidiary Guarantee as of the date first written above.

GUARANTOR:

NAUTICUS ROBOTICS HOLDINGS, INC.
(F/K/A NAUTICUS ROBOTICS, INC.)

By:
Name:
Title:

NAUTIWORKS LLC

By:
Name:
Title:

NAUTICUS ROBOTICS FLEET LLC

By:
Name:
Title:

NAUTICUS ROBOTICS USA LLC

By:
Name:
Title:

Acknowledged and agreed:

COMPANY:

NAUTICUS ROBOTICS, INC.
(F/K/A CLEANTECH ACQUISITION CORP.)
By:_____
Name:
Title:

SCHEDULE 1

GUARANTORS

Name	State of Incorporation /Formation	Notice Address
Nauticus Robotics Holdings, Inc.	Texas	17146 Feathercraft Lane, Suite 450, TX 77598
Nauticus Robotics Fleet LLC	Delaware	17146 Feathercraft Lane, Suite 450 Webster, TX 77598
Nauticus Robotics USA LLC	Delaware	17146 Feathercraft Lane, Suite 450 Webster, TX 77598
NautiWorks LLC	Delaware	17146 Feathercraft Lane, Suite 450 Webster, TX 77598

ANNEX 1
to
SUBSIDIARY GUARANTEE

ASSUMPTION AGREEMENT, dated as of _____ __, ____ made by _____, a _____ (the "Additional Guarantor"), in favor of the Creditors. All capitalized terms not defined herein shall have the meaning ascribed to them in the Guarantee.

W I T N E S S E T H :

WHEREAS, Nauticus Robotics, Inc. (f/k/a Cleantech Acquisition Corp.), a Delaware corporation (together with its successors and assigns, the "Company"), has entered into the [Securities Purchase Agreement], dated as of November 4, 2024 (as amended, supplemented or otherwise modified from time to time, the "Securities Purchase Agreement") by and among the Company, the Agent, and the [purchasers] from time to time party thereto;

WHEREAS, in connection with the Securities Purchase Agreement, NAUTICUS ROBOTICS HOLDINGS, INC. (F/K/A NAUTICUS ROBOTICS, INC.), a Texas corporation (together with its successors and assigns, "Nauticus Sub"), NAUTIWORKS LLC, a Delaware limited liability company (together with its successors and assigns, "NautiWorks"), NAUTICUS ROBOTICS FLEET LLC, a Delaware limited liability company (together with its successors and assigns, "Nauticus Fleet"), and NAUTICUS ROBOTICS USA LLC, a Delaware limited liability company (together with its successors and assigns "Nauticus USA") have entered into a Subsidiary Guarantee, dated as of November 4, 2024 (as amended, supplemented or otherwise modified from time to time, the "Guarantee") in favor of the Creditors;

WHEREAS, the Transaction Documents (as defined in the Securities Purchase Agreement) require the Additional Guarantor to become a party to the Guarantee; and

WHEREAS, the Additional Guarantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee.

NOW, THEREFORE, IT IS AGREED

1. Guarantee. By executing and delivering this Assumption Agreement, the Additional Guarantor, as provided in Section 26 of the Guarantee, hereby becomes a party to the Guarantee as a Guarantor thereunder with the same force and effect as if originally named therein as a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor thereunder. The information set forth in Schedule 1 hereto is hereby added to the information set forth in Schedule 1 to the Guarantee. The Additional Guarantor hereby represents and warrants that each of the representations and warranties contained in Section 25 of the Guarantee is true and correct on and as the date hereof as to such Additional Guarantor (after giving effect to this Assumption Agreement) as if made on and as of such date.

2. Governing Law. THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GUARANTOR]

By:_____

Name:

Title:

Schedule 1

ADDITIONAL GUARANTOR

Name	State of Incorporation/ Formation	Notice Address

EXHIBIT 10.7

INTERCREDITOR AGREEMENT

Dated as of November 4, 2024

among

ATW SPECIAL SITUATIONS MANAGEMENT LLC,
as Super Senior Collateral Agent,

and

ATW SPECIAL SITUATIONS MANAGEMENT LLC,
as Subordinated Lien Collateral Agent,

and acknowledged and agreed to by

NAUTICUS ROBOTICS, INC.,
as the Company,

and the other Grantors referred to herein

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INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this **"Agreement**") is dated as of November 4, 2024, and entered into by and among **ATW SPECIAL SITUATIONS MANAGEMENT LLC**, as collateral agent for the holders of the Super Senior Obligations (as defined below) (in such capacity and together with its successors from time to time, the "**Super Senior Collateral Agent**"), and **ATW SPECIAL SITUATIONS MANAGEMENT LLC** , as agent for the holders of the Subordinated Lien Obligations (as defined below) (in such capacity and together with its successors from time to time, the "**Subordinated Lien Collateral Agent**"), and acknowledged and agreed to by **NAUTICUS ROBOTICS, INC.**, a Delaware corporation (the "**Company**"), and the other Grantors (as defined below) party hereto from time to time. Capitalized terms used in this Agreement have the meanings assigned to them in Section 1 below.

RECITALS

The Company, the lenders party thereto and the Super Senior Collateral Agent have entered into the Securities Purchase Agreement dated as of even date herewith (as amended, modified, supplemented, or amended and restated from time to time in accordance with the terms of this Agreement, "**Super Senior Securities Agreement**");

The Company, the lenders party thereto and Subordinated Lien Collateral Agent entered into that certain Senior Secured Term Loan Agreement, dated as of January 30, 2024 (as amended, modified, supplemented, exchanged or amended and restated from time to time in accordance with the terms of this Agreement, the "**Subordinated Lien Credit Agreement**");

Pursuant to (i) the Super Senior Securities Agreement, the Company has caused, and has agreed to cause, certain of the Company's current and future Subsidiaries to guarantee the Super Senior Obligations (as defined below) pursuant to the Subsidiary Guarantee dated as of the date hereof (as amended, modified, supplemented or amended and restated from time to time, the **"Super Senior Guarantee"**) and (ii) the Subordinated Lien Credit Agreement, the Company has caused certain of the Company's current and future Subsidiaries to guarantee the Subordinated Lien Obligations (as defined below) pursuant to the Subsidiary Guarantee dated as of January 30, 2024 (as amended, modified, supplemented or amended and restated from time to time, the **"Subordinated Lien Guarantee"**);

The obligations of the Company and the other Grantors under the Super Senior Securities Agreement and the obligations under the Super Senior Guarantee of the Company the Company's Subsidiaries party thereto will be secured on a first-priority basis by liens on substantially all the assets of the Company and such Subsidiaries (such current and future Subsidiaries of the Company providing a guaranty thereof, the

"Guarantor Subsidiaries"), pursuant to the terms of the Super Senior Collateral Documents (as defined below);

The obligations of the Company under the Subordinated Lien Credit Agreement and the obligations of the Company and the Guarantor Subsidiaries under the Subordinated Lien Guarantee will be secured on a second-priority basis by liens on substantially all the assets of the Company and the Guarantor Subsidiaries, pursuant to the terms of the Subordinated Lien Collateral Documents (as defined below);

The Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents (each, as defined below) provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral (as defined below); and

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, each of the Super Senior Collateral Agent (on behalf of each Super Senior Claimholder (as defined below)) and the Subordinated Lien Collateral Agent (on behalf of each Subordinated Lien Claimholder (as defined below)), intending to be legally bound, hereby agrees as follows:

AGREEMENT

Section 1. Definitions.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"**Agreement**" has the meaning set forth in the Preamble to this Agreement.

"**Bankruptcy Case**" means a case under the Bankruptcy Code or any other Bankruptcy Law.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Law**" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"**Claimholders**" means the Super Senior Claimholders or the Subordinated Lien Claimholders, as the context may require.

"**Collateral**" means, at any time, all of the assets and property of any Grantor, whether real, personal or mixed, constituting Super Senior Collateral and Subordinated Lien Collateral.

"**Collateral Agent**" means any Super Senior Collateral Agent and/or any Subordinated Lien Collateral Agent, as the context may require.

"**Collateral Documents**" means the Super Senior Collateral Documents and the Subordinated Lien Collateral Documents.

"**Company**" has the meaning set forth in the Preamble to this Agreement.

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

"**Declined Liens**" has the meaning set forth in Section 2.3.

"**DIP Financing**" has the meaning set forth in Section 6.3.

"**Discharge of Super Senior Obligations**" means, except to the extent otherwise expressly provided in Section 5.6, each of the following has occurred:

(a) payment in full in cash of the principal of and accrued and unpaid interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Super Senior Documents and constituting Super Senior Obligations;

(b) payment in full in cash of all other Super Senior Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any contingent indemnification or reimbursement obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(c) termination or expiration of all commitments, if any, to extend credit that would constitute Super Senior Obligations.

"**Discharge of Subordinated Lien Obligations**" means each of the following has occurred:

(d) payment in full in cash of the principal of and accrued and unpaid interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Subordinated Lien Loan Documents and constituting Subordinated Lien Obligations;

(e) payment in full in cash of all other Subordinated Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any contingent indemnification or reimbursement obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(f) termination or expiration of all commitments, if any, to extend credit that would constitute Subordinated Lien Obligations.

"**Disposition**" has the meaning set forth in Section 5.1(b).

"**Enforcement Action**" means any action to:

(g) foreclose, execute, levy, or collect on, take possession or control of, sell or otherwise realize upon (judicially or non-judicially), or lease, license, or otherwise dispose of (whether publicly or privately), Collateral, or otherwise exercise or enforce remedial rights with respect to Collateral under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents (including by way of setoff, recoupment, notification of a public or private sale or other disposition pursuant to the UCC or other applicable law, notification to account debtors, notification to depositary banks under deposit account control agreements, or exercise of rights under landlord consents, if applicable);

(h) solicit bids from third Persons, approve bid procedures for any proposed disposition of Collateral, to conduct the liquidation or disposition of Collateral or engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third Persons for the purposes of marketing, promoting, and selling Collateral, in each case under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents;

(i) receive a transfer of Collateral in satisfaction of Indebtedness under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents or any other Obligation secured thereby; or

(j) otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the Collateral at law, in equity, or pursuant to the Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of Equity Interests comprising Collateral);

provided, *however*, *that*, in all events, notwithstanding anything contained herein to the contrary, the exercise by the Super Senior Collateral Agent, any Super Senior Claimholder, the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholder or any affiliate of any of the foregoing of any rights with respect to any

equity, equity component or conversion feature under the Super Senior Securities Agreement, the Super Senior Securities Purchase Documents, the Subordinated Lien Credit Agreement and Subordinated Lien Loan Documents, including, without limitation, any conversion, redemption or exchange (in whole or in part) of the Super Senior Debt or the Subordinated Lien Debt into Equity Interests, any amendment, waiver or modification to any of the terms and/or conditions of any equity, equity component, exchange or conversion feature under the Super Senior Securities Agreement, the Super Senior Securities Purchase Documents, the Subordinated Lien Credit Agreement and/or Subordinated Lien Loan Documents, as applicable and/or any subscription agreement, registration rights agreement and/or any other related document, agreement and/or Equity Interest, the exercise of any term or condition of any Equity Interest (including, without limitation, any warrants, options or ratchets), the exercise of any rights under any subscription agreement, registration rights agreement, and/or any other related document, agreement and/or Equity Interest, and/or organizational documents (including any shareholder agreements) of any Grantors, in each case, with respect to any Equity Interest of any Grantor (whether or not outstanding as of the date hereof), or any sale or resale of any Equity Interests of the Grantors (collectively referred to as "**Equity Rights**"), shall not constitute an Enforcement Action by the Super Senior Collateral Agent, any Super Senior Claimholder, the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, and neither such Equity Interests, nor any Equity Interest Proceeds with respect thereto, shall be subject to any subordination or other restrictive provisions provided in this Agreement. Notwithstanding the foregoing and for the avoidance of doubt, the rights of the Subordinated Lien Collateral Agent and any Subordinated Lien Claimholders to cash payments of Subordinated Lien Obligations pursuant to the Subordinated Lien Loan Documents, solely to the extent settled in cash (and not settled, converted or exchanged in equity or equity-linked securities) is subject to the terms of this Agreement.

"**Enforcement Notice**" has the meaning set forth in Section 3.1(h).

"**Equity Interests**" means any capital stock or other security of the any Person or any of its subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of such Person or any of its subsidiaries, including, without limitation, common equity, preferred equity, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to, directly or indirectly, purchase or acquire any such Equity Interest.

"**Equity Interest Proceeds**" means any cash or other asset proceeds received by any Person from the sale or resale of any Equity Interest (or any capital stock issued or issuable upon conversion, exercise or exchange of any Equity Interest, as applicable).

"**Equity Rights**" has the meaning given to such term in the definition of Enforcement Action.

"**Excess Super Senior Obligations**" means any Super Senior Obligations that would constitute Super Senior Obligations if not for the Super Senior Cap Amount together with interest, fees and expenses to the extent directly related to such Super Senior Obligations that are in excess of the Super Senior Cap Amount.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Grantors**" means the Company, each of the other Guarantor Subsidiaries and each other Person that has or may from time to time hereafter execute and deliver any Super Senior Collateral Document or Subordinated Lien Collateral Document as a "grantor" or "pledgor" (or the equivalent thereof) to secure any Super Senior Obligations or Subordinated Lien Obligations, as the context may require.

"**Guarantor Subsidiaries**" has the meaning set forth in the Recitals to this Agreement.

"**Indebtedness**" means and includes all indebtedness for borrowed money.

"**Insolvency or Liquidation Proceeding**" means:

(k) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor;

(l) any other voluntary or involuntary insolvency, reorganization or Bankruptcy Case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of their respective assets;

(m) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(n) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

"**Joinder Agreement**" means a supplement to this Agreement in the form of Exhibit A hereto required to be executed pursuant to Section 8.18 hereof.

"**Lien**" means any lien (including, judgment liens and liens arising by operation of law), mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof), UCC financing statement or other preferential arrangement having the practical effect of any of the foregoing, including any right of set-off or recoupment.

"**New Agent**" has the meaning set forth in Section 5.6.

"**New Super Senior Lien Debt Notice**" has the meaning set forth in Section 5.6.

"**Obligations**" means the Super Senior Obligations and the Subordinated Lien Obligations.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Pledged Collateral**" has the meaning set forth in Section 5.5.

"**Post-Petition Interest**" means interest, fees, expenses and other charges that pursuant to the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents, as applicable, continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

"**Purchase Price**" has the meaning set forth in Section 5.7.

"**Recovery**" has the meaning set forth in Section 6.5.

"**Standstill Period**" has the meaning set forth in Section 3.1.

"**Subordinated Lien Claimholders**" means, at any relevant time, the holders of Subordinated Lien Obligations at that time, including the Subordinated Lien Collateral Agent under the Subordinated Lien Loan Documents.

"**Subordinated Lien Collateral**" means all of the assets and property of the Company or any other Grantor, whether real, personal or mixed, in which the holders of Subordinated Lien Obligations (or the Subordinated Lien Collateral Agent) hold, purport to hold or are required to hold, a security interest at such time, including any property subject to Liens granted pursuant to Section 6 to secure both Super Senior Obligations and Subordinated Lien Obligations, including any property or assets subject to replacement Liens or adequate protection Liens in favor of any Subordinated Lien Claimholder.

"**Subordinated Lien Collateral Agent**" has the meaning set forth in the Preamble of this Agreement.

"**Subordinated Lien Collateral Documents**" means the any agreement, document or instrument pursuant to which a Lien is granted securing any Subordinated Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"**Subordinated Lien Credit Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**Subordinated Lien Debt**" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Subordinated Lien Loan Documents.

"**Subordinated Lien Guarantee**" has the meaning set forth in the Recitals to this Agreement.

"**Subordinated Lien Loan Documents**" means the Subordinated Lien Credit Agreement and the Transaction Documents (as defined in the Subordinated Lien Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Subordinated Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any Subordinated Lien Obligations, including any intercreditor or joinder agreement among holders of Subordinated Lien Obligations to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time in accordance with the provisions of this Agreement.

"**Subordinated Lien Obligations**" means all obligations outstanding under, and all other obligations in respect of, the Subordinated Lien Credit Agreement and the other Subordinated Lien Loan Documents. "Subordinated Lien Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Subordinated Lien Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"**Subsidiary**" means, with respect to any Person (the "parent"), any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person or, in the case of a partnership, constituting a majority of the outstanding voting general partnership interests of such Person (in each case irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by the parent

or one or more Subsidiaries of the parent or by the parent and one or more of the Subsidiaries of the parent.

"**Super Senior Buyers**" means the "Buyers" under and as defined in the Super Senior Securities Purchase Documents.

"**Super Senior Cap Amount**" means, at any time and in respect of Super Senior Obligations, a principal amount equal to the sum of (i) $21,150,000, *plus* (ii) any accrued pay-in-kind interest on such principal amount, *minus* (iii) the amount of any repayments and commitment reductions with respect to the Super Senior Obligations.

"**Super Senior Claimholders**" means, at any relevant time, the holders of Super Senior Obligations at that time, including the Super Senior Buyers and the agents under the Super Senior Securities Purchase Documents.

"**Super Senior Collateral**" means all of the assets and property of the Company or any other Grantor, whether real, personal or mixed, in which the holders of Super Senior Obligations (or the Super Senior Collateral Agent) hold, purport to hold or are required to hold, a security interest at such time (or are deemed pursuant to Section 2 to hold a security interest), including any property subject to Liens granted pursuant to Section 6 to secure the Super Senior Obligations, including any property or assets subject to replacement Liens or adequate protection Liens in favor of any Super Senior Claimholder.

"**Super Senior Collateral Agent**" has the meaning set forth in the Preamble to this Agreement.

"**Super Senior Collateral Documents**" means the Security Documents (as defined in the Super Senior Securities Agreement) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Super Senior Obligations or under which rights or remedies with respect to such Liens are governed.

"**Super Senior Debt**" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Super Senior Securities Purchase Documents.

"**Super Senior Guarantee**" has the meaning set forth in the Recitals to this Agreement.

"**Super Senior Obligations**" means, subject to clause (c) hereof, the following:

(a) all "Obligations" (as such term is defined in the Super Senior Collateral Documents) and other obligations outstanding under, and all other obligations in respect of, the Super Senior Securities Agreement and the other Super Senior Securities Purchase Documents;

(b) to the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the Super Senior Securities Purchase Documents are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the Super Senior Claimholders and the Subordinated Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "Super Senior Obligations"; and

(c) notwithstanding the foregoing, if the sum of principal portion of the Super Senior Obligations, is in excess of the Super Senior Cap Amount, then only that principal portion of the Super Senior Obligations equal to the Super Senior Cap Amount shall be included in Super Senior Obligations, and interest, fees, reimbursement obligations and other amounts with respect to such Indebtedness. The principal portion of Super Senior Obligations in excess of the Super Senior Cap Amount and all interest, fees and other Obligations related to such excess shall constitute Excess Super Senior Obligations under this Agreement.

"**Super Senior Securities Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**Super Senior Securities Purchase Documents**" means the Super Senior Securities Agreement and the Transaction Documents (as defined in the Super Senior Securities Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Super Senior Obligation, and any other document or instrument executed or delivered at any time in connection with any Super Senior Obligations, including any intercreditor or joinder agreement among holders of Super Senior Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time in accordance with the provisions of this Agreement.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

1.2 Terms Generally. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise:

(a) any definition of or reference herein to any agreement, instrument or other document, shall be construed as referring to such agreement, instrument or other document, as amended, restated, amended and restated, supplemented or otherwise modified from time to time and any reference herein

to any statute or regulations shall include any amendment, renewal, extension or replacement thereof;

(b) any reference herein to any Person shall be construed to include such Person's successors and assigns from time to time;

(c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(d) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 2. Priorities.

2.1 Relative Priorities. Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the Subordinated Lien Obligations granted on the Collateral or of any Liens securing the Super Senior Obligations granted on the Collateral and notwithstanding any provision of the UCC or any other applicable law or the Subordinated Lien Loan Documents or any defect or deficiencies in, or failure to perfect or lapse in perfection of, or avoidance as a fraudulent conveyance or otherwise of, the Liens securing the Super Senior Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby agrees that:

(a) any Lien on the Collateral securing any Super Senior Obligations now or hereafter held by or on behalf of the Super Senior Collateral Agent or any Super Senior Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any Subordinated Lien Obligations; and

(b) any Lien on the Collateral securing any Subordinated Lien Obligations now or hereafter held by or on behalf of the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholders or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any Super Senior Obligations.

2.2 Prohibition on Contesting Liens. Each of the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder,

and the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, agrees that it will not (and hereby waives any right to) directly or indirectly contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection, extent or enforceability of a Lien held, or purported to be held, by or on behalf of any of the Super Senior Claimholders in the Super Senior Collateral or by or on behalf of any of the Subordinated Lien Claimholders in the Subordinated Lien Collateral, as the case may be, or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Super Senior Collateral Agent or any other Super Senior Claimholder or the Subordinated Lien Collateral Agent or any other Subordinated Lien Claimholder to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the Super Senior Obligations as provided in Sections 2.1 and 3.1.

2.3 No New Liens. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the parties hereto agree that the Company shall not, and shall not permit any other Grantor to:

(a) grant or permit any additional Liens on any asset or property to secure any Subordinated Lien Obligation unless it has granted or concurrently grants a Lien on such asset or property to secure the Super Senior Obligations, the parties hereto agreeing that any such Lien shall be subject to Section 2.1 hereof; provided that this provision will not be violated with respect to any Super Senior Obligations if the Super Senior Collateral Agent is given a reasonable opportunity to accept a Lien on any asset or property and either the Company or the Super Senior Collateral Agent states in writing that the Super Senior Securities Purchase Documents prohibit the Super Senior Collateral Agent from accepting a Lien on such asset or property, or the Super Senior Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined lien, a "**Super Senior Declined Lien**").

(b) grant or permit any additional Liens on any asset or property to secure any Super Senior Obligations unless it has granted or concurrently grants a Lien on such asset or property to secure the Subordinated Lien Obligations; provided that this provision will not be violated with respect to any Subordinated Lien Obligations if the Subordinated Lien Collateral Agent is given a reasonable opportunity to accept a Lien on any asset or property and the Subordinated Lien Collateral Agent states in writing that the Subordinated Lien Loan Documents prohibit the Subordinated Lien Collateral Agent from accepting a Lien on such asset or property, or the Subordinated Lien Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined lien, a "**Subordinated Lien Declined Lien**" and, together with the Super Senior Declined Liens, the "**Declined Liens**").

If any Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder shall hold any Lien on any assets or property of any Grantor securing any Subordinated Lien Obligations that are not also subject to the first-priority Liens, other than any Declined Liens, securing all Super Senior Obligations under the Super Senior Collateral Documents, such Subordinated Lien Collateral Agent or Subordinated Lien Claimholder shall notify the Super Senior Collateral Agent promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, other than any such Lien that would constitute a Declined Lien, on such assets or property to the Super Senior Collateral Agent as security for the Super Senior Obligations, such Subordinated Lien Collateral Agent and Subordinated Lien Claimholders shall be deemed to hold and have held such Lien for the benefit of the Super Senior Collateral Agent and the other Super Senior Claimholders, other than any Super Senior Claimholders whose Super Senior Securities Purchase Documents prohibit them from taking such Liens, as security for the Super Senior Obligations. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to any Super Senior Collateral Agent and/or the Super Senior Claimholders, the Subordinated Lien Collateral Agent, on behalf of each Subordinated Lien Claimholder, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2. If the Super Senior Collateral Agent, any Super Senior Buyer or any Super Senior Claimholder shall hold any Lien on any assets or property of any Grantor securing any Super Senior Obligations that are not also subject to the second-priority Liens, other than any Declined Liens, securing all Subordinated Lien Obligations under the Subordinated Lien Collateral Documents, the Super Senior Collateral Agent, such Super Senior Buyer or such Super Senior Claimholder (i) shall notify the Subordinated Lien Collateral Agent promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, other than any such Lien that would constitute a Declined Lien, on such assets or property to the Subordinated Lien Collateral Agent as security for the Subordinated Lien Obligations, the Super Senior Collateral Agent, such Super Senior Buyer and Super Senior Claimholders shall be deemed to hold and have held such Lien for the benefit of the Subordinated Lien Collateral Agent and the other Subordinated Lien Claimholders. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to any of the Subordinated Lien Collateral Agent and/or the Subordinated Lien Claimholders, the Super Senior Collateral Agent, on behalf of each Super Senior Claimholder, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4 Similar Liens and Agreements. The parties hereto agree that, subject to the immediately preceding paragraph and Declined Liens, it is their intention that the Super Senior Collateral and the Subordinated Lien Collateral be identical. In furtherance of the foregoing and of Section 8.10, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Super Senior Collateral and the Subordinated Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents; and

(b) that the documents and agreements creating or evidencing the Super Senior Collateral and the Subordinated Lien Collateral and guarantees for the Super Senior Obligations and the Subordinated Lien Obligations, subject to Section 2.3, shall be in all material respects the same forms of documents other than with respect to provisions (x) to reflect the first lien and the subordinated junior lien nature of the Obligations thereunder and (y) relating to the Equity Rights.

2.5 Perfection of Liens. Except for the arrangements contemplated by Section 5.5, neither the Super Senior Collateral Agent or the Super Senior Claimholders, on one hand, nor the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders, on the other hand, shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Collateral for the benefit of the other. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the Super Senior Claimholders on the one hand and the Subordinated Lien Claimholders on the other hand and such provisions shall not impose on the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Collateral which would conflict with prior-perfected claims therein in favor of any other Person or any order or decree of any court or Governmental Authority or any applicable law.

2.6 No Claim Subordination. The subordination of Liens securing Subordinated Lien Obligations to Liens securing Super Senior Obligations set forth in this Section 2 affects only the relative priority of those Liens, and does not subordinate the Subordinated Lien Obligations in right of payment to the Super Senior Obligations. Nothing in this Agreement will affect the entitlement of any Super Senior Claimholder or Subordinated Lien Claimholder to receive and retain required payments of interest, principal, and other amounts in respect of a Super Senior Obligation or Subordinated Lien Obligation (other than in connection with a turnover of proceeds of Collateral pursuant to this Agreement in connection with an Enforcement Action), as applicable, or exercise any rights with respect to any Equity Rights or any Equity Interests or Equity Interest Proceeds, as applicable.

Section 3. Enforcement.

3.1 Exercise of Remedies.

(a) Until the Discharge of Super Senior Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders:

(1) will not commence or maintain, or seek to commence or maintain, any Enforcement Action or otherwise exercise any rights or remedies with respect to the Collateral; provided that the Subordinated Lien Collateral Agent may commence an Enforcement Action or otherwise exercise any or all such rights or remedies after the passage of a period of at least 180 days has elapsed since the earlier of: (i) following the occurrence of any Event of Default under any Subordinated Lien Loan Document, the date on which the Super Senior Collateral Agent was given notice thereof in accordance with Section 8.9 and (ii) following the occurrence of the acceleration of the Subordinated Lien Obligations, the date on which the Super Senior Collateral Agent was given notice thereof in accordance with Section 8.9 (the **"Standstill Period"**); provided, further, that notwithstanding anything herein to the contrary, in no event shall the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder exercise any rights or remedies with respect to the Collateral so long as, notwithstanding the expiration of the Standstill Period, the Super Senior Collateral Agent or Super Senior Claimholders shall have commenced and be diligently pursuing an Enforcement Action with respect to all or any material portion of the Collateral or the Company or any other Grantor is then, and then only for so long as it remains, a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding (with prompt notice of such exercise to be given to the Subordinated Lien Collateral Agent);

(2) will not contest, protest, hinder, delay, or object to any foreclosure proceeding or action brought by the Super Senior Collateral Agent or any Super Senior Claimholder or any other exercise by the Super Senior Collateral Agent or any Super Senior Claimholder of any rights and remedies relating to the Collateral under the Super Senior Securities Purchase Documents or otherwise (including any Enforcement Action initiated by or supported by the Super Senior Collateral Agent or any Super Senior Claimholder);

(3) subject to their rights under clause (a)(1) above, will not object to the forbearance by the Super Senior Collateral Agent or the Super Senior Claimholders from bringing or pursuing any foreclosure

proceeding or action or any other exercise of any rights or remedies relating to the Collateral, in each case so long as any proceeds received by the Super Senior Collateral Agent in excess of those necessary to achieve a Discharge of Super Senior Obligations are distributed in accordance with Section 4.1 hereof and applicable law (to the extent such law is not inconsistent with the priority of distributions provided under Section 4.1 hereof);

(4) will not attempt to direct the Super Senior Collateral Agent or the Super Senior Claimholders to exercise any right, remedy or power with respect to the Collateral or exercise any consent to the exercise by the Super Senior Collateral Agent or the Super Senior Claimholders of any right, remedy or power with respect to the Collateral;

(5) will not institute any suit or assert in any suit, Insolvency or Liquidation Proceeding or other proceeding any claim against the Super Senior Collateral Agent or the Super Senior Claimholders seeking damages or other relief by way of specific performance, instructions or otherwise with respect to, and neither the Super Senior Collateral Agent or the Super Senior Claimholders will be liable for, any action taken or omitted to be taken by any of them with respect to the Collateral;

(6) will not take any action to cause or attempt to cause any Lien on the Collateral securing the Subordinated Lien Obligations to be senior to or pari passu with the Liens securing the Super Senior Obligations; and

(7) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement or the enforceability of any Lien securing the Super Senior Obligations. The foregoing shall not be construed to prohibit the Subordinated Lien Collateral Agent from enforcing the provisions of this Agreement.

(b) [Reserved].

(c) Until the Discharge of Super Senior Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to Section 3.1(a)(1), the Super Senior Collateral Agent and the Super Senior Claimholders shall have the exclusive right to commence and maintain an Enforcement Action (except that Subordinated Lien Collateral Agent shall have the credit bid rights set forth in Section 3.1(d)(7)), and subject to Section 5.1, to make determinations regarding the release or dispositions with respect to the Collateral without any consultation with or the consent of the Subordinated Lien

Collateral Agent or any Subordinated Lien Claimholder; provided that any proceeds received by the Super Senior Collateral Agent in excess of those necessary to achieve a Discharge of Super Senior Obligations are distributed to the Subordinated Lien Collateral Agent in accordance with the relative priorities described herein. In commencing or maintaining any Enforcement Action or otherwise exercising rights and remedies with respect to the Collateral, the Super Senior Collateral Agent and the Super Senior Claimholders may enforce the provisions of the Super Senior Securities Purchase Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion in compliance with this Agreement and any applicable law and without consultation with the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder. Such exercise and enforcement shall include, subject to compliance with applicable laws, the rights of an agent appointed by them to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(d) Notwithstanding the foregoing, the Subordinated Lien Collateral Agent and any Subordinated Lien Claimholder may:

(1) vote, file proofs of claim and take any other action not in violation of the provisions of this Agreement with respect to the Subordinated Lien Obligations in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor;

(2) take any action (not adverse to the priority status of the Liens on the Collateral securing the Super Senior Obligations, or the rights of any Super Senior Collateral Agent or the Super Senior Claimholders to exercise remedies in respect thereof) in order to create, perfect, preserve or protect the validity, enforceability, perfection or priority (to the extent permitted by this Agreement) of its Lien on the Collateral and neither the Super Senior Collateral Agent nor the other Super Senior Claimholders will object to or contest, or otherwise support any other person in contesting or objecting to, any such action;

(3) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Subordinated Lien Claimholders, including any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;

(4) vote on any plan of reorganization, arrangement, compromise or liquidation, file any proof of claim, make other filings and

make any arguments and motions that are, in each case, not in violation of the terms of this Agreement, with respect to the Subordinated Lien Obligations and the Collateral; provided that no filing of any claim or vote, or pleading related to such claim or vote, to accept or reject a plan of reorganization, arrangement, compromise or liquidation, or any other document, agreement or proposal similar to the foregoing by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder may seek, or otherwise support, any relief that would alter the lien priorities provided herein or otherwise be inconsistent with or seek to contravene the provisions of this Agreement;

(5) exercise any of its rights or remedies with respect to the Collateral after the termination of the Standstill Period to the extent permitted by Section 3.1(a)(1); provided that in the event that the exercise any of rights or remedies are necessary at any time after the expiration of the Standstill Period, the Super Senior Claimholders and the Subordinated Lien Claimholders shall reasonably discuss the possibility of undertaking a coordinated enforcement process, provided that neither party shall be responsible for paying the other party's costs in connection with any such enforcement and, unless the Super Senior Claimholders and the Subordinated Lien Claimholders otherwise agree in writing, such discussions shall not reinstate or otherwise extend the Standstill Period or constitute a forbearance or waiver of the Subordinated Lien Claimholders' ability to exercise rights or remedies after the termination of the Standstill Period;

(6) exercise any right or remedy permitted under Section 3.1(f);

(7) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by the Super Senior Collateral Agent or any Super Senior Claimholder, or any sale of Collateral during an Insolvency or Liquidation Proceeding; provided that such bid may not include a "credit bid" in respect of any Subordinated Lien Obligations unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of Super Senior Obligations;

(8) take any action to the extent necessary to prevent the running of any applicable statute of limitation or similar restriction on claims;

(9) seek specific performance or other injunctive relief to compel the Company to comply with a non-payment obligation (including, without limitation, any Equity Rights) under any Subordinated

Lien Loan Document or other agreement or Equity Interest with respect to any Equity Rights;

(10) exercise any Equity Rights; and

(11) inspect or appraise the Collateral (and engage or retain investment bankers or appraisers for the sole purpose of appraising or valuing the Collateral) or receive information or reports concerning the Collateral.

The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off and recoupment) with respect to any Collateral in its capacity as a creditor, unless and until the Discharge of Super Senior Obligations has occurred, except as expressly permitted by Section 3.1(a)(1) (to the extent the Subordinated Lien Collateral Agent and Subordinated Lien Claimholders are permitted to retain the proceeds thereof in accordance with Section 4.2 of this Agreement).

(e) Subject to Sections 3.1(a) and (d) and Section 6.3(b):

(1) the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders will not take any action that would hinder any exercise of remedies under the Super Senior Securities Purchase Documents or is otherwise prohibited hereunder, including any sale, lease, exchange, transfer or other disposition of the Collateral by the Super Senior Collateral Agent, whether by foreclosure or otherwise, absent gross negligence, willful misconduct, bad faith, self-dealing or fraud on the part of Super Senior Collateral Agent or such Super Senior Claimholder, as the case may be;

(2) the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby waives any and all rights it or the Subordinated Lien Claimholders may have as a junior lien creditor to object to the manner in which the Super Senior Collateral Agent or the First Lien Claimholders seek to enforce or collect the Super Senior Obligations or the Liens securing the Super Senior Obligations granted in any of the Super Senior Collateral undertaken in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of the Super Senior Collateral Agent or Super Senior Claimholders is adverse to the interest of the Subordinated Lien Claimholders, in each case absent gross negligence, willful misconduct, bad faith, self-dealing or fraud on the part of the Super

Senior Collateral Agent or such Super Senior Claimholder, as the case may be; and

(3) the Subordinated Lien Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Subordinated Lien Collateral Documents or any other Subordinated Lien Loan Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Super Senior Collateral Agent or the Super Senior Claimholders with respect to the Collateral as set forth in this Agreement and the Super Senior Credit Documents.

(f) As long as such exercise is not contrary to the terms of this Agreement, and whether or not any Insolvency or Liquidation Proceeding has been commenced, the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders may exercise rights and remedies as unsecured creditors against the Company or any other Grantor that has guaranteed or granted Liens to secure the Subordinated Lien Obligations in accordance with the terms of the Subordinated Lien Loan Documents and applicable law (other than initiating or joining in an involuntary case or proceeding under any Insolvency or Liquidation Proceeding with respect to any Grantor); provided that in the event that any Subordinated Lien Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Subordinated Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Super Senior Obligations) in the same manner as the other Liens securing the Subordinated Lien Obligations are subject to this Agreement.

(g) Nothing in this Agreement shall prohibit or limit the payment to and the receipt by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders of the required payments of interest, principal and other amounts owed in respect of the Subordinated Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders of rights or remedies as a secured creditor (including set-off and recoupment) or enforcement in contravention of this Agreement of any Lien held by any of them or as a result of any other violation by any Subordinated Lien Claimholder of the express terms of this Agreement. Except as may be expressly provided herein to the contrary for the exclusive benefit of the Subordinated Lien Claimholders, nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the Super Senior Collateral Agent or the Super Senior Claimholders may have with respect to the Super Senior Collateral.

(h) The Super Senior Collateral Agent shall endeavor to deliver simultaneous written notice to the Subordinated Lien Collateral Agent of the

Super Senior Collateral Agent commencing any Enforcement Action ("**Enforcement Notice**").

3.2 Specific Performance. Each of the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent may demand specific performance of this Agreement. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder under the Super Senior Securities Purchase Documents, and the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder under the Subordinated Lien Loan Documents, hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Super Senior Collateral Agent or the Super Senior Claimholders or the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders, as the case may be. No provision of this Agreement shall constitute or be deemed to constitute a waiver by the Super Senior Collateral Agent for itself and on behalf of each other Super Senior Claimholder or the Subordinated Lien Collateral Agent for itself and on behalf of each other Subordinated Lien Claimholder of any right to seek damages from any Person in connection with any breach or alleged breach of this Agreement or their respective Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents, as the case may be.

Section 4. Payments.

4.1 Application of Proceeds. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received in connection with any Enforcement Action or other exercise of remedies by the Super Senior Collateral Agent or Super Senior Claimholders shall be applied by the Super Senior Collateral Agent to the Super Senior Obligations in such order as specified in the relevant Super Senior Securities Purchase Documents. Upon the Discharge of Super Senior Obligations, the Super Senior Collateral Agent shall deliver any remaining Collateral and proceeds thereof held by it in the same form as received, with any necessary endorsements (which endorsements shall be without recourse and without any representation or warranty) *first*, unless a Discharge of Subordinated Lien Obligations has already occurred, to the Subordinated Lien Collateral Agent to be applied by the Subordinated Lien Collateral Agent to the Subordinated Lien Obligations in such order as specified in the Subordinated Lien Loan Documents until a Discharge of Subordinated Lien Obligations, *second*, if there are any Excess Super Senior Obligations, to Super Senior Collateral Agent for application to the Excess Super Senior Obligations in such order as specified in the Super Senior Securities Purchase Documents until payment in full in cash of all such Excess Super Senior Obligations, and *third*, following any Discharge of Super Senior Obligations, Discharge of Subordinated Lien Obligations and payment in full in cash of any Excess Super Senior Obligations, to the Company or as a court of competent jurisdiction may otherwise direct. For the avoidance

of doubt, the parties hereto hereby acknowledge and agree that Equity Interest Proceeds with respect to Equity Rights are not proceeds from Collateral.

4.2 Payments Over. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders solely in connection with any Enforcement Action or other exercise of any right or remedy relating to the Collateral shall be applied in accordance with Section 4.1 hereof.

Section 5. Other Agreements.

5.1 Releases.

(a) If in connection with any Enforcement Action by the Super Senior Collateral Agent, in each case prior to the Discharge of Super Senior Obligations, the Super Senior Collateral Agent, for itself or on behalf of any other Super Senior Claimholder, releases any of its Liens on any part of the Collateral or, in connection with the sale or disposition of all or substantially all of the equity interests of any Guarantor Subsidiary, releases any Guarantor Subsidiary from its obligations under its guaranty of the Super Senior Obligations, then the Liens, if any, of the Subordinated Lien Collateral Agent, for itself or for the benefit of the Subordinated Lien Claimholders, on such Collateral, and the obligations of such Guarantor Subsidiary under its guaranty of the Subordinated Lien Obligations, shall be automatically released to the same extent as the Liens of the Super Senior Collateral Agent so long as the proceeds are applied in accordance with Section 4.1. If in connection with any Enforcement Action or other exercise of rights and remedies by the Super Senior Collateral Agent, in each case prior to the Discharge of Super Senior Obligations, the Equity Interests of any Person are foreclosed upon or otherwise disposed of and the Super Senior Collateral Agent releases its Lien on the property or assets of such Person then the Liens of Subordinated Lien Collateral Agent with respect to the property or assets of such Person will be automatically released to the same extent as the Liens of the Super Senior Collateral Agent. The Subordinated Lien Collateral Agent, for itself or on behalf of any such Subordinated Lien Claimholders, promptly shall execute and deliver to the Super Senior Collateral Agent or such Guarantor Subsidiary such termination statements, releases and other documents as the Super Senior Collateral Agent or such Guarantor Subsidiary may reasonably request to effectively confirm the foregoing releases.

(b) If in connection with any sale, lease, exchange, transfer or other disposition of any Collateral by any Grantor (collectively, a **"Disposition"**) permitted under the terms of the Super Senior Securities Purchase Documents and permitted under the terms of the Subordinated Lien Loan Documents (other than

in connection with an Enforcement Action of the Super Senior Collateral Agent's remedies in respect of the Collateral which shall be governed by Section 5.1(a) above), the Super Senior Collateral Agent, for itself or on behalf of any other Super Senior Claimholder, releases any of its Liens on any part of the Collateral, or releases any Guarantor Subsidiary from its obligations under its guaranty of the Super Senior Obligations, in each case other than in connection with, or following, the Discharge of Super Senior Obligations, then the Liens, if any, of the Subordinated Lien Collateral Agent, for itself or for the benefit of the Subordinated Lien Claimholders, on such Collateral, and the obligations of such Guarantor Subsidiary under its guaranty of the Subordinated Lien Obligations, shall be automatically, unconditionally and simultaneously released. The Subordinated Lien Collateral Agent, for itself or on behalf of any such Subordinated Lien Claimholders, promptly shall execute and deliver to the Super Senior Collateral Agent or such Guarantor Subsidiary such termination statements, releases and other documents as the Super Senior Collateral Agent or such Grantor may reasonably request to effectively confirm such release.

(c) Until the Discharge of Super Senior Obligations occurs and upon the occurrence and during the continuance of an Event of Default under the Super Senior Securities Agreement, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby irrevocably constitutes and appoints the Super Senior Collateral Agent and any officer or agent of the Super Senior Collateral Agent, 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 Subordinated Lien Collateral Agent or such holder or in the Super Senior Collateral Agent's own name, from time to time in the Super Senior Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release, solely to the extent the Subordinated Lien Collateral Agent failed to take such actions within a commercially reasonable period of time. This power is coupled with an interest and is irrevocable until the Discharge of Super Senior Obligations.

(d) Until the Discharge of Super Senior Obligations occurs, to the extent that the Super Senior Collateral Agent or the Super Senior Claimholders (i) have released any Lien on Collateral or any Guarantor Subsidiary from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtain any new Liens or additional guarantees from any Guarantor Subsidiary, then the Subordinated Lien Collateral Agent, for itself and for the Subordinated Lien Claimholders, shall automatically be deemed to have been granted a Lien on any such Collateral (except to the extent such Lien represents a Subordinated Lien Declined Lien with respect to the Indebtedness represented by the Subordinated Lien Collateral Agent), subject to the lien

subordination provisions of this Agreement, and the Subordinated Lien Collateral Agent shall be granted an additional guaranty, as the case may be, and each applicable Grantor shall execute any documentation reasonably requested by the Subordinated Lien Collateral Agent to evidence any such grant.

5.2 Insurance. Until the earlier to occur of the Discharge of Super Senior Obligations or the expiration of the Standstill Period, the Super Senior Collateral Agent and the Super Senior Claimholders shall have the sole and exclusive right, subject to the rights of the Grantors under the Super Senior Securities Purchase Documents, to adjust settlement for any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of Super Senior Obligations has occurred, and subject to the rights of the Grantors under the Super Senior Securities Purchase Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect of the Collateral shall be paid to the Super Senior Collateral Agent for the benefit of the Super Senior Claimholders pursuant to the terms of the Super Senior Securities Purchase Documents and thereafter, if a Discharge of Super Senior Obligations has occurred, and subject to the rights of the Grantors under the Subordinated Lien Loan Documents, to the Subordinated Lien Collateral Agent for the benefit of the Subordinated Lien Claimholders to the extent required under the Subordinated Lien Collateral Documents and then, if a Discharge of Subordinated Lien Obligations has occurred, to the payment of any Excess Super Senior Obligations and, thereafter, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. Until the Discharge of Super Senior Obligations has occurred, if the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, then it shall segregate and hold in trust and forthwith pay such proceeds over to the Super Senior Collateral Agent in accordance with the terms of Section 4.2.

5.3 Amendments to Super Senior Securities Purchase Documents and Subordinated Lien Loan Documents.

(a) The Super Senior Securities Purchase Documents may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms; provided that any such amendment, restatement, supplement or modification shall not, without the consent of the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders):

(1) increase the then-outstanding principal amount of the Super Senior Obligations in excess of the Super Senior Cap Amount;

(2) prohibit payments of principal and interest on the Subordinated Lien Obligations or any exercise of the Equity Rights in connection therewith;

(3) increase the interest rate or yield, including by increasing the "applicable margin" or similar component of the interest rate (other than any increase occurring because of fluctuations in underlying rate indices, pricing grids, the imposition of the default rate of interest in accordance with the terms of the Super Senior Securities Agreement, or changes in interest rates resulting from the replacement of any rate index/indices with an alternative rate index/indices), by imposing fees or premiums, or by modifying the method of computing interest, or modify or implement any letter of credit, commitment, facility, utilization, make-whole or similar fee so that the combined interest rate and fees are increased by more than 2.0% per annum in excess of the total yield on Indebtedness outstanding thereunder as in effect on the date hereof (excluding any (x) customary amendment or consent fees or (y) increases resulting from the accrual of interest at the default rate);

(4) shorten the scheduled maturity of the Super Senior Obligations or provide for any scheduled principal amortization other than those provided for in the Super Senior Securities Agreement as in effect on the date hereof, other than with respect to the exercise of any Equity Rights; or

(5) amend the Super Senior Securities Purchase Documents in any manner which would have the effect of contravening the terms of this Agreement.

(b) Without the prior written consent of a majority in interest of the Super Senior Buyers, no Subordinated Lien Loan Document may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time or entered into (1) unless such amendment, supplement, waiver or modification relates to the Subordinated Lien Equity Rights and (2) to the extent such amendment, restatement, supplement or modification, or the terms of any new Subordinated Lien Loan Document, would:

(1) increase the then-outstanding principal amount of the Subordinated Lien Obligations in excess of amount as of the date hereof plus (y) any accrued pay-in-kind interest on such principal amount;

(2) prohibit payments of principal and interest on the Super Senior Obligations (other than payment of principal thereof in excess of the Super Senior Cap Amount) or any exercise of the Equity Rights in connection therewith;

(3) increase the interest rate or yield, including by increasing the "applicable margin" or similar component of the interest rate (other than any increase occurring because of fluctuations in underlying rate indices, pricing grids, the imposition of the default rate of interest in accordance with the terms of the Super Senior Securities Agreement, or changes in interest rates resulting from the replacement of any rate index/indices with an alternative rate index/indices), by imposing fees or premiums, or by modifying the method of computing interest, or modify or implement any letter of credit, commitment, facility, utilization, make-whole or similar fee so that the combined interest rate and fees are increased by a rate that would result in such interest rate or yield being in excess of 2.0% per annum less than such interest rate or yield accruing with respect to the Super Senior Obligations (excluding any (a) customary amendment or consent fees or (b) increases resulting from the accrual of interest at the default rate), other than with respect to the exercise of any Equity Rights;

(1) shorten the scheduled maturity of the Subordinated Lien Obligations or provide for any scheduled principal amortization other than those provided for in the Subordinated Lien Credit Agreement as in effect on the date hereof, other than with respect to the exercise of any Equity Rights;

(4) amend the Subordinated Lien Loan Documents in any manner which would have the effect of contravening the terms of this Agreement.

5.4 Confirmation of Lien Subordination in Subordinated Lien Collateral Documents. The Company and each other Grantor agrees that, each Subordinated Lien Collateral Document executed and delivered after the date hereof shall include the following language (or language to similar effect approved by the Super Senior Collateral Agent):

"Notwithstanding anything herein to the contrary, the liens and security interests granted to the Subordinated Lien Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Subordinated Lien Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of November 4, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**2024 Super Senior Intercreditor Agreement**"), among ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Super Senior Collateral Agent, and ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Subordinated Lien Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the

Intercreditor Agreement and this Agreement, the terms of the 2024 Super Senior Intercreditor Agreement shall govern and control."

5.5 Gratuitous Bailee/Agent for Perfection.

(a) The Super Senior Collateral Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to or does perfect a Lien thereon under the UCC (such Collateral being the **"Pledged Collateral"**) as collateral agent for the Super Senior Claimholders and as gratuitous bailee for the Subordinated Lien Collateral Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the UCC) and any assignee thereof solely for the purpose of perfecting the security interest granted under the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents, respectively, subject to the terms and conditions of this Section 5.5. Solely with respect to any deposit accounts under the control (within the meaning of Section 9-104 of the UCC) of the Super Senior Collateral Agent, the Super Senior Collateral Agent agrees to also hold control over such deposit accounts as gratuitous agent for the Subordinated Lien Collateral Agent, subject to the terms and conditions of this Section 5.5.

(b) The Super Senior Collateral Agent shall have no obligation whatsoever to the Super Senior Claimholders, the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder to ensure that the Pledged Collateral is genuine or owned by any of the Grantors, to perfect the security interest of the Subordinated Lien Collateral Agent or other Subordinated Lien Claimholders or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.5. The duties or responsibilities of the Super Senior Collateral Agent under this Section 5.5 shall be limited solely to holding the Pledged Collateral as bailee (and with respect to deposit accounts, agent) in accordance with this Section 5.5 and delivering the Pledged Collateral upon a Discharge of Super Senior Obligations as provided in paragraph (d) below.

(c) None of the Super Senior Collateral Agent and the Super Senior Claimholders shall have by reason of the Super Senior Collateral Documents, the Subordinated Lien Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders hereby waive and release the Super Senior Collateral Agent and the Super Senior Claimholders from all claims and liabilities arising pursuant to the Super Senior Collateral Agent's role under this Section 5.5 as gratuitous bailee and gratuitous agent with respect to the Pledged Collateral. It is understood and agreed that the interests of the Super Senior Collateral Agent and the Super Senior Claimholders, on the one hand, and

the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders on the other hand, may differ and the Super Senior Collateral Agent and the Super Senior Claimholders shall be fully entitled to act in their own interest without taking into account the interests of the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders.

(d) Upon the Discharge of Super Senior Obligations under the Super Senior Securities Purchase Documents to which the Super Senior Collateral Agent is a party, the Super Senior Collateral Agent shall deliver the remaining Pledged Collateral in its possession (if any) as provided in Section 4.1. The Super Senior Collateral Agent further agrees to take all other action reasonably requested by the Subordinated Lien Collateral Agent at the expense of the Subordinated Lien Collateral Agent or the Company in connection with the Subordinated Lien Collateral Agent obtaining a first-priority interest in the Collateral.

5.6 When Discharge of Super Senior Obligations Deemed to Not Have Occurred. If, substantially contemporaneously with the Discharge of Super Senior Obligations, the Company or any other Grantor enters into any refinancing of the Super Senior Securities Agreement, which refinancing is permitted by the Subordinated Lien Loan Documents, then such Discharge of Super Senior Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Super Senior Obligations), and, from and after the date on which the New Super Senior Lien Debt Notice is delivered to the Subordinated Lien Collateral Agent in accordance with the next sentence, the obligations under such refinancing of the Super Senior Securities Purchase Documents shall automatically be treated as Super Senior Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the Super Senior Collateral Agent under such Super Senior Securities Purchase Documents shall be the Super Senior Collateral Agent for all purposes of this Agreement. Upon the Subordinated Lien Collateral Agent's receipt of a written notice (the **"New Super Senior Lien Debt Notice"**) stating that the Company or any other Grantor has entered into a new Super Senior Securities Agreement (which notice shall include such new Super Senior Securities Agreement and all Super Senior Securities Purchase Documents (other than any fee letters or other documents containing confidential business information) executed or delivered in connection therewith, and the identity of the new first lien collateral agent, such agent, the **"New Agent"**), the Subordinated Lien Collateral Agent shall promptly enter into amendments or supplements to this Agreement to the extent necessary to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. The New Agent shall agree in a writing reasonably satisfactory to the Subordinated Lien Collateral Agent and addressed to the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders to be bound by the terms of this Agreement. If the new Super Senior Obligations under the new Super Senior Securities Purchase Documents are secured by assets of the Grantors constituting Collateral that do

not also secure the Subordinated Lien Obligations, then the Subordinated Lien Obligations shall be secured at such time by a junior subordinated Lien, subject in priority to the Super Senior Obligations, on such assets to the same extent provided in the Subordinated Lien Collateral Documents and this Agreement except to the extent such Lien on such assets constitutes a Subordinated Lien Declined Lien.

5.7 Purchase Right.

(a) Without prejudice to the enforcement of any of the Super Senior Claimholders' remedies under the Super Senior Securities Purchase Documents, this Agreement, at law or in equity or otherwise, the Super Senior Claimholders agree at any time following the first to occur of (1) the commencement of any Insolvency or Liquidation Proceeding, (2) the acceleration of the Super Senior Obligations or taking of any Enforcement Action, (3) a payment default with respect to any Super Senior Obligations that has not been cured or waived within 60 days after the occurrence thereof or (4) delivery of an Enforcement Notice, the Subordinated Lien Claimholders will have the option to purchase, and the Super Senior Claimholders shall be obligated to sell on the date provided in the notice to Super Senior Claimholders of the exercise of such purchase option by the Subordinated Lien Claimholders (the "**Proposed Purchase Date**"), the entire aggregate amount (but not less than the entirety) of outstanding Super Senior Obligations (but specifically excluding any Excess Super Senior Obligations on or prior to the Proposed Purchase Date) at the Purchase Price without warranty or representation or recourse except as provided in Section 5.7(d), on a pro rata basis among the Super Senior Claimholders, which option may be exercised by less than all of the Subordinated Lien Claimholders so long as all the accepting Subordinated Lien Claimholders shall when taken together purchase such entire aggregate amount as set forth above; provided that (A) the Proposed Purchase Date must be no later than ten (10) Business Days after the date upon which any Subordinated Lien Claimholder provides notice to the Super Senior Claimholders of its intent to exercise the purchase right contemplated hereby, (B) if any Subordinated Lien Claimholder fails to purchase the Super Senior Obligations on the Proposed Purchase Date in accordance with the provisions of this Section 5.7, such Subordinated Lien Claimholder and its Affiliates shall no longer have the right to exercise a purchase right under this Section 5.7 and (C) prior to the Proposed Purchase Date the Super Senior Claimholders may exercise any Equity Rights in accordance with the Super Senior Securities Purchase Documents.

(a) The **"Purchase Price"** will equal the sum of (1) the full amount of all Super Senior Obligations (other than any Excess Super Senior Obligations) then-outstanding and unpaid at par (including principal, accrued but unpaid interest and fees and any other unpaid amounts, including breakage costs and, in the case of any secured hedging obligations, the amount that would be payable by the relevant Grantor thereunder if such Grantor were to terminate the

hedge agreement in respect thereof on the date of the purchase or, if not terminated, an amount determined by the relevant Super Senior Claimholder to be necessary to collateralize its credit risk arising out of such agreement, but excluding any prepayment penalties or premiums) (which, for the avoidance of doubt, shall not include any acceleration prepayment penalties or premiums), and (2) all accrued and unpaid fees and expenses (including reasonable and documented outside attorneys' fees and expenses) owed to the Super Senior Claimholders under or pursuant to the Super Senior Securities Purchase Documents on the date of purchase to the extent not allocable to Excess Super Senior Obligations, solely to the extent Grantors are obligated to reimburse the Super Senior Claimholders therefor.

(b) If the Subordinated Lien Claimholders (or any subset of them) exercise the purchase option pursuant to Section 5.7(a) above, it shall be exercised pursuant to documentation mutually acceptable to each of the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent and the parties shall use commercially reasonable efforts to close promptly after such exercise. Each Super Senior Claimholder will retain all rights to indemnification provided in the relevant Super Senior Securities Purchase Documents for all claims and other amounts relating to periods prior to the purchase of the Super Senior Obligations pursuant to this Section 5.7.

(c) The purchase and sale of the Super Senior Obligations under this Section 5.7 will be without recourse and without representation or warranty of any kind by the Super Senior Claimholders, except that the Super Senior Claimholders shall severally and not jointly represent and warrant to the Subordinated Lien Claimholders that on the date of such purchase, immediately before giving effect to the purchase:

(1) the principal of and accrued and unpaid interest on the Super Senior Obligations, and the fees and expenses thereof owed to the respective Super Senior Claimholders, are as stated in any assignment agreement prepared in connection with the purchase and sale of the Super Senior Obligations; and

(2) each Super Senior Claimholder owns the Super Senior Obligations purported to be owned by it free and clear of any Liens granted by it.

Section 6. Insolvency or Liquidation Proceedings.

6.1 [Reserved].

6.2 Relief from the Automatic Stay. Until the Discharge of Super Senior Obligations has occurred, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that none of them shall: (i)

seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral other than with respect to the exercise of Equity Rights, without the prior written consent of the Super Senior Collateral Agent, unless the Super Senior Agent has been granted such relief or a motion for adequate protection permitted under Section 6.3 has been denied by a bankruptcy court or (ii) oppose (or support any other Person in opposing) any request by the Super Senior Collateral Agent for relief from such stay.

6.3 Adequate Protection.

(a) Until the Discharge of Super Senior Obligations has occurred, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that none of them shall contest (or support any other Person contesting):

(1) any request by the Super Senior Collateral Agent or the Super Senior Claimholders for adequate protection under any Bankruptcy Law that does not contravene the terms of this Agreement; or

(2) any objection by the Super Senior Collateral Agent or the Super Senior Claimholders to any motion, relief, action or proceeding based on the Super Senior Collateral Agent or the Super Senior Claimholders claiming a lack of adequate protection.

(b) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency or Liquidation Proceeding:

(1) if the Super Senior Claimholders (or any subset thereof) are granted adequate protection in the form of additional collateral or an administrative claim in connection with any Cash Collateral use or any financing under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("**DIP Financing**"), then the Subordinated Lien Collateral Agent, for itself or any of the other Subordinated Lien Claimholders, may seek or request adequate protection in the form of a Lien on such additional collateral and junior administrative claims, which Lien will be subordinated to the Liens securing the Super Senior Obligations and such Cash Collateral use or DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Subordinated Lien Obligations are so subordinated to the Super Senior Obligations under this Agreement, and which administrative claims shall be subordinated in right of payment to the administrative claims provided to the Super Senior Claimholders (or any subset thereof) to the same extent as Liens of the Subordinated Lien Claimholders are subordinated to the Liens of the Super Senior Claimholders hereunder; and

(2) The Subordinated Lien Collateral Agent and Subordinated Lien Claimholders shall only be permitted to seek adequate protection with respect to their rights in the Collateral in any Insolvency or Liquidation Proceeding in the form of (A) additional collateral; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted a Lien on such additional collateral, which Lien shall be senior to any Lien of the Subordinated Lien Representatives, Subordinated Lien Collateral Agents and Subordinated Lien Claimholders on such additional collateral; (B) replacement Liens on the Collateral; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted replacement Liens on the Collateral, which Liens shall be senior to the Liens of the Subordinated Lien Representatives, Subordinated Lien Collateral Agents and Subordinated Lien Claimholders on the collateral; (C) an administrative expense claim; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted an administrative expense claim which is senior and prior to the administrative expense claim of the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders and (D) periodic interest payments at the non-default rate and the payment of reasonable out-of-pocket expenses.

(c) The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that notice of a hearing to approve DIP Financing or use of Cash Collateral on an interim basis shall be adequate if delivered to the Subordinated Lien Collateral Agent at least five (5) full Business Days in advance of such hearing.

6.4 [Reserved].

6.5 Avoidance Issues. If any Super Senior Claimholder or Subordinated Lien Claimholder is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor any amount paid in respect of Super Senior Obligations or Subordinated Lien Obligations, as applicable (a "**Recovery**"), then such Super Senior Claimholder or Subordinated Lien Claimholder shall be entitled to a reinstatement of its Super Senior Obligations or Subordinated Lien Claimholder, as applicable, with respect to all such recovered amounts on the date of such Recovery, and from and after the date of such reinstatement the Discharge of Super Senior Obligations or Discharge of Subordinated Lien Obligations, as applicable, shall be deemed not to have occurred for all purposes hereunder. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties

hereto from such date of reinstatement. This Section 6.5 shall survive termination of this Agreement.

6.6 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization, arrangement, compromise or liquidation or similar dispositive restructuring plan, both on account of Super Senior Obligations and on account of Subordinated Lien Obligations, then, to the extent the debt obligations distributed on account of the Super Senior Obligations and on account of the Subordinated Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

6.7 Post-Petition Interest.

(a) Neither the Subordinated Lien Collateral Agent nor any Subordinated Lien Claimholder shall oppose or seek to challenge any claim by the Super Senior Collateral Agent or any Super Senior Claimholder for allowance in any Insolvency or Liquidation Proceeding of Super Senior Obligations consisting of Post-Petition Interest to the extent of the value of any Super Senior Claimholder's Lien on the Collateral, without regard to the existence of the Lien of the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders on the Collateral.

(b) Neither the Super Senior Collateral Agent nor any other Super Senior Claimholder shall oppose or seek to challenge any claim by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Subordinated Lien Obligations consisting of Post-Petition Interest to the extent of the value of the Lien of the Subordinated Lien Collateral Agent, on behalf of the Subordinated Lien Claimholders, on the Collateral (after taking into account the amount of the Super Senior Obligations); provided that if the Super Senior Collateral Agent shall have made any such claim, such claim either has been approved or will be approved contemporaneously with the approval of the Subordinated Lien Collateral Agent's claim.

6.8 Waiver. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, waives any claim it may hereafter have against any Super Senior Claimholder arising out of the election of any Super Senior Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code.

6.9 Separate Grants of Security and Separate Classification. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated

Lien Claimholder, and the Super Senior Collateral Agent for itself and on behalf of each other Super Senior Claimholder, acknowledges and agrees that

(a) the grants of Liens pursuant to the Super Senior Collateral Documents and the Subordinated Lien Collateral Documents constitute two separate and distinct grants of Liens; and

(b) because of, among other things, their differing rights in the Collateral, the Subordinated Lien Obligations are fundamentally different from the Super Senior Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Super Senior Claimholders and the Subordinated Lien Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Collateral (with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Subordinated Lien Claimholders), the Super Senior Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or that would be owing if there were such separate classes of senior and junior secured claims) in respect of Post-Petition Interest (including any additional interest payable pursuant to the Super Senior Securities Purchase Documents arising from or related to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding) in all cases to the extent constituting Super Senior Obligations, before any distribution is made in respect of the claims held by the Subordinated Lien Claimholders with respect to the Collateral, with the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby acknowledging and agreeing to turn over to the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, Collateral or proceeds of Collateral otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Subordinated Lien Claimholders); provided that the foregoing shall not require the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder to turnover distributions that do not constitute Collateral or proceeds of Collateral.

6.10 Effectiveness in Insolvency or Liquidation Proceedings. The Parties acknowledge that this Agreement is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, which will be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor will include such Person as a debtor-in-possession and any receiver or trustee for such Person in an Insolvency or Liquidation Proceeding.

Section 7. Reliance; Waivers; Etc.

7.1 Reliance. Other than any reliance on the terms of this Agreement, the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, acknowledges that it and such Super Senior Claimholders have, independently and without reliance on the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Super Senior Securities Purchase Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Super Senior Securities Purchase Documents or this Agreement. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, acknowledges that it and such Subordinated Lien Claimholders have, independently and without reliance on the Super Senior Collateral Agent or any Super Senior Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Subordinated Lien Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Subordinated Lien Loan Documents or this Agreement.

7.2 No Warranties or Liability. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, acknowledges and agrees that each of the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Subordinated Lien Loan Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the Subordinated Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Subordinated Lien Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, acknowledges and agrees that each of the Super Senior Collateral Agent and the Super Senior Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Super Senior Securities Purchase Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon, in each case whether existing on or prior to the date hereof or otherwise. Except as otherwise provided herein, the Super Senior Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Super Senior Securities Purchase Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders shall have no duty to the Super Senior Collateral Agent or any of the other Super Senior Claimholders, and the Super Senior Collateral Agent and the Super Senior Claimholders shall have no duty to the Subordinated Lien Collateral Agent or any of the other Subordinated Lien Claimholders,

to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any other Grantor (including the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 No Waiver of Lien Priorities.

(a) Except with respect to a Declined Lien, no right of the Super Senior Claimholders, the Super Senior Collateral Agent or any of them to enforce any provision of this Agreement or any Super Senior Securities Purchase Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any other Grantor or by any act or failure to act by any Super Senior Claimholder or the Super Senior Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Super Senior Securities Purchase Documents or any of the Subordinated Lien Loan Documents, regardless of any knowledge thereof which the Super Senior Collateral Agent or the Super Senior Claimholders, or any of them, may have or be otherwise charged with.

(b) Until the Discharge of Super Senior Obligations, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. All rights, interests, agreements and obligations of the Super Senior Collateral Agent and the Super Senior Claimholders and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Super Senior Securities Purchase Documents or any Subordinated Lien Loan Documents;

(b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Super Senior Obligations or Subordinated Lien Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Super Senior Securities Purchase Document or any Subordinated Lien Loan Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Super Senior Obligations or Subordinated Lien Obligations or any guaranty thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the Super Senior Collateral Agent, the Super Senior Obligations, any Super Senior Claimholder, the Subordinated Lien Collateral Agent, the Subordinated Lien Obligations or any Subordinated Lien Claimholder in respect of this Agreement other than the defense that the Discharge of the Super Senior Obligations has occurred.

Section 8. Miscellaneous.

8.1 Integration/Conflicts. This Agreement, the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents represent the entire agreement of the Grantors, the Super Senior Claimholders and the Subordinated Lien Claimholders with respect to the subject matter hereof and thereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by the Super Senior Claimholder or the Subordinated Lien Claimholders relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein. In the event of any conflict between the provisions of this Agreement and the provisions of the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents, the provisions of this Agreement shall govern and control. The Super Senior Claimholders and the Subordinated Lien Claimholders acknowledge and agree that they have each entered into other intercreditor arrangements with other claimholders and their rights and remedies are also subject to the terms and conditions of each of those agreements.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions. All references to the Company or any other Grantor shall include the Company or such Grantor as debtor and debtor-in-possession and any receiver, trustee or similar Person for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to the Super Senior Collateral Agent, the Super Senior Claimholders and the Super Senior Obligations, upon the date upon which the Super Senior Obligations are Discharged, subject to the rights of such Super Senior Claimholders under Sections 5.6 and 6.5; and

(b) with respect to the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and the Subordinated Lien Obligations, the date upon which the Subordinated Lien Obligations are Discharged subject to the rights of such Subordinated Lien Claimholders under Sections 5.6 and 6.5;

provided, however, that in each case, such termination shall not relieve any such party of its obligations incurred hereunder prior to the date of such termination.

8.3 Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the Subordinated Lien Collateral Agent or the Super Senior Collateral Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time; provided, however, that this Agreement may be amended from time to time, without the consent of either the Subordinated Lien Collateral Agent or the Super Senior Collateral Agent, to add additional Grantors, whereupon such Person will be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof. Notwithstanding the foregoing, the Company and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent (i) its rights are directly and adversely affected by any such amendment, modification or waiver, (ii) any such amendment, modification or waiver reduces the amount of debt available to be incurred by the Borrower under the Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents, or (iii) any such amendment, modification or waiver increases the obligations of Borrower under this Agreement.

8.4 Information Concerning Financial Condition of the Company and its Subsidiaries. The Super Senior Collateral Agent and the Super Senior Claimholders,

on the one hand, and the Subordinated Lien Claimholders and the Subordinated Lien Collateral Agent, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of the Company and its Subsidiaries and all endorsers and/or guarantors of the Super Senior Obligations or the Subordinated Lien Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Super Senior Obligations or the Subordinated Lien Obligations. The Super Senior Collateral Agent and the Super Senior Claimholders, on the one hand, and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, on the other hand, shall have no duty to advise the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, on the one hand, or the Super Senior Collateral Agent or any Super Senior Claimholder, on the other hand, of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the Super Senior Collateral Agent, any of the other Super Senior Claimholders, the Subordinated Lien Collateral Agent or any of the other Subordinated Lien Claimholders in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholder, the Super Senior Collateral Agent or any Super Senior Claimholder, it or they shall be under no obligation:

(a) to make, and the Super Senior Collateral Agent and the Super Senior Claimholders or the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, as applicable, shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

Notwithstanding any provision herein to the contrary, the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent shall each endeavor to promptly provide (i) upon request of the other party, information and particulars as to the amounts owing by the Company in respect of the Super Senior Obligations and Subordinated Lien Obligations, respectively, and (ii) to the other party, copies of any written waivers of any events of default granted pursuant to their respective loan documents and copies of all amendments to their respective loan documents; provided, however, that the failure to provide such information or copies of such instruments shall not affect the validity or enforceability of such instruments or give rise to any claim against such Person.

8.5 Subrogation. With respect to the value of any payments or distributions in cash, property or other assets that any of the Subordinated Lien

Claimholders or the Subordinated Lien Collateral Agent pays over to the Super Senior Collateral Agent or the Super Senior Claimholders under the terms of this Agreement, the Subordinated Lien Claimholders and the Subordinated Lien Collateral Agent shall be subrogated to the rights of the Super Senior Collateral Agent and the Super Senior Claimholders; provided that the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby agrees not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Super Senior Obligations has occurred. The Company acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders that are paid over to the Super Senior Collateral Agent or the Super Senior Claimholders pursuant to this Agreement shall not reduce any of the Subordinated Lien Obligations. Following the Discharge of Super Senior Obligations, the Super Senior Collateral Agent agrees to execute such documents, agreements, and instruments as the Subordinated Lien Collateral Agent may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Super Senior Obligations resulting from payments to the Super Senior Collateral Agent by such Person.

8.6 [Reserved].

8.7 Submission to Jurisdiction; Certain Waivers. Each of the Company, each Grantor and each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Collateral Documents (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court;

(c) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law and that nothing in this Agreement or any other Super Senior Securities Purchase Document shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Super Senior Securities Purchase Document or Subordinated Lien Loan Document against such Grantor or any of its assets in the courts of any jurisdiction;

(d) waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any

action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section 8.7 (and irrevocably waives to the fullest extent permitted by applicable law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(e) consents to service of process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the applicable party at its address provided in accordance with Section 8.8 (and agrees that nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law);

(f) agrees that service as provided in clause (e) above is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and

(g) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

8.8 WAIVER OF JURY TRIAL. **EACH PARTY HERETO, THE COMPANY AND EACH OTHER GRANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL**.

8.9 Notices. All notices to the Subordinated Lien Claimholders and the Super Senior Claimholders permitted or required under this Agreement shall also be sent to the Subordinated Lien Collateral Agent and the Super Senior Collateral Agent,

respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by facsimile or electronic mail or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile, telex, or electronic mail or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto or in the Joinder Agreement pursuant to which it becomes a party hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.10 Further Assurances. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder under the Super Senior Securities Purchase Documents, and the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder under the Subordinated Lien Loan Documents, and the Company and each other Grantor, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

8.11 APPLICABLE LAW. **THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS IN THE COLLATERAL).**

8.12 Binding on Successors and Assigns. This Agreement shall be binding upon the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and their respective successors and assigns from time to time; provided, however, Super Senior Collateral Agent and the Super Senior Claimholders agree that no assignment shall be made to any Grantor or any affiliate of any Grantor (other than an affiliate that is a wholly owned subsidiary of a Super Senior Claimholder (or a parent company thereof) as of the date hereof). If either of the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent resigns or is replaced pursuant to the Super Senior Securities Agreement or the Subordinated Lien Credit Agreement, as applicable, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement. No provision of this Agreement will inure to the

benefit of a trustee, debtor-in-possession, creditor trust or other representative of an estate or creditor of any Grantor, including where any such trustee, debtor-in-possession, creditor trust or other representative of an estate is the beneficiary of a Lien securing Collateral by virtue of the avoidance of such Lien in an Insolvency or Liquidation Proceeding.

8.13 Section Headings. The section headings and table of contents used in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose, be given any substantive effect, affect the construction hereof or be taken into consideration in the interpretation hereof.

8.14 Counterparts. This Agreement may be executed (including electronic execution) by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

8.15 Authorization. By its signature, each Person executing this Agreement, on behalf of Person but not in his or her personal capacity as a signatory, represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.16 No Third Party Beneficiaries/ Provisions Solely to Define Relative Rights. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the Collateral Agents, the Super Senior Claimholders and the Subordinated Lien Claimholders and their respective successors and assigns from time to time. The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Super Senior Collateral Agent and the Super Senior Claimholders on the one hand and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders on the other hand. Nothing herein shall be construed to limit the relative rights and obligations as among the Super Senior Claimholders or as among the Subordinated Lien Claimholders. Other than as set forth in Section 8.3, none of the Company, any other Grantor or any other creditor thereof shall have any rights hereunder and neither the Company, nor any Grantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor, which are absolute and unconditional, to pay the Super Senior Obligations and the Subordinated Lien Obligations as and when the same shall become due and payable in accordance with their terms.

8.17 No Indirect Actions. Unless otherwise expressly stated, if a party may not take an action under this Agreement, then it may not take that action indirectly, or support any other Person in taking that action directly or indirectly. "Taking an action

indirectly" means taking an action that is not expressly prohibited for the party but is intended to have substantially the same effects as the prohibited action.

8.18 Additional Grantors. Each Grantor agrees that it shall ensure that each of its Subsidiaries that is or is to become a party to any Super Senior Securities Purchase Document or Subordinated Lien Loan Document shall either execute this Agreement on the date hereof or shall confirm that it is a Grantor hereunder pursuant to a Joinder Agreement substantially in the form attached hereto as Exhibit A that is executed and delivered by such Subsidiary prior to or concurrently with its execution and delivery of such Super Senior Securities Purchase Document or such Subordinated Lien Loan Document.

8.19 Equity Rights. Nothing in this Agreement shall prevent any of the following actions: (a) the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from exercising any of the Equity Rights; (b) the Company from paying, or the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from receiving, any dividends, distributions or other payments on account of its Equity Rights or any other Equity Rights Proceeds; or (c) the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from exercising any rights under any organization documents of any Grantors or any subscription agreement, registration rights agreement, Equity Interest or other agreement or security of any Grantor related to the Equity Rights (excluding, for the avoidance of doubt, any rights under any such agreement or security relating to Liens on the Collateral).

8.20 Acknowledgment of Other Agreements. All rights, interests, agreements and obligations of the Super Senior Collateral Agent and the Super Senior Claimholders and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, respectively, hereunder are subject to (a) that certain Intercreditor Agreement, dated as of September 18, 2023, by and among ATW Special Situations II LLC, as succeeded by Acquiom Agency Services LLC, in its capacity as First Lien Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Second Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors, (b) that certain Intercreditor Agreement, dated as of January 30, 2024, by and among ATW Special Situations II LLC, as succeeded by ATW Special Situations Management LLC, in its capacity as First Lien Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors, (c) that certain Pari Passu Intercreditor Agreement, dated as of January 30, 2024, by and among ATW Special Situations Management LLC, in its capacity as Credit Agreement Collateral Agent (as defined therein), Acquiom Agency Services LLC, in its capacity as the 2023

First Lien Agent (as defined therein), and the Grantors, (d) that certain Intercreditor Agreement, dated as of even date herewith, by and among ATW Special Situations Management LLC, in its capacity as Super Senior Collateral Agent (as defined therein), and Acquiom Agency Services LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors and (e) that certain Intercreditor Agreement, dated as of even date herewith, by and among ATW Special Situations Management LLC, in its capacity as Super Senior Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first written above.

Super Senior Collateral Agent:

ATW SPECIAL SITUATIONS MANAGEMENT LLC

By: ____
Name:
Title:

Notice Information:

1 Pennsylvania Plaza, Suite 4810
New York, N.Y. 10119
Attention: Alex LaViolette, Isaac Barber,
Antonio Ruiz-Gimenez
Email: notice@atwpartners.com,
operations@atwpartners.com

Subordinated Lien Collateral Agent:

ATW SPECIAL SITUATIONS MANAGEMENT LLC

By: ____
Name:
Title:

Notice Information:

1 Pennsylvania Plaza, Suite 4810
New York, N.Y. 10119
Attention: Alex LaViolette, Isaac Barber,
Antonio Ruiz-Gimenez
Email: notice@atwpartners.com,
operations@atwpartners.com

Acknowledged and Agreed to by:

NAUTICUS ROBOTICS, INC.

By:
Name:
Title:

NAUTICUS ROBOTICS HOLDINGS, INC.

By:
Name:
Title:

NAUTIWORKS LLC

By:
Name:
Title:

NAUTICUS ROBOTICS FLEET LLC

By:
Name:
Title:

NAUTICUS ROBOTICS USA LLC

By:
Name:
Title:

Notice Information:

17146 Feathercraft Lane, Suite 450
Webster, TX 77598

Attention: Mr. John Symington
Email: jsymington@nauticusrobotics.com

[FORM OF] GRANTOR JOINDER AGREEMENT NO. [ ] dated as of [ ], 20[ ] (the "**Grantor Joinder Agreement**") to the INTERCREDITOR AGREEMENT dated as of November 4, 2024 (the "**Intercreditor Agreement**"), among ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Super Senior Collateral Agent, ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Subordinated Lien Collateral Agent, and acknowledged and agreed to by NAUTICUS ROBOTICS, INC., a Delaware corporation (the "**Company**"), and certain subsidiaries of the Company (each a "**Grantor**").

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

The undersigned, [_____], a [_____], (the "New Grantor") wishes to acknowledge and agree to the Intercreditor Agreement and become a party thereto to the limited extent contemplated by Section 8.16 thereof and to acquire and undertake the rights and obligations of a Grantor thereunder.

Accordingly, the New Grantor agrees as follows for the benefit of the Collateral Agents and the Claimholders:

Section 1. Accession to the Intercreditor Agreement. The New Grantor (a) acknowledges and agrees to, and becomes a party to the Intercreditor Agreement as a Grantor to the limited extent contemplated by Section 8.16 thereof, (b) agrees to all the terms and provisions of the Intercreditor Agreement and (c) shall have all the rights and obligations of a Grantor under the Intercreditor Agreement. This Grantor Joinder Agreement supplements the Intercreditor Agreement and is being executed and delivered by the New Grantor pursuant to Section 8.18 of the Intercreditor Agreement.

Section 2. Representations, Warranties and Acknowledgement of the New Grantor. The New Grantor represents and warrants to each Collateral Agent and to the Claimholders that (a) it has full power and authority to enter into this Grantor Joinder Agreement, in its capacity as Grantor and (b) this Grantor Joinder Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Grantor Joinder Agreement.

Section 3. Counterparts. This Grantor Joinder Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Grantor Joinder Agreement or any document or instrument delivered in connection herewith by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Grantor Joinder Agreement or such other document or instrument, as applicable.

Section 4. Section Headings. Section heading used in this Grantor Joinder Agreement are for convenience of reference only and are not to affect the construction hereof or to be taken in consideration in the interpretation hereof.

Section 5. Benefit of Agreement. The agreements set forth herein or undertaken pursuant hereto are for the benefit of, and may be enforced by, any party to the Intercreditor Agreement subject to any limitations set forth in the Intercreditor Agreement with respect to the Grantors.

Section 6. Governing Law. THIS GRANTOR JOINDER AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 7. Severability. In case any one or more of the provisions contained in this Grantor Joinder Agreement should be held invalid, illegal or unenforceable in any respect, none of the parties hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 8. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 8.8 of the Intercreditor Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature hereto, which information supplements Section 8.8 of the Intercreditor Agreement.

Section 9. Miscellaneous. The provisions of Section 8 of the Intercreditor Agreement will apply with like effect to this Grantor Joinder Agreement.

Exhibit A

Error! Missing test condition.

EXHIBIT 10.8

INTERCREDITOR AGREEMENT

Dated as of November 4, 2024

among

ATW SPECIAL SITUATIONS MANAGEMENT LLC,
as Super Senior Collateral Agent,

and

ACQUIOM AGENCY SERVICES LLC,
as Subordinated Lien Collateral Agent,

and acknowledged and agreed to by

NAUTICUS ROBOTICS, INC.,
as the Company,

and the other Grantors referred to herein

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INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this **"Agreement**") is dated as of November 4, 2024, and entered into by and among **ATW SPECIAL SITUATIONS MANAGEMENT LLC**, as collateral agent for the holders of the Super Senior Obligations (as defined below) (in such capacity and together with its successors from time to time, the "**Super Senior Collateral Agent**"), and **ACQUIOM AGENCY SERVICES LLC** , as agent for the holders of the Subordinated Lien Obligations (as defined below) (in such capacity and together with its successors from time to time, the "**Subordinated Lien Collateral Agent**"), and acknowledged and agreed to by **NAUTICUS ROBOTICS, INC.**, a Delaware corporation (the "**Company**"), and the other Grantors (as defined below) party hereto from time to time. Capitalized terms used in this Agreement have the meanings assigned to them in Section 1 below.

RECITALS

The Company, the lenders party thereto and the Super Senior Collateral Agent have entered into the Securities Purchase Agreement dated as of even date herewith (as amended, modified, supplemented, or amended and restated from time to time in accordance with the terms of this Agreement, "**Super Senior Securities Agreement**");

The Company, the lenders party thereto and Subordinated Lien Collateral Agent entered into that certain Senior Secured Term Loan Agreement, dated as of September 18, 2023 (as amended, modified, supplemented, exchanged or amended and restated from time to time in accordance with the terms of this Agreement, the "**Subordinated Lien Credit Agreement**");

Pursuant to (i) the Super Senior Securities Agreement, the Company has caused, and has agreed to cause, certain of the Company's current and future Subsidiaries to guarantee the Super Senior Obligations (as defined below) pursuant to the Subsidiary Guarantee dated as of the date hereof (as amended, modified, supplemented or amended and restated from time to time, the **"Super Senior Guarantee"**) and (ii) the Subordinated Lien Credit Agreement, the Company has caused certain of the Company's current and future Subsidiaries to guarantee the Subordinated Lien Obligations (as defined below) pursuant to the Subsidiary Guarantee dated as of September 18, 2023 (as amended, modified, supplemented or amended and restated from time to time, the **"Subordinated Lien Guarantee"**);

The obligations of the Company and the other Grantors under the Super Senior Securities Agreement and the obligations under the Super Senior Guarantee of the Company the Company's Subsidiaries party thereto will be secured on a first-priority basis by liens on substantially all the assets of the Company and such Subsidiaries (such current and future Subsidiaries of the Company providing a guaranty thereof, the

"Guarantor Subsidiaries"), pursuant to the terms of the Super Senior Collateral Documents (as defined below);

The obligations of the Company under the Subordinated Lien Credit Agreement and the obligations of the Company and the Guarantor Subsidiaries under the Subordinated Lien Guarantee will be secured on a second-priority basis by liens on substantially all the assets of the Company and the Guarantor Subsidiaries, pursuant to the terms of the Subordinated Lien Collateral Documents (as defined below);

The Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents (each, as defined below) provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral (as defined below); and

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, each of the Super Senior Collateral Agent (on behalf of each Super Senior Claimholder (as defined below)) and the Subordinated Lien Collateral Agent (on behalf of each Subordinated Lien Claimholder (as defined below)), intending to be legally bound, hereby agrees as follows:

AGREEMENT

Section 1. Definitions.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"**Agreement**" has the meaning set forth in the Preamble to this Agreement.

"**Bankruptcy Case**" means a case under the Bankruptcy Code or any other Bankruptcy Law.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Law**" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"**Claimholders**" means the Super Senior Claimholders or the Subordinated Lien Claimholders, as the context may require.

"**Collateral**" means, at any time, all of the assets and property of any Grantor, whether real, personal or mixed, constituting Super Senior Collateral and Subordinated Lien Collateral.

"**Collateral Agent**" means any Super Senior Collateral Agent and/or any Subordinated Lien Collateral Agent, as the context may require.

"**Collateral Documents**" means the Super Senior Collateral Documents and the Subordinated Lien Collateral Documents.

"**Company**" has the meaning set forth in the Preamble to this Agreement.

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

"**Declined Liens**" has the meaning set forth in Section 2.3.

"**DIP Financing**" has the meaning set forth in Section 6.3.

"**Discharge of Super Senior Obligations**" means, except to the extent otherwise expressly provided in Section 5.6, each of the following has occurred:

(a) payment in full in cash of the principal of and accrued and unpaid interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Super Senior Documents and constituting Super Senior Obligations;

(b) payment in full in cash of all other Super Senior Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any contingent indemnification or reimbursement obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(c) termination or expiration of all commitments, if any, to extend credit that would constitute Super Senior Obligations.

"**Discharge of Subordinated Lien Obligations**" means each of the following has occurred:

(d) payment in full in cash of the principal of and accrued and unpaid interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Subordinated Lien Loan Documents and constituting Subordinated Lien Obligations;

(e) payment in full in cash of all other Subordinated Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any contingent indemnification or reimbursement obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(f) termination or expiration of all commitments, if any, to extend credit that would constitute Subordinated Lien Obligations.

"**Disposition**" has the meaning set forth in Section 5.1(b).

"**Enforcement Action**" means any action to:

(g) foreclose, execute, levy, or collect on, take possession or control of, sell or otherwise realize upon (judicially or non-judicially), or lease, license, or otherwise dispose of (whether publicly or privately), Collateral, or otherwise exercise or enforce remedial rights with respect to Collateral under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents (including by way of setoff, recoupment, notification of a public or private sale or other disposition pursuant to the UCC or other applicable law, notification to account debtors, notification to depositary banks under deposit account control agreements, or exercise of rights under landlord consents, if applicable);

(h) solicit bids from third Persons, approve bid procedures for any proposed disposition of Collateral, to conduct the liquidation or disposition of Collateral or engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third Persons for the purposes of marketing, promoting, and selling Collateral, in each case under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents;

(i) receive a transfer of Collateral in satisfaction of Indebtedness under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents or any other Obligation secured thereby; or

(j) otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the Collateral at law, in equity, or pursuant to the Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of Equity Interests comprising Collateral);

provided, *however*, *that*, in all events, notwithstanding anything contained herein to the contrary, the exercise by the Super Senior Collateral Agent, any Super Senior Claimholder, the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholder or any affiliate of any of the foregoing of any rights with respect to any

equity, equity component or conversion feature under the Super Senior Securities Agreement, the Super Senior Securities Purchase Documents, the Subordinated Lien Credit Agreement and Subordinated Lien Loan Documents, including, without limitation, any conversion, redemption or exchange (in whole or in part) of the Super Senior Debt or the Subordinated Lien Debt into Equity Interests, any amendment, waiver or modification to any of the terms and/or conditions of any equity, equity component, exchange or conversion feature under the Super Senior Securities Agreement, the Super Senior Securities Purchase Documents, the Subordinated Lien Credit Agreement and/or Subordinated Lien Loan Documents, as applicable and/or any subscription agreement, registration rights agreement and/or any other related document, agreement and/or Equity Interest, the exercise of any term or condition of any Equity Interest (including, without limitation, any warrants, options or ratchets), the exercise of any rights under any subscription agreement, registration rights agreement, and/or any other related document, agreement and/or Equity Interest, and/or organizational documents (including any shareholder agreements) of any Grantors, in each case, with respect to any Equity Interest of any Grantor (whether or not outstanding as of the date hereof), or any sale or resale of any Equity Interests of the Grantors (collectively referred to as "**Equity Rights**"), shall not constitute an Enforcement Action by the Super Senior Collateral Agent, any Super Senior Claimholder, the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, and neither such Equity Interests, nor any Equity Interest Proceeds with respect thereto, shall be subject to any subordination or other restrictive provisions provided in this Agreement. Notwithstanding the foregoing and for the avoidance of doubt, the rights of the Subordinated Lien Collateral Agent and any Subordinated Lien Claimholders to cash payments of Subordinated Lien Obligations pursuant to the Subordinated Lien Loan Documents, solely to the extent settled in cash (and not settled, converted or exchanged in equity or equity-linked securities) is subject to the terms of this Agreement.

"**Enforcement Notice**" has the meaning set forth in Section 3.1(h).

"**Equity Interests**" means any capital stock or other security of the any Person or any of its subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of such Person or any of its subsidiaries, including, without limitation, common equity, preferred equity, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to, directly or indirectly, purchase or acquire any such Equity Interest.

"**Equity Interest Proceeds**" means any cash or other asset proceeds received by any Person from the sale or resale of any Equity Interest (or any capital stock issued or issuable upon conversion, exercise or exchange of any Equity Interest, as applicable).

"**Equity Rights**" has the meaning given to such term in the definition of Enforcement Action.

"**Excess Super Senior Obligations**" means any Super Senior Obligations that would constitute Super Senior Obligations if not for the Super Senior Cap Amount together with interest, fees and expenses to the extent directly related to such Super Senior Obligations that are in excess of the Super Senior Cap Amount.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Grantors**" means the Company, each of the other Guarantor Subsidiaries and each other Person that has or may from time to time hereafter execute and deliver any Super Senior Collateral Document or Subordinated Lien Collateral Document as a "grantor" or "pledgor" (or the equivalent thereof) to secure any Super Senior Obligations or Subordinated Lien Obligations, as the context may require.

"**Guarantor Subsidiaries**" has the meaning set forth in the Recitals to this Agreement.

"**Indebtedness**" means and includes all indebtedness for borrowed money.

"**Insolvency or Liquidation Proceeding**" means:

(k) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor;

(l) any other voluntary or involuntary insolvency, reorganization or Bankruptcy Case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of their respective assets;

(m) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(n) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

"**Joinder Agreement**" means a supplement to this Agreement in the form of Exhibit A hereto required to be executed pursuant to Section 8.18 hereof.

"**Lien**" means any lien (including, judgment liens and liens arising by operation of law), mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof), UCC financing statement or other preferential arrangement having the practical effect of any of the foregoing, including any right of set-off or recoupment.

"**New Agent**" has the meaning set forth in Section 5.6.

"**New Super Senior Lien Debt Notice**" has the meaning set forth in Section 5.6.

"**Obligations**" means the Super Senior Obligations and the Subordinated Lien Obligations.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Pledged Collateral**" has the meaning set forth in Section 5.5.

"**Post-Petition Interest**" means interest, fees, expenses and other charges that pursuant to the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents, as applicable, continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

"**Purchase Price**" has the meaning set forth in Section 5.7.

"**Recovery**" has the meaning set forth in Section 6.5.

"**Standstill Period**" has the meaning set forth in Section 3.1.

"**Subordinated Lien Claimholders**" means, at any relevant time, the holders of Subordinated Lien Obligations at that time, including the Subordinated Lien Collateral Agent under the Subordinated Lien Loan Documents.

"**Subordinated Lien Collateral**" means all of the assets and property of the Company or any other Grantor, whether real, personal or mixed, in which the holders of Subordinated Lien Obligations (or the Subordinated Lien Collateral Agent) hold, purport to hold or are required to hold, a security interest at such time, including any property subject to Liens granted pursuant to Section 6 to secure both Super Senior Obligations and Subordinated Lien Obligations, including any property or assets subject to replacement Liens or adequate protection Liens in favor of any Subordinated Lien Claimholder.

"**Subordinated Lien Collateral Agent**" has the meaning set forth in the Preamble of this Agreement.

"**Subordinated Lien Collateral Documents**" means the any agreement, document or instrument pursuant to which a Lien is granted securing any Subordinated Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"**Subordinated Lien Credit Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**Subordinated Lien Debt**" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Subordinated Lien Loan Documents.

"**Subordinated Lien Guarantee**" has the meaning set forth in the Recitals to this Agreement.

"**Subordinated Lien Loan Documents**" means the Subordinated Lien Credit Agreement and the Transaction Documents (as defined in the Subordinated Lien Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Subordinated Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any Subordinated Lien Obligations, including any intercreditor or joinder agreement among holders of Subordinated Lien Obligations to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time in accordance with the provisions of this Agreement.

"**Subordinated Lien Obligations**" means all obligations outstanding under, and all other obligations in respect of, the Subordinated Lien Credit Agreement and the other Subordinated Lien Loan Documents. "Subordinated Lien Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Subordinated Lien Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"**Subsidiary**" means, with respect to any Person (the "parent"), any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person or, in the case of a partnership, constituting a majority of the outstanding voting general partnership interests of such Person (in each case irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by the parent

or one or more Subsidiaries of the parent or by the parent and one or more of the Subsidiaries of the parent.

"**Super Senior Buyers**" means the "Buyers" under and as defined in the Super Senior Securities Purchase Documents.

"**Super Senior Cap Amount**" means, at any time and in respect of Super Senior Obligations, a principal amount equal to the sum of (i) $21,150,000, *plus* (ii) any accrued pay-in-kind interest on such principal amount, *minus* (iii) the amount of any repayments and commitment reductions with respect to the Super Senior Obligations.

"**Super Senior Claimholders**" means, at any relevant time, the holders of Super Senior Obligations at that time, including the Super Senior Buyers and the agents under the Super Senior Securities Purchase Documents.

"**Super Senior Collateral**" means all of the assets and property of the Company or any other Grantor, whether real, personal or mixed, in which the holders of Super Senior Obligations (or the Super Senior Collateral Agent) hold, purport to hold or are required to hold, a security interest at such time (or are deemed pursuant to Section 2 to hold a security interest), including any property subject to Liens granted pursuant to Section 6 to secure the Super Senior Obligations, including any property or assets subject to replacement Liens or adequate protection Liens in favor of any Super Senior Claimholder.

"**Super Senior Collateral Agent**" has the meaning set forth in the Preamble to this Agreement.

"**Super Senior Collateral Documents**" means the Security Documents (as defined in the Super Senior Securities Agreement) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Super Senior Obligations or under which rights or remedies with respect to such Liens are governed.

"**Super Senior Debt**" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Super Senior Securities Purchase Documents.

"**Super Senior Guarantee**" has the meaning set forth in the Recitals to this Agreement.

"**Super Senior Obligations**" means, subject to clause (c) hereof, the following:

(a) all "Obligations" (as such term is defined in the Super Senior Collateral Documents) and other obligations outstanding under, and all other obligations in respect of, the Super Senior Securities Agreement and the other Super Senior Securities Purchase Documents;

(b) to the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the Super Senior Securities Purchase Documents are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the Super Senior Claimholders and the Subordinated Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "Super Senior Obligations"; and

(c) notwithstanding the foregoing, if the sum of principal portion of the Super Senior Obligations, is in excess of the Super Senior Cap Amount, then only that principal portion of the Super Senior Obligations equal to the Super Senior Cap Amount shall be included in Super Senior Obligations, and interest, fees, reimbursement obligations and other amounts with respect to such Indebtedness. The principal portion of Super Senior Obligations in excess of the Super Senior Cap Amount and all interest, fees and other Obligations related to such excess shall constitute Excess Super Senior Obligations under this Agreement.

"**Super Senior Securities Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**Super Senior Securities Purchase Documents**" means the Super Senior Securities Agreement and the Transaction Documents (as defined in the Super Senior Securities Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Super Senior Obligation, and any other document or instrument executed or delivered at any time in connection with any Super Senior Obligations, including any intercreditor or joinder agreement among holders of Super Senior Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time in accordance with the provisions of this Agreement.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

1.2 Terms Generally. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise:

(a) any definition of or reference herein to any agreement, instrument or other document, shall be construed as referring to such agreement, instrument or other document, as amended, restated, amended and restated, supplemented or otherwise modified from time to time and any reference herein

to any statute or regulations shall include any amendment, renewal, extension or replacement thereof;

(b) any reference herein to any Person shall be construed to include such Person's successors and assigns from time to time;

(c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(d) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 2. Priorities.

2.1 Relative Priorities. Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the Subordinated Lien Obligations granted on the Collateral or of any Liens securing the Super Senior Obligations granted on the Collateral and notwithstanding any provision of the UCC or any other applicable law or the Subordinated Lien Loan Documents or any defect or deficiencies in, or failure to perfect or lapse in perfection of, or avoidance as a fraudulent conveyance or otherwise of, the Liens securing the Super Senior Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby agrees that:

(a) any Lien on the Collateral securing any Super Senior Obligations now or hereafter held by or on behalf of the Super Senior Collateral Agent or any Super Senior Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any Subordinated Lien Obligations; and

(b) any Lien on the Collateral securing any Subordinated Lien Obligations now or hereafter held by or on behalf of the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholders or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any Super Senior Obligations.

2.2 Prohibition on Contesting Liens. Each of the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder,

and the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, agrees that it will not (and hereby waives any right to) directly or indirectly contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection, extent or enforceability of a Lien held, or purported to be held, by or on behalf of any of the Super Senior Claimholders in the Super Senior Collateral or by or on behalf of any of the Subordinated Lien Claimholders in the Subordinated Lien Collateral, as the case may be, or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Super Senior Collateral Agent or any other Super Senior Claimholder or the Subordinated Lien Collateral Agent or any other Subordinated Lien Claimholder to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the Super Senior Obligations as provided in Sections 2.1 and 3.1.

2.3 No New Liens. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the parties hereto agree that the Company shall not, and shall not permit any other Grantor to:

(a) grant or permit any additional Liens on any asset or property to secure any Subordinated Lien Obligation unless it has granted or concurrently grants a Lien on such asset or property to secure the Super Senior Obligations, the parties hereto agreeing that any such Lien shall be subject to Section 2.1 hereof; provided that this provision will not be violated with respect to any Super Senior Obligations if the Super Senior Collateral Agent is given a reasonable opportunity to accept a Lien on any asset or property and either the Company or the Super Senior Collateral Agent states in writing that the Super Senior Securities Purchase Documents prohibit the Super Senior Collateral Agent from accepting a Lien on such asset or property, or the Super Senior Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined lien, a "**Super Senior Declined Lien**").

(b) grant or permit any additional Liens on any asset or property to secure any Super Senior Obligations unless it has granted or concurrently grants a Lien on such asset or property to secure the Subordinated Lien Obligations; provided that this provision will not be violated with respect to any Subordinated Lien Obligations if the Subordinated Lien Collateral Agent is given a reasonable opportunity to accept a Lien on any asset or property and the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders) states in writing that the Subordinated Lien Loan Documents prohibit the Subordinated Lien Collateral Agent from accepting a Lien on such asset or property, or the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders) otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined lien, a "**Subordinated**

Lien Declined Lien" and, together with the Super Senior Declined Liens, the "**Declined Liens**").

If any Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder shall hold any Lien on any assets or property of any Grantor securing any Subordinated Lien Obligations that are not also subject to the first-priority Liens, other than any Declined Liens, securing all Super Senior Obligations under the Super Senior Collateral Documents, such Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders) or Subordinated Lien Claimholder shall notify the Super Senior Collateral Agent promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, other than any such Lien that would constitute a Declined Lien, on such assets or property to the Super Senior Collateral Agent as security for the Super Senior Obligations, such Subordinated Lien Collateral Agent and Subordinated Lien Claimholders shall be deemed to hold and have held such Lien for the benefit of the Super Senior Collateral Agent and the other Super Senior Claimholders, other than any Super Senior Claimholders whose Super Senior Securities Purchase Documents prohibit them from taking such Liens, as security for the Super Senior Obligations. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to any Super Senior Collateral Agent and/or the Super Senior Claimholders, the Subordinated Lien Collateral Agent, on behalf of each Subordinated Lien Claimholder, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2. If the Super Senior Collateral Agent, any Super Senior Buyer or any Super Senior Claimholder shall hold any Lien on any assets or property of any Grantor securing any Super Senior Obligations that are not also subject to the second-priority Liens, other than any Declined Liens, securing all Subordinated Lien Obligations under the Subordinated Lien Collateral Documents, the Super Senior Collateral Agent, such Super Senior Buyer or such Super Senior Claimholder (i) shall notify the Subordinated Lien Collateral Agent promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, other than any such Lien that would constitute a Declined Lien, on such assets or property to the Subordinated Lien Collateral Agent as security for the Subordinated Lien Obligations, the Super Senior Collateral Agent, such Super Senior Buyer and Super Senior Claimholders shall be deemed to hold and have held such Lien for the benefit of the Subordinated Lien Collateral Agent and the other Subordinated Lien Claimholders. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to any of the Subordinated Lien Collateral Agent and/or the Subordinated Lien Claimholders, the Super Senior Collateral Agent, on behalf of each Super Senior Claimholder, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4 Similar Liens and Agreements. The parties hereto agree that, subject to the immediately preceding paragraph and Declined Liens, it is their intention that the Super Senior Collateral and the Subordinated Lien Collateral be identical. In

furtherance of the foregoing and of Section 8.10, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders), to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Super Senior Collateral and the Subordinated Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents; and

(b) that the documents and agreements creating or evidencing the Super Senior Collateral and the Subordinated Lien Collateral and guarantees for the Super Senior Obligations and the Subordinated Lien Obligations, subject to Section 2.3, shall be in all material respects the same forms of documents other than with respect to provisions (x) to reflect the first lien and the subordinated junior lien nature of the Obligations thereunder and (y) relating to the Equity Rights.

2.5 Perfection of Liens. Except for the arrangements contemplated by Section 5.5, neither the Super Senior Collateral Agent or the Super Senior Claimholders, on one hand, nor the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders, on the other hand, shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Collateral for the benefit of the other. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the Super Senior Claimholders on the one hand and the Subordinated Lien Claimholders on the other hand and such provisions shall not impose on the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Collateral which would conflict with prior-perfected claims therein in favor of any other Person or any order or decree of any court or Governmental Authority or any applicable law.

2.6 No Claim Subordination. The subordination of Liens securing Subordinated Lien Obligations to Liens securing Super Senior Obligations set forth in this Section 2 affects only the relative priority of those Liens, and does not subordinate the Subordinated Lien Obligations in right of payment to the Super Senior Obligations. Nothing in this Agreement will affect the entitlement of any Super Senior Claimholder or Subordinated Lien Claimholder to receive and retain required payments of interest, principal, and other amounts in respect of a Super Senior Obligation or Subordinated Lien Obligation (other than in connection with a turnover of proceeds of Collateral pursuant to this Agreement in connection with an Enforcement Action), as applicable, or exercise any rights with respect to any Equity Rights or any Equity Interests or Equity Interest Proceeds, as applicable.

Section 3. Enforcement.

3.1 Exercise of Remedies.

(a) Until the Discharge of Super Senior Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders:

(1) will not commence or maintain, or seek to commence or maintain, any Enforcement Action or otherwise exercise any rights or remedies with respect to the Collateral; provided that the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders) may commence an Enforcement Action or otherwise exercise any or all such rights or remedies after the passage of a period of at least 180 days has elapsed since the earlier of: (i) following the occurrence of any Event of Default under any Subordinated Lien Loan Document, the date on which the Super Senior Collateral Agent was given notice thereof in accordance with Section 8.9 and (ii) following the occurrence of the acceleration of the Subordinated Lien Obligations, the date on which the Super Senior Collateral Agent was given notice thereof in accordance with Section 8.9 (the **"Standstill Period"**); provided, further, that notwithstanding anything herein to the contrary, in no event shall the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder exercise any rights or remedies with respect to the Collateral so long as, notwithstanding the expiration of the Standstill Period, the Super Senior Collateral Agent or Super Senior Claimholders shall have commenced and be diligently pursuing an Enforcement Action with respect to all or any material portion of the Collateral or the Company or any other Grantor is then, and then only for so long as it remains, a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding (with prompt notice of such exercise to be given to the Subordinated Lien Collateral Agent);

(2) will not contest, protest, hinder, delay, or object to any foreclosure proceeding or action brought by the Super Senior Collateral Agent or any Super Senior Claimholder or any other exercise by the Super Senior Collateral Agent or any Super Senior Claimholder of any rights and remedies relating to the Collateral under the Super Senior Securities Purchase Documents or otherwise (including any Enforcement Action initiated by or supported by the Super Senior Collateral Agent or any Super Senior Claimholder);

(3) subject to their rights under clause (a)(1) above, will not object to the forbearance by the Super Senior Collateral Agent or the Super Senior Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral, in each case so long as any proceeds received by the Super Senior Collateral Agent in excess of those necessary to achieve a Discharge of Super Senior Obligations are distributed in accordance with Section 4.1 hereof and applicable law (to the extent such law is not inconsistent with the priority of distributions provided under Section 4.1 hereof);

(4) will not attempt to direct the Super Senior Collateral Agent or the Super Senior Claimholders to exercise any right, remedy or power with respect to the Collateral or exercise any consent to the exercise by the Super Senior Collateral Agent or the Super Senior Claimholders of any right, remedy or power with respect to the Collateral;

(5) will not institute any suit or assert in any suit, Insolvency or Liquidation Proceeding or other proceeding any claim against the Super Senior Collateral Agent or the Super Senior Claimholders seeking damages or other relief by way of specific performance, instructions or otherwise with respect to, and neither the Super Senior Collateral Agent or the Super Senior Claimholders will be liable for, any action taken or omitted to be taken by any of them with respect to the Collateral;

(6) will not take any action to cause or attempt to cause any Lien on the Collateral securing the Subordinated Lien Obligations to be senior to or pari passu with the Liens securing the Super Senior Obligations; and

(7) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement or the enforceability of any Lien securing the Super Senior Obligations. The foregoing shall not be construed to prohibit the Subordinated Lien Collateral Agent from enforcing the provisions of this Agreement.

(b) [Reserved].

(c) Until the Discharge of Super Senior Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to Section 3.1(a)(1), the Super Senior Collateral Agent and the Super Senior Claimholders shall have the exclusive right to commence and maintain an Enforcement Action (except that Subordinated Lien Collateral Agent shall have

the credit bid rights set forth in Section 3.1(d)(7)), and subject to Section 5.1, to make determinations regarding the release or dispositions with respect to the Collateral without any consultation with or the consent of the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder; provided that any proceeds received by the Super Senior Collateral Agent in excess of those necessary to achieve a Discharge of Super Senior Obligations are distributed to the Subordinated Lien Collateral Agent in accordance with the relative priorities described herein. In commencing or maintaining any Enforcement Action or otherwise exercising rights and remedies with respect to the Collateral, the Super Senior Collateral Agent and the Super Senior Claimholders may enforce the provisions of the Super Senior Securities Purchase Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion in compliance with this Agreement and any applicable law and without consultation with the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder. Such exercise and enforcement shall include, subject to compliance with applicable laws, the rights of an agent appointed by them to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(d) Notwithstanding the foregoing, the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders) and any Subordinated Lien Claimholder may:

(1) vote, file proofs of claim and take any other action not in violation of the provisions of this Agreement with respect to the Subordinated Lien Obligations in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor;

(2) take any action (not adverse to the priority status of the Liens on the Collateral securing the Super Senior Obligations, or the rights of any Super Senior Collateral Agent or the Super Senior Claimholders to exercise remedies in respect thereof) in order to create, perfect, preserve or protect the validity, enforceability, perfection or priority (to the extent permitted by this Agreement) of its Lien on the Collateral and neither the Super Senior Collateral Agent nor the other Super Senior Claimholders will object to or contest, or otherwise support any other person in contesting or objecting to, any such action;

(3) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Subordinated Lien Claimholders, including any claims

secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;

(4) vote on any plan of reorganization, arrangement, compromise or liquidation, file any proof of claim, make other filings and make any arguments and motions that are, in each case, not in violation of the terms of this Agreement, with respect to the Subordinated Lien Obligations and the Collateral; provided that no filing of any claim or vote, or pleading related to such claim or vote, to accept or reject a plan of reorganization, arrangement, compromise or liquidation, or any other document, agreement or proposal similar to the foregoing by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder may seek, or otherwise support, any relief that would alter the lien priorities provided herein or otherwise be inconsistent with or seek to contravene the provisions of this Agreement;

(5) exercise any of its rights or remedies with respect to the Collateral after the termination of the Standstill Period to the extent permitted by Section 3.1(a)(1); provided that in the event that the exercise any of rights or remedies are necessary at any time after the expiration of the Standstill Period, the Super Senior Claimholders and the Subordinated Lien Claimholders shall reasonably discuss the possibility of undertaking a coordinated enforcement process, provided that neither party shall be responsible for paying the other party's costs in connection with any such enforcement and, unless the Super Senior Claimholders and the Subordinated Lien Claimholders otherwise agree in writing, such discussions shall not reinstate or otherwise extend the Standstill Period or constitute a forbearance or waiver of the Subordinated Lien Claimholders' ability to exercise rights or remedies after the termination of the Standstill Period;

(6) exercise any right or remedy permitted under Section 3.1(f);

(7) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by the Super Senior Collateral Agent or any Super Senior Claimholder, or any sale of Collateral during an Insolvency or Liquidation Proceeding; provided that such bid may not include a "credit bid" in respect of any Subordinated Lien Obligations unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of Super Senior Obligations;

(8) take any action to the extent necessary to prevent the running of any applicable statute of limitation or similar restriction on claims;

(9) seek specific performance or other injunctive relief to compel the Company to comply with a non-payment obligation (including, without limitation, any Equity Rights) under any Subordinated Lien Loan Document or other agreement or Equity Interest with respect to any Equity Rights;

(10) exercise any Equity Rights; and

(11) inspect or appraise the Collateral (and engage or retain investment bankers or appraisers for the sole purpose of appraising or valuing the Collateral) or receive information or reports concerning the Collateral.

The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off and recoupment) with respect to any Collateral in its capacity as a creditor, unless and until the Discharge of Super Senior Obligations has occurred, except as expressly permitted by Section 3.1(a)(1) (to the extent the Subordinated Lien Collateral Agent and Subordinated Lien Claimholders are permitted to retain the proceeds thereof in accordance with Section 4.2 of this Agreement).

(e) Subject to Sections 3.1(a) and (d) and Section 6.3(b):

(1) the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders will not take any action that would hinder any exercise of remedies under the Super Senior Securities Purchase Documents or is otherwise prohibited hereunder, including any sale, lease, exchange, transfer or other disposition of the Collateral by the Super Senior Collateral Agent, whether by foreclosure or otherwise, absent gross negligence, willful misconduct, bad faith, self-dealing or fraud on the part of Super Senior Collateral Agent or such Super Senior Claimholder, as the case may be;

(2) the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby waives any and all rights it or the Subordinated Lien Claimholders may have as a junior lien creditor to object to the manner in which the Super Senior Collateral Agent or the First Lien Claimholders seek to enforce or collect the Super Senior Obligations or the Liens securing the Super Senior Obligations granted in any of the Super Senior Collateral undertaken in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of the Super Senior Collateral Agent or Super Senior Claimholders is adverse to the interest of the

Subordinated Lien Claimholders, in each case absent gross negligence, willful misconduct, bad faith, self-dealing or fraud on the part of the Super Senior Collateral Agent or such Super Senior Claimholder, as the case may be; and

(3) the Subordinated Lien Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Subordinated Lien Collateral Documents or any other Subordinated Lien Loan Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Super Senior Collateral Agent or the Super Senior Claimholders with respect to the Collateral as set forth in this Agreement and the Super Senior Credit Documents.

(f) As long as such exercise is not contrary to the terms of this Agreement, and whether or not any Insolvency or Liquidation Proceeding has been commenced, the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders may exercise rights and remedies as unsecured creditors against the Company or any other Grantor that has guaranteed or granted Liens to secure the Subordinated Lien Obligations in accordance with the terms of the Subordinated Lien Loan Documents and applicable law (other than initiating or joining in an involuntary case or proceeding under any Insolvency or Liquidation Proceeding with respect to any Grantor); provided that in the event that any Subordinated Lien Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Subordinated Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Super Senior Obligations) in the same manner as the other Liens securing the Subordinated Lien Obligations are subject to this Agreement.

(g) Nothing in this Agreement shall prohibit or limit the payment to and the receipt by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders of the required payments of interest, principal and other amounts owed in respect of the Subordinated Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders of rights or remedies as a secured creditor (including set-off and recoupment) or enforcement in contravention of this Agreement of any Lien held by any of them or as a result of any other violation by any Subordinated Lien Claimholder of the express terms of this Agreement. Except as may be expressly provided herein to the contrary for the exclusive benefit of the Subordinated Lien Claimholders, nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the Super Senior Collateral Agent or the Super Senior Claimholders may have with respect to the Super Senior Collateral.

(h) The Super Senior Collateral Agent shall endeavor to deliver simultaneous written notice to the Subordinated Lien Collateral Agent of the Super Senior Collateral Agent commencing any Enforcement Action ("**Enforcement Notice**").

3.2 Specific Performance. Each of the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders) may demand specific performance of this Agreement. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder under the Super Senior Securities Purchase Documents, and the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder under the Subordinated Lien Loan Documents, hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Super Senior Collateral Agent or the Super Senior Claimholders or the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders, as the case may be. No provision of this Agreement shall constitute or be deemed to constitute a waiver by the Super Senior Collateral Agent for itself and on behalf of each other Super Senior Claimholder or the Subordinated Lien Collateral Agent for itself and on behalf of each other Subordinated Lien Claimholder of any right to seek damages from any Person in connection with any breach or alleged breach of this Agreement or their respective Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents, as the case may be.

Section 4. Payments.

4.1 Application of Proceeds. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received in connection with any Enforcement Action or other exercise of remedies by the Super Senior Collateral Agent or Super Senior Claimholders shall be applied by the Super Senior Collateral Agent to the Super Senior Obligations in such order as specified in the relevant Super Senior Securities Purchase Documents. Upon the Discharge of Super Senior Obligations, the Super Senior Collateral Agent shall deliver any remaining Collateral and proceeds thereof held by it in the same form as received, with any necessary endorsements (which endorsements shall be without recourse and without any representation or warranty) *first*, unless a Discharge of Subordinated Lien Obligations has already occurred, to the Subordinated Lien Collateral Agent to be applied by the Subordinated Lien Collateral Agent to the Subordinated Lien Obligations in such order as specified in the Subordinated Lien Loan Documents until a Discharge of Subordinated Lien Obligations, *second*, if there are any Excess Super Senior Obligations, to Super Senior Collateral Agent for application to the Excess Super Senior Obligations in such order as specified in the Super Senior Securities Purchase Documents until payment in full in cash of all such Excess Super Senior Obligations, and *third*, following any Discharge of Super Senior Obligations, Discharge of Subordinated Lien

Obligations and payment in full in cash of any Excess Super Senior Obligations, to the Company or as a court of competent jurisdiction may otherwise direct. For the avoidance of doubt, the parties hereto hereby acknowledge and agree that Equity Interest Proceeds with respect to Equity Rights are not proceeds from Collateral.

4.2 Payments Over. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders solely in connection with any Enforcement Action or other exercise of any right or remedy relating to the Collateral shall be applied in accordance with Section 4.1 hereof.

Section 5. Other Agreements.

5.1 Releases.

(a) If in connection with any Enforcement Action by the Super Senior Collateral Agent, in each case prior to the Discharge of Super Senior Obligations, the Super Senior Collateral Agent, for itself or on behalf of any other Super Senior Claimholder, releases any of its Liens on any part of the Collateral or, in connection with the sale or disposition of all or substantially all of the equity interests of any Guarantor Subsidiary, releases any Guarantor Subsidiary from its obligations under its guaranty of the Super Senior Obligations, then the Liens, if any, of the Subordinated Lien Collateral Agent, for itself or for the benefit of the Subordinated Lien Claimholders, on such Collateral, and the obligations of such Guarantor Subsidiary under its guaranty of the Subordinated Lien Obligations, shall be automatically released to the same extent as the Liens of the Super Senior Collateral Agent so long as the proceeds are applied in accordance with Section 4.1. If in connection with any Enforcement Action or other exercise of rights and remedies by the Super Senior Collateral Agent, in each case prior to the Discharge of Super Senior Obligations, the Equity Interests of any Person are foreclosed upon or otherwise disposed of and the Super Senior Collateral Agent releases its Lien on the property or assets of such Person then the Liens of Subordinated Lien Collateral Agent with respect to the property or assets of such Person will be automatically released to the same extent as the Liens of the Super Senior Collateral Agent. The Subordinated Lien Collateral Agent, for itself or on behalf of any such Subordinated Lien Claimholders, promptly shall execute and deliver to the Super Senior Collateral Agent or such Guarantor Subsidiary such termination statements, releases and other documents as the Super Senior Collateral Agent or such Guarantor Subsidiary may reasonably request to effectively confirm the foregoing releases.

(b) If in connection with any sale, lease, exchange, transfer or other disposition of any Collateral by any Grantor (collectively, a **"Disposition"**)

permitted under the terms of the Super Senior Securities Purchase Documents and permitted under the terms of the Subordinated Lien Loan Documents (other than in connection with an Enforcement Action of the Super Senior Collateral Agent's remedies in respect of the Collateral which shall be governed by Section 5.1(a) above), the Super Senior Collateral Agent, for itself or on behalf of any other Super Senior Claimholder, releases any of its Liens on any part of the Collateral, or releases any Guarantor Subsidiary from its obligations under its guaranty of the Super Senior Obligations, in each case other than in connection with, or following, the Discharge of Super Senior Obligations, then the Liens, if any, of the Subordinated Lien Collateral Agent, for itself or for the benefit of the Subordinated Lien Claimholders, on such Collateral, and the obligations of such Guarantor Subsidiary under its guaranty of the Subordinated Lien Obligations, shall be automatically, unconditionally and simultaneously released. The Subordinated Lien Collateral Agent, for itself or on behalf of any such Subordinated Lien Claimholders, promptly shall execute and deliver to the Super Senior Collateral Agent or such Guarantor Subsidiary such termination statements, releases and other documents as the Super Senior Collateral Agent or such Grantor may reasonably request to effectively confirm such release.

(c) Until the Discharge of Super Senior Obligations occurs and upon the occurrence and during the continuance of an Event of Default under the Super Senior Securities Agreement, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby irrevocably constitutes and appoints the Super Senior Collateral Agent and any officer or agent of the Super Senior Collateral Agent, 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 Subordinated Lien Collateral Agent or such holder or in the Super Senior Collateral Agent's own name, from time to time in the Super Senior Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release, solely to the extent the Subordinated Lien Collateral Agent failed to take such actions within a commercially reasonable period of time. This power is coupled with an interest and is irrevocable until the Discharge of Super Senior Obligations.

(d) Until the Discharge of Super Senior Obligations occurs, to the extent that the Super Senior Collateral Agent or the Super Senior Claimholders (i) have released any Lien on Collateral or any Guarantor Subsidiary from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtain any new Liens or additional guarantees from any Guarantor Subsidiary, then the Subordinated Lien Collateral Agent, for itself and for the Subordinated Lien Claimholders, shall automatically be deemed to have been granted a Lien on any such Collateral (except to the extent such Lien

represents a Subordinated Lien Declined Lien with respect to the Indebtedness represented by the Subordinated Lien Collateral Agent), subject to the lien subordination provisions of this Agreement, and the Subordinated Lien Collateral Agent shall be granted an additional guaranty, as the case may be, and each applicable Grantor shall execute any documentation reasonably requested by the Subordinated Lien Collateral Agent to evidence any such grant.

5.2 Insurance. Until the earlier to occur of the Discharge of Super Senior Obligations or the expiration of the Standstill Period, the Super Senior Collateral Agent and the Super Senior Claimholders shall have the sole and exclusive right, subject to the rights of the Grantors under the Super Senior Securities Purchase Documents, to adjust settlement for any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of Super Senior Obligations has occurred, and subject to the rights of the Grantors under the Super Senior Securities Purchase Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect of the Collateral shall be paid to the Super Senior Collateral Agent for the benefit of the Super Senior Claimholders pursuant to the terms of the Super Senior Securities Purchase Documents and thereafter, if a Discharge of Super Senior Obligations has occurred, and subject to the rights of the Grantors under the Subordinated Lien Loan Documents, to the Subordinated Lien Collateral Agent for the benefit of the Subordinated Lien Claimholders to the extent required under the Subordinated Lien Collateral Documents and then, if a Discharge of Subordinated Lien Obligations has occurred, to the payment of any Excess Super Senior Obligations and, thereafter, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. Until the Discharge of Super Senior Obligations has occurred, if the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, then it shall segregate and hold in trust and forthwith pay such proceeds over to the Super Senior Collateral Agent in accordance with the terms of Section 4.2.

5.3 Amendments to Super Senior Securities Purchase Documents and Subordinated Lien Loan Documents.

(a) The Super Senior Securities Purchase Documents may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms; provided that any such amendment, restatement, supplement or modification shall not, without the consent of the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders):

(1) increase the then-outstanding principal amount of the Super Senior Obligations in excess of the Super Senior Cap Amount;

(2) prohibit payments of principal and interest on the Subordinated Lien Obligations or any exercise of the Equity Rights in connection therewith;

(3) increase the interest rate or yield, including by increasing the "applicable margin" or similar component of the interest rate (other than any increase occurring because of fluctuations in underlying rate indices, pricing grids, the imposition of the default rate of interest in accordance with the terms of the Super Senior Securities Agreement, or changes in interest rates resulting from the replacement of any rate index/indices with an alternative rate index/indices), by imposing fees or premiums, or by modifying the method of computing interest, or modify or implement any letter of credit, commitment, facility, utilization, make-whole or similar fee so that the combined interest rate and fees are increased by more than 2.0% per annum in excess of the total yield on Indebtedness outstanding thereunder as in effect on the date hereof (excluding any (x) customary amendment or consent fees or (y) increases resulting from the accrual of interest at the default rate);

(4) shorten the scheduled maturity of the Super Senior Obligations or provide for any scheduled principal amortization other than those provided for in the Super Senior Securities Agreement as in effect on the date hereof, other than with respect to the exercise of any Equity Rights; or

(5) amend the Super Senior Securities Purchase Documents in any manner which would have the effect of contravening the terms of this Agreement.

(b) Without the prior written consent of a majority in interest of the Super Senior Buyers, no Subordinated Lien Loan Document may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time or entered into (1) unless such amendment, supplement, waiver or modification relates to the Subordinated Lien Equity Rights and (2) to the extent such amendment, restatement, supplement or modification, or the terms of any new Subordinated Lien Loan Document, would:

(1) increase the then-outstanding principal amount of the Subordinated Lien Obligations in excess of the amount outstanding as of the date hereof plus (y) any accrued pay-in-kind interest on such principal amount;

(2) prohibit payments of principal and interest on the Super Senior Obligations (other than payment of principal thereof in excess of the Super Senior Cap Amount) or any exercise of the Equity Rights in connection therewith;

(3) increase the interest rate or yield, including by increasing the "applicable margin" or similar component of the interest rate (other than any increase occurring because of fluctuations in underlying rate indices, pricing grids, the imposition of the default rate of interest in accordance with the terms of the Super Senior Securities Agreement, or changes in interest rates resulting from the replacement of any rate index/indices with an alternative rate index/indices), by imposing fees or premiums, or by modifying the method of computing interest, or modify or implement any letter of credit, commitment, facility, utilization, make-whole or similar fee so that the combined interest rate and fees are increased by a rate that would result in such interest rate or yield being in excess of 2.0% per annum less than such interest rate or yield accruing with respect to the Super Senior Obligations (excluding any (a) customary amendment or consent fees or (b) increases resulting from the accrual of interest at the default rate), other than with respect to the exercise of any Equity Rights;

(1) shorten the scheduled maturity of the Subordinated Lien Obligations or provide for any scheduled principal amortization other than those provided for in the Subordinated Lien Credit Agreement as in effect on the date hereof, other than with respect to the exercise of any Equity Rights;

(4) amend the Subordinated Lien Loan Documents in any manner which would have the effect of contravening the terms of this Agreement.

5.4 Confirmation of Lien Subordination in Subordinated Lien Collateral Documents. The Company and each other Grantor agrees that, each Subordinated Lien Collateral Document executed and delivered after the date hereof shall include the following language (or language to similar effect approved by the Super Senior Collateral Agent):

"Notwithstanding anything herein to the contrary, the liens and security interests granted to the Subordinated Lien Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Subordinated Lien Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of November 4, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**2024 Super Senior Intercreditor Agreement**"), among ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Super Senior Collateral Agent, and ACQUIOM AGENCY SERVICES LLC, as Subordinated Lien Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and

this Agreement, the terms of the 2024 Super Senior Intercreditor Agreement shall govern and control."

5.5 Gratuitous Bailee/Agent for Perfection.

(a) The Super Senior Collateral Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to or does perfect a Lien thereon under the UCC (such Collateral being the **"Pledged Collateral"**) as collateral agent for the Super Senior Claimholders and as gratuitous bailee for the Subordinated Lien Collateral Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the UCC) and any assignee thereof solely for the purpose of perfecting the security interest granted under the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents, respectively, subject to the terms and conditions of this Section 5.5. Solely with respect to any deposit accounts under the control (within the meaning of Section 9-104 of the UCC) of the Super Senior Collateral Agent, the Super Senior Collateral Agent agrees to also hold control over such deposit accounts as gratuitous agent for the Subordinated Lien Collateral Agent, subject to the terms and conditions of this Section 5.5.

(b) The Super Senior Collateral Agent shall have no obligation whatsoever to the Super Senior Claimholders, the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder to ensure that the Pledged Collateral is genuine or owned by any of the Grantors, to perfect the security interest of the Subordinated Lien Collateral Agent or other Subordinated Lien Claimholders or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.5. The duties or responsibilities of the Super Senior Collateral Agent under this Section 5.5 shall be limited solely to holding the Pledged Collateral as bailee (and with respect to deposit accounts, agent) in accordance with this Section 5.5 and delivering the Pledged Collateral upon a Discharge of Super Senior Obligations as provided in paragraph (d) below.

(c) None of the Super Senior Collateral Agent and the Super Senior Claimholders shall have by reason of the Super Senior Collateral Documents, the Subordinated Lien Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders hereby waive and release the Super Senior Collateral Agent and the Super Senior Claimholders from all claims and liabilities arising pursuant to the Super Senior Collateral Agent's role under this Section 5.5 as gratuitous bailee and gratuitous agent with respect to the Pledged Collateral. It is understood and agreed that the interests of the Super Senior Collateral Agent and the Super Senior Claimholders, on the one hand, and

the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders on the other hand, may differ and the Super Senior Collateral Agent and the Super Senior Claimholders shall be fully entitled to act in their own interest without taking into account the interests of the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders.

(d) Upon the Discharge of Super Senior Obligations under the Super Senior Securities Purchase Documents to which the Super Senior Collateral Agent is a party, the Super Senior Collateral Agent shall deliver the remaining Pledged Collateral in its possession (if any) as provided in Section 4.1. The Super Senior Collateral Agent further agrees to take all other action reasonably requested by the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders) at the expense of the Company, or if the Company fails to pay such expenses, the Subordinated Lien Claimholders, in connection with the Subordinated Lien Collateral Agent obtaining a first-priority interest in the Collateral.

5.6 When Discharge of Super Senior Obligations Deemed to Not Have Occurred. If, substantially contemporaneously with the Discharge of Super Senior Obligations, the Company or any other Grantor enters into any refinancing of the Super Senior Securities Agreement, which refinancing is permitted by the Subordinated Lien Loan Documents, then such Discharge of Super Senior Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Super Senior Obligations), and, from and after the date on which the New Super Senior Lien Debt Notice is delivered to the Subordinated Lien Collateral Agent in accordance with the next sentence, the obligations under such refinancing of the Super Senior Securities Purchase Documents shall automatically be treated as Super Senior Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the Super Senior Collateral Agent under such Super Senior Securities Purchase Documents shall be the Super Senior Collateral Agent for all purposes of this Agreement. Upon the Subordinated Lien Collateral Agent's receipt of a written notice (the **"New Super Senior Lien Debt Notice"**) stating that the Company or any other Grantor has entered into a new Super Senior Securities Agreement (which notice shall include such new Super Senior Securities Agreement and all Super Senior Securities Purchase Documents (other than any fee letters or other documents containing confidential business information) executed or delivered in connection therewith, and the identity of the new first lien collateral agent, such agent, the **"New Agent"**), the Subordinated Lien Collateral Agent shall promptly enter into amendments or supplements to this Agreement to the extent necessary to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. The New Agent shall agree in a writing reasonably satisfactory to the Subordinated Lien Collateral Agent and addressed to the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders to be bound by the terms of this Agreement. If the new Super Senior Obligations under the new Super Senior Securities

Purchase Documents are secured by assets of the Grantors constituting Collateral that do not also secure the Subordinated Lien Obligations, then the Subordinated Lien Obligations shall be secured at such time by a junior subordinated Lien, subject in priority to the Super Senior Obligations, on such assets to the same extent provided in the Subordinated Lien Collateral Documents and this Agreement except to the extent such Lien on such assets constitutes a Subordinated Lien Declined Lien.

5.7 Purchase Right.

(a) Without prejudice to the enforcement of any of the Super Senior Claimholders' remedies under the Super Senior Securities Purchase Documents, this Agreement, at law or in equity or otherwise, the Super Senior Claimholders agree at any time following the first to occur of (1) the commencement of any Insolvency or Liquidation Proceeding, (2) the acceleration of the Super Senior Obligations or taking of any Enforcement Action, (3) a payment default with respect to any Super Senior Obligations that has not been cured or waived within 60 days after the occurrence thereof or (4) delivery of an Enforcement Notice, the Subordinated Lien Claimholders will have the option to purchase, and the Super Senior Claimholders shall be obligated to sell on the date provided in the notice to Super Senior Claimholders of the exercise of such purchase option by the Subordinated Lien Claimholders (the "**Proposed Purchase Date**"), the entire aggregate amount (but not less than the entirety) of outstanding Super Senior Obligations (but specifically excluding any Excess Super Senior Obligations on or prior to the Proposed Purchase Date) at the Purchase Price without warranty or representation or recourse except as provided in Section 5.7(d), on a pro rata basis among the Super Senior Claimholders, which option may be exercised by less than all of the Subordinated Lien Claimholders so long as all the accepting Subordinated Lien Claimholders shall when taken together purchase such entire aggregate amount as set forth above; provided that (A) the Proposed Purchase Date must be no later than ten (10) Business Days after the date upon which any Subordinated Lien Claimholder provides notice to the Super Senior Claimholders of its intent to exercise the purchase right contemplated hereby, (B) if any Subordinated Lien Claimholder fails to purchase the Super Senior Obligations on the Proposed Purchase Date in accordance with the provisions of this Section 5.7, such Subordinated Lien Claimholder and its Affiliates shall no longer have the right to exercise a purchase right under this Section 5.7 and (C) prior to the Proposed Purchase Date the Super Senior Claimholders may exercise any Equity Rights in accordance with the Super Senior Securities Purchase Documents.

(a) The **"Purchase Price"** will equal the sum of (1) the full amount of all Super Senior Obligations (other than any Excess Super Senior Obligations) then-outstanding and unpaid at par (including principal, accrued but unpaid interest and fees and any other unpaid amounts, including breakage costs and, in the case of any secured hedging obligations, the amount that would be

payable by the relevant Grantor thereunder if such Grantor were to terminate the hedge agreement in respect thereof on the date of the purchase or, if not terminated, an amount determined by the relevant Super Senior Claimholder to be necessary to collateralize its credit risk arising out of such agreement, but excluding any prepayment penalties or premiums) (which, for the avoidance of doubt, shall not include any acceleration prepayment penalties or premiums), and (2) all accrued and unpaid fees and expenses (including reasonable and documented outside attorneys' fees and expenses) owed to the Super Senior Claimholders under or pursuant to the Super Senior Securities Purchase Documents on the date of purchase to the extent not allocable to Excess Super Senior Obligations, solely to the extent Grantors are obligated to reimburse the Super Senior Claimholders therefor.

(b) If the Subordinated Lien Claimholders (or any subset of them) exercise the purchase option pursuant to Section 5.7(a) above, it shall be exercised pursuant to documentation mutually acceptable to each of the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent and the parties shall use commercially reasonable efforts to close promptly after such exercise. Each Super Senior Claimholder will retain all rights to indemnification provided in the relevant Super Senior Securities Purchase Documents for all claims and other amounts relating to periods prior to the purchase of the Super Senior Obligations pursuant to this Section 5.7.

(c) The purchase and sale of the Super Senior Obligations under this Section 5.7 will be without recourse and without representation or warranty of any kind by the Super Senior Claimholders, except that the Super Senior Claimholders shall severally and not jointly represent and warrant to the Subordinated Lien Claimholders that on the date of such purchase, immediately before giving effect to the purchase:

(1) the principal of and accrued and unpaid interest on the Super Senior Obligations, and the fees and expenses thereof owed to the respective Super Senior Claimholders, are as stated in any assignment agreement prepared in connection with the purchase and sale of the Super Senior Obligations; and

(2) each Super Senior Claimholder owns the Super Senior Obligations purported to be owned by it free and clear of any Liens granted by it.

Section 6. Insolvency or Liquidation Proceedings.

6.1 [Reserved].

6.2 Relief from the Automatic Stay. Until the Discharge of Super Senior Obligations has occurred, the Subordinated Lien Collateral Agent, for itself and on

behalf of each other Subordinated Lien Claimholder, agrees that none of them shall: (i) seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral other than with respect to the exercise of Equity Rights, without the prior written consent of the Super Senior Collateral Agent, unless the Super Senior Agent has been granted such relief or a motion for adequate protection permitted under Section 6.3 has been denied by a bankruptcy court or (ii) oppose (or support any other Person in opposing) any request by the Super Senior Collateral Agent for relief from such stay.

6.3 Adequate Protection.

(a) Until the Discharge of Super Senior Obligations has occurred, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that none of them shall contest (or support any other Person contesting):

(1) any request by the Super Senior Collateral Agent or the Super Senior Claimholders for adequate protection under any Bankruptcy Law that does not contravene the terms of this Agreement; or

(2) any objection by the Super Senior Collateral Agent or the Super Senior Claimholders to any motion, relief, action or proceeding based on the Super Senior Collateral Agent or the Super Senior Claimholders claiming a lack of adequate protection.

(b) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency or Liquidation Proceeding:

(1) if the Super Senior Claimholders (or any subset thereof) are granted adequate protection in the form of additional collateral or an administrative claim in connection with any Cash Collateral use or any financing under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("**DIP Financing**"), then the Subordinated Lien Collateral Agent, for itself or any of the other Subordinated Lien Claimholders, may seek or request adequate protection in the form of a Lien on such additional collateral and junior administrative claims, which Lien will be subordinated to the Liens securing the Super Senior Obligations and such Cash Collateral use or DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Subordinated Lien Obligations are so subordinated to the Super Senior Obligations under this Agreement, and which administrative claims shall be subordinated in right of payment to the administrative claims provided to the Super Senior Claimholders (or any subset thereof) to the same extent as Liens of the Subordinated Lien Claimholders are subordinated to the Liens of the Super Senior Claimholders hereunder; and

(2) The Subordinated Lien Collateral Agent and Subordinated Lien Claimholders shall only be permitted to seek adequate protection with respect to their rights in the Collateral in any Insolvency or Liquidation Proceeding in the form of (A) additional collateral; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted a Lien on such additional collateral, which Lien shall be senior to any Lien of the Subordinated Lien Representatives, Subordinated Lien Collateral Agents and Subordinated Lien Claimholders on such additional collateral; (B) replacement Liens on the Collateral; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted replacement Liens on the Collateral, which Liens shall be senior to the Liens of the Subordinated Lien Representatives, Subordinated Lien Collateral Agents and Subordinated Lien Claimholders on the collateral; (C) an administrative expense claim; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted an administrative expense claim which is senior and prior to the administrative expense claim of the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders and (D) periodic interest payments at the non-default rate and the payment of reasonable out-of-pocket expenses.

(c) The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that notice of a hearing to approve DIP Financing or use of Cash Collateral on an interim basis shall be adequate if delivered to the Subordinated Lien Collateral Agent at least five (5) full Business Days in advance of such hearing.

6.4 [Reserved].

6.5 Avoidance Issues. If any Super Senior Claimholder or Subordinated Lien Claimholder is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor any amount paid in respect of Super Senior Obligations or Subordinated Lien Obligations, as applicable (a "**Recovery**"), then such Super Senior Claimholder or Subordinated Lien Claimholder shall be entitled to a reinstatement of its Super Senior Obligations or Subordinated Lien Claimholder, as applicable, with respect to all such recovered amounts on the date of such Recovery, and from and after the date of such reinstatement the Discharge of Super Senior Obligations or Discharge of Subordinated Lien Obligations, as applicable, shall be deemed not to have occurred for all purposes hereunder. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties

hereto from such date of reinstatement. This Section 6.5 shall survive termination of this Agreement.

6.6 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization, arrangement, compromise or liquidation or similar dispositive restructuring plan, both on account of Super Senior Obligations and on account of Subordinated Lien Obligations, then, to the extent the debt obligations distributed on account of the Super Senior Obligations and on account of the Subordinated Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

6.7 Post-Petition Interest.

(a) Neither the Subordinated Lien Collateral Agent nor any Subordinated Lien Claimholder shall oppose or seek to challenge any claim by the Super Senior Collateral Agent or any Super Senior Claimholder for allowance in any Insolvency or Liquidation Proceeding of Super Senior Obligations consisting of Post-Petition Interest to the extent of the value of any Super Senior Claimholder's Lien on the Collateral, without regard to the existence of the Lien of the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders on the Collateral.

(b) Neither the Super Senior Collateral Agent nor any other Super Senior Claimholder shall oppose or seek to challenge any claim by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Subordinated Lien Obligations consisting of Post-Petition Interest to the extent of the value of the Lien of the Subordinated Lien Collateral Agent, on behalf of the Subordinated Lien Claimholders, on the Collateral (after taking into account the amount of the Super Senior Obligations); provided that if the Super Senior Collateral Agent shall have made any such claim, such claim either has been approved or will be approved contemporaneously with the approval of the Subordinated Lien Collateral Agent's claim.

6.8 Waiver. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, waives any claim it may hereafter have against any Super Senior Claimholder arising out of the election of any Super Senior Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code.

6.9 Separate Grants of Security and Separate Classification. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated

Lien Claimholder, and the Super Senior Collateral Agent for itself and on behalf of each other Super Senior Claimholder, acknowledges and agrees that

(a) the grants of Liens pursuant to the Super Senior Collateral Documents and the Subordinated Lien Collateral Documents constitute two separate and distinct grants of Liens; and

(b) because of, among other things, their differing rights in the Collateral, the Subordinated Lien Obligations are fundamentally different from the Super Senior Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Super Senior Claimholders and the Subordinated Lien Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Collateral (with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Subordinated Lien Claimholders), the Super Senior Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or that would be owing if there were such separate classes of senior and junior secured claims) in respect of Post-Petition Interest (including any additional interest payable pursuant to the Super Senior Securities Purchase Documents arising from or related to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding) in all cases to the extent constituting Super Senior Obligations, before any distribution is made in respect of the claims held by the Subordinated Lien Claimholders with respect to the Collateral, with the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby acknowledging and agreeing to turn over to the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, Collateral or proceeds of Collateral otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Subordinated Lien Claimholders); provided that the foregoing shall not require the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder to turnover distributions that do not constitute Collateral or proceeds of Collateral.

6.10 Effectiveness in Insolvency or Liquidation Proceedings. The Parties acknowledge that this Agreement is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, which will be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor will include such Person as a debtor-in-possession and any receiver or trustee for such Person in an Insolvency or Liquidation Proceeding.

Section 7. Reliance; Waivers; Etc.

7.1 Reliance. Other than any reliance on the terms of this Agreement, the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, acknowledges that it and such Super Senior Claimholders have, independently and without reliance on the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Super Senior Securities Purchase Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Super Senior Securities Purchase Documents or this Agreement. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, acknowledges that it and such Subordinated Lien Claimholders have, independently and without reliance on the Super Senior Collateral Agent or any Super Senior Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Subordinated Lien Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Subordinated Lien Loan Documents or this Agreement.

7.2 No Warranties or Liability. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, acknowledges and agrees that each of the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Subordinated Lien Loan Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the Subordinated Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Subordinated Lien Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, acknowledges and agrees that each of the Super Senior Collateral Agent and the Super Senior Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Super Senior Securities Purchase Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon, in each case whether existing on or prior to the date hereof or otherwise. Except as otherwise provided herein, the Super Senior Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Super Senior Securities Purchase Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders shall have no duty to the Super Senior Collateral Agent or any of the other Super Senior Claimholders, and the Super Senior Collateral Agent and the Super Senior Claimholders shall have no duty to the Subordinated Lien Collateral Agent or any of the other Subordinated Lien Claimholders,

to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any other Grantor (including the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 No Waiver of Lien Priorities.

(a) Except with respect to a Declined Lien, no right of the Super Senior Claimholders, the Super Senior Collateral Agent or any of them to enforce any provision of this Agreement or any Super Senior Securities Purchase Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any other Grantor or by any act or failure to act by any Super Senior Claimholder or the Super Senior Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Super Senior Securities Purchase Documents or any of the Subordinated Lien Loan Documents, regardless of any knowledge thereof which the Super Senior Collateral Agent or the Super Senior Claimholders, or any of them, may have or be otherwise charged with.

(b) Until the Discharge of Super Senior Obligations, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. All rights, interests, agreements and obligations of the Super Senior Collateral Agent and the Super Senior Claimholders and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Super Senior Securities Purchase Documents or any Subordinated Lien Loan Documents;

(b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Super Senior Obligations or Subordinated Lien Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Super Senior Securities Purchase Document or any Subordinated Lien Loan Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Super Senior Obligations or Subordinated Lien Obligations or any guaranty thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the Super Senior Collateral Agent, the Super Senior Obligations, any Super Senior Claimholder, the Subordinated Lien Collateral Agent, the Subordinated Lien Obligations or any Subordinated Lien Claimholder in respect of this Agreement other than the defense that the Discharge of the Super Senior Obligations has occurred.

Section 8. Miscellaneous.

8.1 Integration/Conflicts. This Agreement, the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents represent the entire agreement of the Grantors, the Super Senior Claimholders and the Subordinated Lien Claimholders with respect to the subject matter hereof and thereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by the Super Senior Claimholder or the Subordinated Lien Claimholders relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein. In the event of any conflict between the provisions of this Agreement and the provisions of the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents, the provisions of this Agreement shall govern and control. The Super Senior Claimholders and the Subordinated Lien Claimholders acknowledge and agree that they have each entered into other intercreditor arrangements with other claimholders and their rights and remedies are also subject to the terms and conditions of each of those agreements.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions. All references to the Company or any other Grantor shall include the Company or such Grantor as debtor and debtor-in-possession and any receiver, trustee or similar Person for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to the Super Senior Collateral Agent, the Super Senior Claimholders and the Super Senior Obligations, upon the date upon which the Super Senior Obligations are Discharged, subject to the rights of such Super Senior Claimholders under Sections 5.6 and 6.5; and

(b) with respect to the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and the Subordinated Lien Obligations, the date upon which the Subordinated Lien Obligations are Discharged subject to the rights of such Subordinated Lien Claimholders under Sections 5.6 and 6.5;

provided, however, that in each case, such termination shall not relieve any such party of its obligations incurred hereunder prior to the date of such termination.

8.3 Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the Subordinated Lien Collateral Agent or the Super Senior Collateral Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time; provided, however, that this Agreement may be amended from time to time, without the consent of either the Subordinated Lien Collateral Agent or the Super Senior Collateral Agent, to add additional Grantors, whereupon such Person will be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof. Notwithstanding the foregoing, the Company and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent (i) its rights are directly and adversely affected by any such amendment, modification or waiver, (ii) any such amendment, modification or waiver reduces the amount of debt available to be incurred by the Borrower under the Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents, or (iii) any such amendment, modification or waiver increases the obligations of Borrower under this Agreement.

8.4 Information Concerning Financial Condition of the Company and its Subsidiaries. The Super Senior Collateral Agent and the Super Senior Claimholders,

on the one hand, and the Subordinated Lien Claimholders and the Subordinated Lien Collateral Agent, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of the Company and its Subsidiaries and all endorsers and/or guarantors of the Super Senior Obligations or the Subordinated Lien Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Super Senior Obligations or the Subordinated Lien Obligations. The Super Senior Collateral Agent and the Super Senior Claimholders, on the one hand, and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, on the other hand, shall have no duty to advise the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, on the one hand, or the Super Senior Collateral Agent or any Super Senior Claimholder, on the other hand, of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the Super Senior Collateral Agent, any of the other Super Senior Claimholders, the Subordinated Lien Collateral Agent or any of the other Subordinated Lien Claimholders in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholder, the Super Senior Collateral Agent or any Super Senior Claimholder, it or they shall be under no obligation:

(a) to make, and the Super Senior Collateral Agent and the Super Senior Claimholders or the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, as applicable, shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

Notwithstanding any provision herein to the contrary, the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent shall each endeavor to promptly provide (i) upon request of the other party, information and particulars as to the amounts owing by the Company in respect of the Super Senior Obligations and Subordinated Lien Obligations, respectively, and (ii) to the other party, copies of any written waivers of any events of default granted pursuant to their respective loan documents and copies of all amendments to their respective loan documents; provided, however, that the failure to provide such information or copies of such instruments shall not affect the validity or enforceability of such instruments or give rise to any claim against such Person.

8.5 Subrogation. With respect to the value of any payments or distributions in cash, property or other assets that any of the Subordinated Lien

Claimholders or the Subordinated Lien Collateral Agent pays over to the Super Senior Collateral Agent or the Super Senior Claimholders under the terms of this Agreement, the Subordinated Lien Claimholders and the Subordinated Lien Collateral Agent shall be subrogated to the rights of the Super Senior Collateral Agent and the Super Senior Claimholders; provided that the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby agrees not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Super Senior Obligations has occurred. The Company acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders that are paid over to the Super Senior Collateral Agent or the Super Senior Claimholders pursuant to this Agreement shall not reduce any of the Subordinated Lien Obligations. Following the Discharge of Super Senior Obligations, the Super Senior Collateral Agent agrees to execute such documents, agreements, and instruments as the Subordinated Lien Collateral Agent may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Super Senior Obligations resulting from payments to the Super Senior Collateral Agent by such Person.

8.6 [Reserved].

8.7 Submission to Jurisdiction; Certain Waivers. Each of the Company, each Grantor and each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Collateral Documents (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court;

(c) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law and that nothing in this Agreement or any other Super Senior Securities Purchase Document shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Super Senior Securities Purchase Document or Subordinated Lien Loan Document against such Grantor or any of its assets in the courts of any jurisdiction;

(d) waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any

action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section 8.7 (and irrevocably waives to the fullest extent permitted by applicable law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(e) consents to service of process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the applicable party at its address provided in accordance with Section 8.8 (and agrees that nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law);

(f) agrees that service as provided in clause (e) above is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and

(g) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

8.8 WAIVER OF JURY TRIAL. **EACH PARTY HERETO, THE COMPANY AND EACH OTHER GRANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL**.

8.9 Notices. All notices to the Subordinated Lien Claimholders and the Super Senior Claimholders permitted or required under this Agreement shall also be sent to the Subordinated Lien Collateral Agent and the Super Senior Collateral Agent,

respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by facsimile or electronic mail or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile, telex, or electronic mail or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto or in the Joinder Agreement pursuant to which it becomes a party hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.10 Further Assurances. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder under the Super Senior Securities Purchase Documents, and the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder under the Subordinated Lien Loan Documents, and the Company and each other Grantor, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

8.11 APPLICABLE LAW. **THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS IN THE COLLATERAL).**

8.12 Binding on Successors and Assigns. This Agreement shall be binding upon the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and their respective successors and assigns from time to time; provided, however, Super Senior Collateral Agent and the Super Senior Claimholders agree that no assignment shall be made to any Grantor or any affiliate of any Grantor (other than an affiliate that is a wholly owned subsidiary of a Super Senior Claimholder (or a parent company thereof) as of the date hereof). If either of the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent resigns or is replaced pursuant to the Super Senior Securities Agreement or the Subordinated Lien Credit Agreement, as applicable, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement. No provision of this Agreement will inure to the

benefit of a trustee, debtor-in-possession, creditor trust or other representative of an estate or creditor of any Grantor, including where any such trustee, debtor-in-possession, creditor trust or other representative of an estate is the beneficiary of a Lien securing Collateral by virtue of the avoidance of such Lien in an Insolvency or Liquidation Proceeding.

8.13 Section Headings. The section headings and table of contents used in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose, be given any substantive effect, affect the construction hereof or be taken into consideration in the interpretation hereof.

8.14 Counterparts. This Agreement may be executed (including electronic execution) by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

8.15 Authorization. By its signature, each Person executing this Agreement, on behalf of Person but not in his or her personal capacity as a signatory, represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.16 No Third Party Beneficiaries/ Provisions Solely to Define Relative Rights. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the Collateral Agents, the Super Senior Claimholders and the Subordinated Lien Claimholders and their respective successors and assigns from time to time. The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Super Senior Collateral Agent and the Super Senior Claimholders on the one hand and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders on the other hand. Nothing herein shall be construed to limit the relative rights and obligations as among the Super Senior Claimholders or as among the Subordinated Lien Claimholders. Other than as set forth in Section 8.3, none of the Company, any other Grantor or any other creditor thereof shall have any rights hereunder and neither the Company, nor any Grantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor, which are absolute and unconditional, to pay the Super Senior Obligations and the Subordinated Lien Obligations as and when the same shall become due and payable in accordance with their terms.

8.17 No Indirect Actions. Unless otherwise expressly stated, if a party may not take an action under this Agreement, then it may not take that action indirectly, or support any other Person in taking that action directly or indirectly. "Taking an action

indirectly" means taking an action that is not expressly prohibited for the party but is intended to have substantially the same effects as the prohibited action.

8.18 Additional Grantors. Each Grantor agrees that it shall ensure that each of its Subsidiaries that is or is to become a party to any Super Senior Securities Purchase Document or Subordinated Lien Loan Document shall either execute this Agreement on the date hereof or shall confirm that it is a Grantor hereunder pursuant to a Joinder Agreement substantially in the form attached hereto as Exhibit A that is executed and delivered by such Subsidiary prior to or concurrently with its execution and delivery of such Super Senior Securities Purchase Document or such Subordinated Lien Loan Document.

8.19 Equity Rights. Nothing in this Agreement shall prevent any of the following actions: (a) the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from exercising any of the Equity Rights; (b) the Company from paying, or the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from receiving, any dividends, distributions or other payments on account of its Equity Rights or any other Equity Rights Proceeds; or (c) the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from exercising any rights under any organization documents of any Grantors or any subscription agreement, registration rights agreement, Equity Interest or other agreement or security of any Grantor related to the Equity Rights (excluding, for the avoidance of doubt, any rights under any such agreement or security relating to Liens on the Collateral).

8.20 Acknowledgment of Other Agreements. All rights, interests, agreements and obligations of the Super Senior Collateral Agent and the Super Senior Claimholders and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, respectively, hereunder are subject to (a) that certain Intercreditor Agreement, dated as of September 18, 2023, by and among ATW Special Situations II LLC, as succeeded by Acquiom Agency Services LLC, in its capacity as First Lien Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Second Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors, (b) that certain Intercreditor Agreement, dated as of January 30, 2024, by and among ATW Special Situations II LLC, as succeeded by ATW Special Situations Management LLC, in its capacity as First Lien Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors, (c) that certain Pari Passu Intercreditor Agreement, dated as of January 30, 2024, by and among ATW Special Situations Management LLC, in its capacity as Credit Agreement Collateral Agent (as defined therein), Acquiom Agency Services LLC, in its capacity as the 2023

First Lien Agent (as defined therein), and the Grantors, (d) that certain Intercreditor Agreement, dated as of even date herewith, by and among ATW Special Situations Management LLC, in its capacity as Super Senior Collateral Agent (as defined therein), and ATW Special Situations Management LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors and (e) that certain Intercreditor Agreement, dated as of even date herewith, by and among ATW Special Situations Management LLC, in its capacity as Super Senior Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first written above.

Super Senior Collateral Agent:

ATW SPECIAL SITUATIONS MANAGEMENT LLC

By: ____
Name:
Title:

Notice Information:

1 Pennsylvania Plaza, Suite 4810
New York, N.Y. 10119
Attention: Alex LaViolette, Isaac Barber,
Antonio Ruiz-Gimenez
Email: notice@atwpartners.com,
operations@atwpartners.com

Subordinated Lien Collateral Agent:

ACQUIOM AGENCY SERVICES LLC

By: ____
Name:
Title:

Notice Information:

950 17th Street, Suite 1400
Denver, CO 80202
Attn: Karyn Kesselring, Director
Email: kkesselring@srsacquiom.com
Loanagency@srsacquiom.com

Acknowledged and Agreed to by:

NAUTICUS ROBOTICS, INC.

By:
Name:
Title:

NAUTICUS ROBOTICS HOLDINGS, INC.

By:
Name:
Title:

NAUTIWORKS LLC

By:
Name:
Title:

NAUTICUS ROBOTICS FLEET LLC

By:
Name:
Title:

NAUTICUS ROBOTICS USA LLC

By:
Name:
Title:

Notice Information:

17146 Feathercraft Lane, Suite 450
Webster, TX 77598

Attention: Mr. John Symington
Email: jsymington@nauticusrobotics.com

[FORM OF] GRANTOR JOINDER AGREEMENT NO. [ ] dated as of [ ], 20[ ] (the "**Grantor Joinder Agreement**") to the INTERCREDITOR AGREEMENT dated as of November 4, 2024 (the "**Intercreditor Agreement**"), among ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Super Senior Collateral Agent, ACQUIOM AGENCY SERVICES LLC, as Subordinated Lien Collateral Agent, and acknowledged and agreed to by NAUTICUS ROBOTICS, INC., a Delaware corporation (the "**Company**"), and certain subsidiaries of the Company (each a "**Grantor**").

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

The undersigned, [_____], a [_____], (the "New Grantor") wishes to acknowledge and agree to the Intercreditor Agreement and become a party thereto to the limited extent contemplated by Section 8.16 thereof and to acquire and undertake the rights and obligations of a Grantor thereunder.

Accordingly, the New Grantor agrees as follows for the benefit of the Collateral Agents and the Claimholders:

Section 1. Accession to the Intercreditor Agreement. The New Grantor (a) acknowledges and agrees to, and becomes a party to the Intercreditor Agreement as a Grantor to the limited extent contemplated by Section 8.16 thereof, (b) agrees to all the terms and provisions of the Intercreditor Agreement and (c) shall have all the rights and obligations of a Grantor under the Intercreditor Agreement. This Grantor Joinder Agreement supplements the Intercreditor Agreement and is being executed and delivered by the New Grantor pursuant to Section 8.18 of the Intercreditor Agreement.

Section 2. Representations, Warranties and Acknowledgement of the New Grantor. The New Grantor represents and warrants to each Collateral Agent and to the Claimholders that (a) it has full power and authority to enter into this Grantor Joinder Agreement, in its capacity as Grantor and (b) this Grantor Joinder Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Grantor Joinder Agreement.

Section 3. Counterparts. This Grantor Joinder Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Grantor Joinder Agreement or any document or instrument delivered in connection herewith by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Grantor Joinder Agreement or such other document or instrument, as applicable.

Section 4. Section Headings. Section heading used in this Grantor Joinder Agreement are for convenience of reference only and are not to affect the construction hereof or to be taken in consideration in the interpretation hereof.

Section 5. Benefit of Agreement. The agreements set forth herein or undertaken pursuant hereto are for the benefit of, and may be enforced by, any party to the Intercreditor Agreement subject to any limitations set forth in the Intercreditor Agreement with respect to the Grantors.

Section 6. Governing Law. THIS GRANTOR JOINDER AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 7. Severability. In case any one or more of the provisions contained in this Grantor Joinder Agreement should be held invalid, illegal or unenforceable in any respect, none of the parties hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 8. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 8.8 of the Intercreditor Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature hereto, which information supplements Section 8.8 of the Intercreditor Agreement.

Section 9. Miscellaneous. The provisions of Section 8 of the Intercreditor Agreement will apply with like effect to this Grantor Joinder Agreement.

Exhibit A

Error! Missing test condition.

EXHIBIT 10.9

INTERCREDITOR AGREEMENT

Dated as of November 4, 2024

among

ATW SPECIAL SITUATIONS MANAGEMENT LLC,
as Super Senior Collateral Agent,

and

ATW SPECIAL SITUATIONS I LLC,
as Subordinated Lien Collateral Agent,

and acknowledged and agreed to by

NAUTICUS ROBOTICS, INC.,
as the Company,

and the other Grantors referred to herein

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INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this **"Agreement**") is dated as of November 4, 2024, and entered into by and among **ATW SPECIAL SITUATIONS MANAGEMENT LLC**, as collateral agent for the holders of the Super Senior Obligations (as defined below) (in such capacity and together with its successors from time to time, the "**Super Senior Collateral Agent**"), and **ATW SPECIAL SITUATIONS I LLC** , as agent for the holders of the Subordinated Lien Obligations (as defined below) (in such capacity and together with its successors from time to time, the "**Subordinated Lien Collateral Agent**"), and acknowledged and agreed to by **NAUTICUS ROBOTICS, INC.**, a Delaware corporation (the "**Company**"), and the other Grantors (as defined below) party hereto from time to time. Capitalized terms used in this Agreement have the meanings assigned to them in Section 1 below.

RECITALS

The Company, the lenders party thereto and the Super Senior Collateral Agent have entered into the Securities Purchase Agreement dated as of even date herewith (as amended, modified, supplemented, or amended and restated from time to time in accordance with the terms of this Agreement, "**Super Senior Securities Agreement**");

The Company, the lenders party thereto and Subordinated Lien Collateral Agent entered into that certain Securities Purchase Agreement, dated as of December 16, 2021 (as amended, modified, supplemented, exchanged or amended and restated from time to time in accordance with the terms of this Agreement, the "**Subordinated Lien Credit Agreement**");

Pursuant to (i) the Super Senior Securities Agreement, the Company has caused, and has agreed to cause, certain of the Company's current and future Subsidiaries to guarantee the Super Senior Obligations (as defined below) pursuant to the Subsidiary Guarantee dated as of the date hereof (as amended, modified, supplemented or amended and restated from time to time, the **"Super Senior Guarantee"**) and (ii) the Subordinated Lien Credit Agreement, the Company has caused certain of the Company's current and future Subsidiaries to guarantee the Subordinated Lien Obligations (as defined below) pursuant to the Subsidiary Guarantee dated as of September 9, 2022 (as amended, modified, supplemented or amended and restated from time to time, the **"Subordinated Lien Guarantee"**);

The obligations of the Company and the other Grantors under the Super Senior Securities Agreement and the obligations under the Super Senior Guarantee of the Company the Company's Subsidiaries party thereto will be secured on a first-priority basis by liens on substantially all the assets of the Company and such Subsidiaries (such current and future Subsidiaries of the Company providing a guaranty thereof, the

"Guarantor Subsidiaries"), pursuant to the terms of the Super Senior Collateral Documents (as defined below);

The obligations of the Company under the Subordinated Lien Credit Agreement and the obligations of the Company and the Guarantor Subsidiaries under the Subordinated Lien Guarantee will be secured on a second-priority basis by liens on substantially all the assets of the Company and the Guarantor Subsidiaries, pursuant to the terms of the Subordinated Lien Collateral Documents (as defined below);

The Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents (each, as defined below) provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral (as defined below); and

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, each of the Super Senior Collateral Agent (on behalf of each Super Senior Claimholder (as defined below)) and the Subordinated Lien Collateral Agent (on behalf of each Subordinated Lien Claimholder (as defined below)), intending to be legally bound, hereby agrees as follows:

AGREEMENT

Section 1. Definitions.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"**Agreement**" has the meaning set forth in the Preamble to this Agreement.

"**Bankruptcy Case**" means a case under the Bankruptcy Code or any other Bankruptcy Law.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Law**" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"**Claimholders**" means the Super Senior Claimholders or the Subordinated Lien Claimholders, as the context may require.

"**Collateral**" means, at any time, all of the assets and property of any Grantor, whether real, personal or mixed, constituting Super Senior Collateral and Subordinated Lien Collateral.

"**Collateral Agent**" means any Super Senior Collateral Agent and/or any Subordinated Lien Collateral Agent, as the context may require.

"**Collateral Documents**" means the Super Senior Collateral Documents and the Subordinated Lien Collateral Documents.

"**Company**" has the meaning set forth in the Preamble to this Agreement.

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

"**Declined Liens**" has the meaning set forth in Section 2.3.

"**DIP Financing**" has the meaning set forth in Section 6.3.

"**Discharge of Super Senior Obligations**" means, except to the extent otherwise expressly provided in Section 5.6, each of the following has occurred:

(a) payment in full in cash of the principal of and accrued and unpaid interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Super Senior Documents and constituting Super Senior Obligations;

(b) payment in full in cash of all other Super Senior Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any contingent indemnification or reimbursement obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(c) termination or expiration of all commitments, if any, to extend credit that would constitute Super Senior Obligations.

"**Discharge of Subordinated Lien Obligations**" means each of the following has occurred:

(d) payment in full in cash of the principal of and accrued and unpaid interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Subordinated Lien Loan Documents and constituting Subordinated Lien Obligations;

(e) payment in full in cash of all other Subordinated Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any contingent indemnification or reimbursement obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(f) termination or expiration of all commitments, if any, to extend credit that would constitute Subordinated Lien Obligations.

"**Disposition**" has the meaning set forth in Section 5.1(b).

"**Enforcement Action**" means any action to:

(g) foreclose, execute, levy, or collect on, take possession or control of, sell or otherwise realize upon (judicially or non-judicially), or lease, license, or otherwise dispose of (whether publicly or privately), Collateral, or otherwise exercise or enforce remedial rights with respect to Collateral under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents (including by way of setoff, recoupment, notification of a public or private sale or other disposition pursuant to the UCC or other applicable law, notification to account debtors, notification to depositary banks under deposit account control agreements, or exercise of rights under landlord consents, if applicable);

(h) solicit bids from third Persons, approve bid procedures for any proposed disposition of Collateral, to conduct the liquidation or disposition of Collateral or engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third Persons for the purposes of marketing, promoting, and selling Collateral, in each case under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents;

(i) receive a transfer of Collateral in satisfaction of Indebtedness under the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents or any other Obligation secured thereby; or

(j) otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the Collateral at law, in equity, or pursuant to the Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of Equity Interests comprising Collateral);

provided, *however*, *that*, in all events, notwithstanding anything contained herein to the contrary, the exercise by the Super Senior Collateral Agent, any Super Senior Claimholder, the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholder or any affiliate of any of the foregoing of any rights with respect to any

equity, equity component or conversion feature under the Super Senior Securities Agreement, the Super Senior Securities Purchase Documents, the Subordinated Lien Credit Agreement and Subordinated Lien Loan Documents, including, without limitation, any conversion, redemption or exchange (in whole or in part) of the Super Senior Debt or the Subordinated Lien Debt into Equity Interests, any amendment, waiver or modification to any of the terms and/or conditions of any equity, equity component, exchange or conversion feature under the Super Senior Securities Agreement, the Super Senior Securities Purchase Documents, the Subordinated Lien Credit Agreement and/or Subordinated Lien Loan Documents, as applicable and/or any subscription agreement, registration rights agreement and/or any other related document, agreement and/or Equity Interest, the exercise of any term or condition of any Equity Interest (including, without limitation, any warrants, options or ratchets), the exercise of any rights under any subscription agreement, registration rights agreement, and/or any other related document, agreement and/or Equity Interest, and/or organizational documents (including any shareholder agreements) of any Grantors, in each case, with respect to any Equity Interest of any Grantor (whether or not outstanding as of the date hereof), or any sale or resale of any Equity Interests of the Grantors (collectively referred to as "**Equity Rights**"), shall not constitute an Enforcement Action by the Super Senior Collateral Agent, any Super Senior Claimholder, the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, and neither such Equity Interests, nor any Equity Interest Proceeds with respect thereto, shall be subject to any subordination or other restrictive provisions provided in this Agreement. Notwithstanding the foregoing and for the avoidance of doubt, the rights of the Subordinated Lien Collateral Agent and any Subordinated Lien Claimholders to cash payments of Subordinated Lien Obligations pursuant to the Subordinated Lien Loan Documents, solely to the extent settled in cash (and not settled, converted or exchanged in equity or equity-linked securities) is subject to the terms of this Agreement.

"**Enforcement Notice**" has the meaning set forth in Section 3.1(h).

"**Equity Interests**" means any capital stock or other security of the any Person or any of its subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of such Person or any of its subsidiaries, including, without limitation, common equity, preferred equity, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to, directly or indirectly, purchase or acquire any such Equity Interest.

"**Equity Interest Proceeds**" means any cash or other asset proceeds received by any Person from the sale or resale of any Equity Interest (or any capital stock issued or issuable upon conversion, exercise or exchange of any Equity Interest, as applicable).

"**Equity Rights**" has the meaning given to such term in the definition of Enforcement Action.

"**Excess Super Senior Obligations**" means any Super Senior Obligations that would constitute Super Senior Obligations if not for the Super Senior Cap Amount together with interest, fees and expenses to the extent directly related to such Super Senior Obligations that are in excess of the Super Senior Cap Amount.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Grantors**" means the Company, each of the other Guarantor Subsidiaries and each other Person that has or may from time to time hereafter execute and deliver any Super Senior Collateral Document or Subordinated Lien Collateral Document as a "grantor" or "pledgor" (or the equivalent thereof) to secure any Super Senior Obligations or Subordinated Lien Obligations, as the context may require.

"**Guarantor Subsidiaries**" has the meaning set forth in the Recitals to this Agreement.

"**Indebtedness**" means and includes all indebtedness for borrowed money.

"**Insolvency or Liquidation Proceeding**" means:

(k) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor;

(l) any other voluntary or involuntary insolvency, reorganization or Bankruptcy Case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of their respective assets;

(m) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(n) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

"**Joinder Agreement**" means a supplement to this Agreement in the form of Exhibit A hereto required to be executed pursuant to Section 8.18 hereof.

"**Lien**" means any lien (including, judgment liens and liens arising by operation of law), mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof), UCC financing statement or other preferential arrangement having the practical effect of any of the foregoing, including any right of set-off or recoupment.

"**New Agent**" has the meaning set forth in Section 5.6.

"**New Super Senior Lien Debt Notice**" has the meaning set forth in Section 5.6.

"**Obligations**" means the Super Senior Obligations and the Subordinated Lien Obligations.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Pledged Collateral**" has the meaning set forth in Section 5.5.

"**Post-Petition Interest**" means interest, fees, expenses and other charges that pursuant to the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents, as applicable, continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

"**Purchase Price**" has the meaning set forth in Section 5.7.

"**Recovery**" has the meaning set forth in Section 6.5.

"**Standstill Period**" has the meaning set forth in Section 3.1.

"**Subordinated Lien Claimholders**" means, at any relevant time, the holders of Subordinated Lien Obligations at that time, including the Subordinated Lien Collateral Agent under the Subordinated Lien Loan Documents.

"**Subordinated Lien Collateral**" means all of the assets and property of the Company or any other Grantor, whether real, personal or mixed, in which the holders of Subordinated Lien Obligations (or the Subordinated Lien Collateral Agent) hold, purport to hold or are required to hold, a security interest at such time, including any property subject to Liens granted pursuant to Section 6 to secure both Super Senior Obligations and Subordinated Lien Obligations, including any property or assets subject to replacement Liens or adequate protection Liens in favor of any Subordinated Lien Claimholder.

"**Subordinated Lien Collateral Agent**" has the meaning set forth in the Preamble of this Agreement.

"**Subordinated Lien Collateral Documents**" means the any agreement, document or instrument pursuant to which a Lien is granted securing any Subordinated Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"**Subordinated Lien Credit Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**Subordinated Lien Debt**" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Subordinated Lien Loan Documents.

"**Subordinated Lien Guarantee**" has the meaning set forth in the Recitals to this Agreement.

"**Subordinated Lien Loan Documents**" means the Subordinated Lien Credit Agreement and the Transaction Documents (as defined in the Subordinated Lien Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Subordinated Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any Subordinated Lien Obligations, including any intercreditor or joinder agreement among holders of Subordinated Lien Obligations to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time in accordance with the provisions of this Agreement.

"**Subordinated Lien Obligations**" means all obligations outstanding under, and all other obligations in respect of, the Subordinated Lien Credit Agreement and the other Subordinated Lien Loan Documents. "Subordinated Lien Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Subordinated Lien Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"**Subsidiary**" means, with respect to any Person (the "parent"), any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person or, in the case of a partnership, constituting a majority of the outstanding voting general partnership interests of such Person (in each case irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by the parent

or one or more Subsidiaries of the parent or by the parent and one or more of the Subsidiaries of the parent.

"**Super Senior Buyers**" means the "Buyers" under and as defined in the Super Senior Securities Purchase Documents.

"**Super Senior Cap Amount**" means, at any time and in respect of Super Senior Obligations, a principal amount equal to the sum of (i) $21,150,000, *plus* (ii) any accrued pay-in-kind interest on such principal amount, *minus* (iii) the amount of any repayments and commitment reductions with respect to the Super Senior Obligations.

"**Super Senior Claimholders**" means, at any relevant time, the holders of Super Senior Obligations at that time, including the Super Senior Buyers and the agents under the Super Senior Securities Purchase Documents.

"**Super Senior Collateral**" means all of the assets and property of the Company or any other Grantor, whether real, personal or mixed, in which the holders of Super Senior Obligations (or the Super Senior Collateral Agent) hold, purport to hold or are required to hold, a security interest at such time (or are deemed pursuant to Section 2 to hold a security interest), including any property subject to Liens granted pursuant to Section 6 to secure the Super Senior Obligations, including any property or assets subject to replacement Liens or adequate protection Liens in favor of any Super Senior Claimholder.

"**Super Senior Collateral Agent**" has the meaning set forth in the Preamble to this Agreement.

"**Super Senior Collateral Documents**" means the Security Documents (as defined in the Super Senior Securities Agreement) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Super Senior Obligations or under which rights or remedies with respect to such Liens are governed.

"**Super Senior Debt**" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Super Senior Securities Purchase Documents.

"**Super Senior Guarantee**" has the meaning set forth in the Recitals to this Agreement.

"**Super Senior Obligations**" means, subject to clause (c) hereof, the following:

(a) all "Obligations" (as such term is defined in the Super Senior Collateral Documents) and other obligations outstanding under, and all other obligations in respect of, the Super Senior Securities Agreement and the other Super Senior Securities Purchase Documents;

(b) to the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the Super Senior Securities Purchase Documents are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the Super Senior Claimholders and the Subordinated Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "Super Senior Obligations"; and

(c) notwithstanding the foregoing, if the sum of principal portion of the Super Senior Obligations, is in excess of the Super Senior Cap Amount, then only that principal portion of the Super Senior Obligations equal to the Super Senior Cap Amount shall be included in Super Senior Obligations, and interest, fees, reimbursement obligations and other amounts with respect to such Indebtedness. The principal portion of Super Senior Obligations in excess of the Super Senior Cap Amount and all interest, fees and other Obligations related to such excess shall constitute Excess Super Senior Obligations under this Agreement.

"**Super Senior Securities Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**Super Senior Securities Purchase Documents**" means the Super Senior Securities Agreement and the Transaction Documents (as defined in the Super Senior Securities Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Super Senior Obligation, and any other document or instrument executed or delivered at any time in connection with any Super Senior Obligations, including any intercreditor or joinder agreement among holders of Super Senior Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time in accordance with the provisions of this Agreement.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

1.2 Terms Generally. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise:

(a) any definition of or reference herein to any agreement, instrument or other document, shall be construed as referring to such agreement, instrument or other document, as amended, restated, amended and restated, supplemented or otherwise modified from time to time and any reference herein

to any statute or regulations shall include any amendment, renewal, extension or replacement thereof;

(b) any reference herein to any Person shall be construed to include such Person's successors and assigns from time to time;

(c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(d) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 2. Priorities.

2.1 Relative Priorities. Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the Subordinated Lien Obligations granted on the Collateral or of any Liens securing the Super Senior Obligations granted on the Collateral and notwithstanding any provision of the UCC or any other applicable law or the Subordinated Lien Loan Documents or any defect or deficiencies in, or failure to perfect or lapse in perfection of, or avoidance as a fraudulent conveyance or otherwise of, the Liens securing the Super Senior Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby agrees that:

(a) any Lien on the Collateral securing any Super Senior Obligations now or hereafter held by or on behalf of the Super Senior Collateral Agent or any Super Senior Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any Subordinated Lien Obligations; and

(b) any Lien on the Collateral securing any Subordinated Lien Obligations now or hereafter held by or on behalf of the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholders or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any Super Senior Obligations.

2.2 Prohibition on Contesting Liens. Each of the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder,

and the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, agrees that it will not (and hereby waives any right to) directly or indirectly contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection, extent or enforceability of a Lien held, or purported to be held, by or on behalf of any of the Super Senior Claimholders in the Super Senior Collateral or by or on behalf of any of the Subordinated Lien Claimholders in the Subordinated Lien Collateral, as the case may be, or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the Super Senior Collateral Agent or any other Super Senior Claimholder or the Subordinated Lien Collateral Agent or any other Subordinated Lien Claimholder to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the Super Senior Obligations as provided in Sections 2.1 and 3.1.

2.3 No New Liens. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the parties hereto agree that the Company shall not, and shall not permit any other Grantor to:

(a) grant or permit any additional Liens on any asset or property to secure any Subordinated Lien Obligation unless it has granted or concurrently grants a Lien on such asset or property to secure the Super Senior Obligations, the parties hereto agreeing that any such Lien shall be subject to Section 2.1 hereof; provided that this provision will not be violated with respect to any Super Senior Obligations if the Super Senior Collateral Agent is given a reasonable opportunity to accept a Lien on any asset or property and either the Company or the Super Senior Collateral Agent states in writing that the Super Senior Securities Purchase Documents prohibit the Super Senior Collateral Agent from accepting a Lien on such asset or property, or the Super Senior Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined lien, a "**Super Senior Declined Lien**").

(b) grant or permit any additional Liens on any asset or property to secure any Super Senior Obligations unless it has granted or concurrently grants a Lien on such asset or property to secure the Subordinated Lien Obligations; provided that this provision will not be violated with respect to any Subordinated Lien Obligations if the Subordinated Lien Collateral Agent is given a reasonable opportunity to accept a Lien on any asset or property and the Subordinated Lien Collateral Agent states in writing that the Subordinated Lien Loan Documents prohibit the Subordinated Lien Collateral Agent from accepting a Lien on such asset or property, or the Subordinated Lien Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined lien, a "**Subordinated Lien Declined Lien**" and, together with the Super Senior Declined Liens, the "**Declined Liens**").

If any Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder shall hold any Lien on any assets or property of any Grantor securing any Subordinated Lien Obligations that are not also subject to the first-priority Liens, other than any Declined Liens, securing all Super Senior Obligations under the Super Senior Collateral Documents, such Subordinated Lien Collateral Agent or Subordinated Lien Claimholder shall notify the Super Senior Collateral Agent promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, other than any such Lien that would constitute a Declined Lien, on such assets or property to the Super Senior Collateral Agent as security for the Super Senior Obligations, such Subordinated Lien Collateral Agent and Subordinated Lien Claimholders shall be deemed to hold and have held such Lien for the benefit of the Super Senior Collateral Agent and the other Super Senior Claimholders, other than any Super Senior Claimholders whose Super Senior Securities Purchase Documents prohibit them from taking such Liens, as security for the Super Senior Obligations. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to any Super Senior Collateral Agent and/or the Super Senior Claimholders, the Subordinated Lien Collateral Agent, on behalf of each Subordinated Lien Claimholder, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2. If the Super Senior Collateral Agent, any Super Senior Buyer or any Super Senior Claimholder shall hold any Lien on any assets or property of any Grantor securing any Super Senior Obligations that are not also subject to the second-priority Liens, other than any Declined Liens, securing all Subordinated Lien Obligations under the Subordinated Lien Collateral Documents, the Super Senior Collateral Agent, such Super Senior Buyer or such Super Senior Claimholder (i) shall notify the Subordinated Lien Collateral Agent promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, other than any such Lien that would constitute a Declined Lien, on such assets or property to the Subordinated Lien Collateral Agent as security for the Subordinated Lien Obligations, the Super Senior Collateral Agent, such Super Senior Buyer and Super Senior Claimholders shall be deemed to hold and have held such Lien for the benefit of the Subordinated Lien Collateral Agent and the other Subordinated Lien Claimholders. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to any of the Subordinated Lien Collateral Agent and/or the Subordinated Lien Claimholders, the Super Senior Collateral Agent, on behalf of each Super Senior Claimholder, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4 Similar Liens and Agreements. The parties hereto agree that, subject to the immediately preceding paragraph and Declined Liens, it is their intention that the Super Senior Collateral and the Subordinated Lien Collateral be identical. In furtherance of the foregoing and of Section 8.10, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Super Senior Collateral and the Subordinated Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents; and

(b) that the documents and agreements creating or evidencing the Super Senior Collateral and the Subordinated Lien Collateral and guarantees for the Super Senior Obligations and the Subordinated Lien Obligations, subject to Section 2.3, shall be in all material respects the same forms of documents other than with respect to provisions (x) to reflect the first lien and the subordinated junior lien nature of the Obligations thereunder and (y) relating to the Equity Rights.

2.5 Perfection of Liens. Except for the arrangements contemplated by Section 5.5, neither the Super Senior Collateral Agent or the Super Senior Claimholders, on one hand, nor the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders, on the other hand, shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Collateral for the benefit of the other. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the Super Senior Claimholders on the one hand and the Subordinated Lien Claimholders on the other hand and such provisions shall not impose on the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Collateral which would conflict with prior-perfected claims therein in favor of any other Person or any order or decree of any court or Governmental Authority or any applicable law.

2.6 No Claim Subordination. The subordination of Liens securing Subordinated Lien Obligations to Liens securing Super Senior Obligations set forth in this Section 2 affects only the relative priority of those Liens, and does not subordinate the Subordinated Lien Obligations in right of payment to the Super Senior Obligations. Nothing in this Agreement will affect the entitlement of any Super Senior Claimholder or Subordinated Lien Claimholder to receive and retain required payments of interest, principal, and other amounts in respect of a Super Senior Obligation or Subordinated Lien Obligation (other than in connection with a turnover of proceeds of Collateral pursuant to this Agreement in connection with an Enforcement Action), as applicable, or exercise any rights with respect to any Equity Rights or any Equity Interests or Equity Interest Proceeds, as applicable.

Section 3. Enforcement.

3.1 Exercise of Remedies.

(a) Until the Discharge of Super Senior Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders:

(1) will not commence or maintain, or seek to commence or maintain, any Enforcement Action or otherwise exercise any rights or remedies with respect to the Collateral; provided that the Subordinated Lien Collateral Agent may commence an Enforcement Action or otherwise exercise any or all such rights or remedies after the passage of a period of at least 180 days has elapsed since the earlier of: (i) following the occurrence of any Event of Default under any Subordinated Lien Loan Document, the date on which the Super Senior Collateral Agent was given notice thereof in accordance with Section 8.9 and (ii) following the occurrence of the acceleration of the Subordinated Lien Obligations, the date on which the Super Senior Collateral Agent was given notice thereof in accordance with Section 8.9 (the **"Standstill Period"**); provided, further, that notwithstanding anything herein to the contrary, in no event shall the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder exercise any rights or remedies with respect to the Collateral so long as, notwithstanding the expiration of the Standstill Period, the Super Senior Collateral Agent or Super Senior Claimholders shall have commenced and be diligently pursuing an Enforcement Action with respect to all or any material portion of the Collateral or the Company or any other Grantor is then, and then only for so long as it remains, a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding (with prompt notice of such exercise to be given to the Subordinated Lien Collateral Agent);

(2) will not contest, protest, hinder, delay, or object to any foreclosure proceeding or action brought by the Super Senior Collateral Agent or any Super Senior Claimholder or any other exercise by the Super Senior Collateral Agent or any Super Senior Claimholder of any rights and remedies relating to the Collateral under the Super Senior Securities Purchase Documents or otherwise (including any Enforcement Action initiated by or supported by the Super Senior Collateral Agent or any Super Senior Claimholder);

(3) subject to their rights under clause (a)(1) above, will not object to the forbearance by the Super Senior Collateral Agent or the Super Senior Claimholders from bringing or pursuing any foreclosure

proceeding or action or any other exercise of any rights or remedies relating to the Collateral, in each case so long as any proceeds received by the Super Senior Collateral Agent in excess of those necessary to achieve a Discharge of Super Senior Obligations are distributed in accordance with Section 4.1 hereof and applicable law (to the extent such law is not inconsistent with the priority of distributions provided under Section 4.1 hereof);

(4) will not attempt to direct the Super Senior Collateral Agent or the Super Senior Claimholders to exercise any right, remedy or power with respect to the Collateral or exercise any consent to the exercise by the Super Senior Collateral Agent or the Super Senior Claimholders of any right, remedy or power with respect to the Collateral;

(5) will not institute any suit or assert in any suit, Insolvency or Liquidation Proceeding or other proceeding any claim against the Super Senior Collateral Agent or the Super Senior Claimholders seeking damages or other relief by way of specific performance, instructions or otherwise with respect to, and neither the Super Senior Collateral Agent or the Super Senior Claimholders will be liable for, any action taken or omitted to be taken by any of them with respect to the Collateral;

(6) will not take any action to cause or attempt to cause any Lien on the Collateral securing the Subordinated Lien Obligations to be senior to or pari passu with the Liens securing the Super Senior Obligations; and

(7) will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement or the enforceability of any Lien securing the Super Senior Obligations. The foregoing shall not be construed to prohibit the Subordinated Lien Collateral Agent from enforcing the provisions of this Agreement.

(b) [Reserved].

(c) Until the Discharge of Super Senior Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to Section 3.1(a)(1), the Super Senior Collateral Agent and the Super Senior Claimholders shall have the exclusive right to commence and maintain an Enforcement Action (except that Subordinated Lien Collateral Agent shall have the credit bid rights set forth in Section 3.1(d)(7)), and subject to Section 5.1, to make determinations regarding the release or dispositions with respect to the Collateral without any consultation with or the consent of the Subordinated Lien

Collateral Agent or any Subordinated Lien Claimholder; provided that any proceeds received by the Super Senior Collateral Agent in excess of those necessary to achieve a Discharge of Super Senior Obligations are distributed to the Subordinated Lien Collateral Agent in accordance with the relative priorities described herein. In commencing or maintaining any Enforcement Action or otherwise exercising rights and remedies with respect to the Collateral, the Super Senior Collateral Agent and the Super Senior Claimholders may enforce the provisions of the Super Senior Securities Purchase Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion in compliance with this Agreement and any applicable law and without consultation with the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder. Such exercise and enforcement shall include, subject to compliance with applicable laws, the rights of an agent appointed by them to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(d) Notwithstanding the foregoing, the Subordinated Lien Collateral Agent and any Subordinated Lien Claimholder may:

(1) vote, file proofs of claim and take any other action not in violation of the provisions of this Agreement with respect to the Subordinated Lien Obligations in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor;

(2) take any action (not adverse to the priority status of the Liens on the Collateral securing the Super Senior Obligations, or the rights of any Super Senior Collateral Agent or the Super Senior Claimholders to exercise remedies in respect thereof) in order to create, perfect, preserve or protect the validity, enforceability, perfection or priority (to the extent permitted by this Agreement) of its Lien on the Collateral and neither the Super Senior Collateral Agent nor the other Super Senior Claimholders will object to or contest, or otherwise support any other person in contesting or objecting to, any such action;

(3) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Subordinated Lien Claimholders, including any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;

(4) vote on any plan of reorganization, arrangement, compromise or liquidation, file any proof of claim, make other filings and

make any arguments and motions that are, in each case, not in violation of the terms of this Agreement, with respect to the Subordinated Lien Obligations and the Collateral; provided that no filing of any claim or vote, or pleading related to such claim or vote, to accept or reject a plan of reorganization, arrangement, compromise or liquidation, or any other document, agreement or proposal similar to the foregoing by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder may seek, or otherwise support, any relief that would alter the lien priorities provided herein or otherwise be inconsistent with or seek to contravene the provisions of this Agreement;

(5) exercise any of its rights or remedies with respect to the Collateral after the termination of the Standstill Period to the extent permitted by Section 3.1(a)(1); provided that in the event that the exercise any of rights or remedies are necessary at any time after the expiration of the Standstill Period, the Super Senior Claimholders and the Subordinated Lien Claimholders shall reasonably discuss the possibility of undertaking a coordinated enforcement process, provided that neither party shall be responsible for paying the other party's costs in connection with any such enforcement and, unless the Super Senior Claimholders and the Subordinated Lien Claimholders otherwise agree in writing, such discussions shall not reinstate or otherwise extend the Standstill Period or constitute a forbearance or waiver of the Subordinated Lien Claimholders' ability to exercise rights or remedies after the termination of the Standstill Period;

(6) exercise any right or remedy permitted under Section 3.1(f);

(7) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by the Super Senior Collateral Agent or any Super Senior Claimholder, or any sale of Collateral during an Insolvency or Liquidation Proceeding; provided that such bid may not include a "credit bid" in respect of any Subordinated Lien Obligations unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of Super Senior Obligations;

(8) take any action to the extent necessary to prevent the running of any applicable statute of limitation or similar restriction on claims;

(9) seek specific performance or other injunctive relief to compel the Company to comply with a non-payment obligation (including, without limitation, any Equity Rights) under any Subordinated

Lien Loan Document or other agreement or Equity Interest with respect to any Equity Rights;

(10) exercise any Equity Rights; and

(11) inspect or appraise the Collateral (and engage or retain investment bankers or appraisers for the sole purpose of appraising or valuing the Collateral) or receive information or reports concerning the Collateral.

The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off and recoupment) with respect to any Collateral in its capacity as a creditor, unless and until the Discharge of Super Senior Obligations has occurred, except as expressly permitted by Section 3.1(a)(1) (to the extent the Subordinated Lien Collateral Agent and Subordinated Lien Claimholders are permitted to retain the proceeds thereof in accordance with Section 4.2 of this Agreement).

(e) Subject to Sections 3.1(a) and (d) and Section 6.3(b):

(1) the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders will not take any action that would hinder any exercise of remedies under the Super Senior Securities Purchase Documents or is otherwise prohibited hereunder, including any sale, lease, exchange, transfer or other disposition of the Collateral by the Super Senior Collateral Agent, whether by foreclosure or otherwise, absent gross negligence, willful misconduct, bad faith, self-dealing or fraud on the part of Super Senior Collateral Agent or such Super Senior Claimholder, as the case may be;

(2) the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby waives any and all rights it or the Subordinated Lien Claimholders may have as a junior lien creditor to object to the manner in which the Super Senior Collateral Agent or the First Lien Claimholders seek to enforce or collect the Super Senior Obligations or the Liens securing the Super Senior Obligations granted in any of the Super Senior Collateral undertaken in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of the Super Senior Collateral Agent or Super Senior Claimholders is adverse to the interest of the Subordinated Lien Claimholders, in each case absent gross negligence, willful misconduct, bad faith, self-dealing or fraud on the part of the Super

Senior Collateral Agent or such Super Senior Claimholder, as the case may be; and

(3) the Subordinated Lien Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Subordinated Lien Collateral Documents or any other Subordinated Lien Loan Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Super Senior Collateral Agent or the Super Senior Claimholders with respect to the Collateral as set forth in this Agreement and the Super Senior Credit Documents.

(f) As long as such exercise is not contrary to the terms of this Agreement, and whether or not any Insolvency or Liquidation Proceeding has been commenced, the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders may exercise rights and remedies as unsecured creditors against the Company or any other Grantor that has guaranteed or granted Liens to secure the Subordinated Lien Obligations in accordance with the terms of the Subordinated Lien Loan Documents and applicable law (other than initiating or joining in an involuntary case or proceeding under any Insolvency or Liquidation Proceeding with respect to any Grantor); provided that in the event that any Subordinated Lien Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Subordinated Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Super Senior Obligations) in the same manner as the other Liens securing the Subordinated Lien Obligations are subject to this Agreement.

(g) Nothing in this Agreement shall prohibit or limit the payment to and the receipt by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders of the required payments of interest, principal and other amounts owed in respect of the Subordinated Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders of rights or remedies as a secured creditor (including set-off and recoupment) or enforcement in contravention of this Agreement of any Lien held by any of them or as a result of any other violation by any Subordinated Lien Claimholder of the express terms of this Agreement. Except as may be expressly provided herein to the contrary for the exclusive benefit of the Subordinated Lien Claimholders, nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the Super Senior Collateral Agent or the Super Senior Claimholders may have with respect to the Super Senior Collateral.

(h) The Super Senior Collateral Agent shall endeavor to deliver simultaneous written notice to the Subordinated Lien Collateral Agent of the

Super Senior Collateral Agent commencing any Enforcement Action ("**Enforcement Notice**").

3.2 Specific Performance. Each of the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent may demand specific performance of this Agreement. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder under the Super Senior Securities Purchase Documents, and the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder under the Subordinated Lien Loan Documents, hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Super Senior Collateral Agent or the Super Senior Claimholders or the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders, as the case may be. No provision of this Agreement shall constitute or be deemed to constitute a waiver by the Super Senior Collateral Agent for itself and on behalf of each other Super Senior Claimholder or the Subordinated Lien Collateral Agent for itself and on behalf of each other Subordinated Lien Claimholder of any right to seek damages from any Person in connection with any breach or alleged breach of this Agreement or their respective Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents, as the case may be.

Section 4. Payments.

4.1 Application of Proceeds. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received in connection with any Enforcement Action or other exercise of remedies by the Super Senior Collateral Agent or Super Senior Claimholders shall be applied by the Super Senior Collateral Agent to the Super Senior Obligations in such order as specified in the relevant Super Senior Securities Purchase Documents. Upon the Discharge of Super Senior Obligations, the Super Senior Collateral Agent shall deliver any remaining Collateral and proceeds thereof held by it in the same form as received, with any necessary endorsements (which endorsements shall be without recourse and without any representation or warranty) *first*, unless a Discharge of Subordinated Lien Obligations has already occurred, to the Subordinated Lien Collateral Agent to be applied by the Subordinated Lien Collateral Agent to the Subordinated Lien Obligations in such order as specified in the Subordinated Lien Loan Documents until a Discharge of Subordinated Lien Obligations, *second*, if there are any Excess Super Senior Obligations, to Super Senior Collateral Agent for application to the Excess Super Senior Obligations in such order as specified in the Super Senior Securities Purchase Documents until payment in full in cash of all such Excess Super Senior Obligations, and *third*, following any Discharge of Super Senior Obligations, Discharge of Subordinated Lien Obligations and payment in full in cash of any Excess Super Senior Obligations, to the Company or as a court of competent jurisdiction may otherwise direct. For the avoidance

of doubt, the parties hereto hereby acknowledge and agree that Equity Interest Proceeds with respect to Equity Rights are not proceeds from Collateral.

4.2 Payments Over. So long as the Discharge of Super Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders solely in connection with any Enforcement Action or other exercise of any right or remedy relating to the Collateral shall be applied in accordance with Section 4.1 hereof.

Section 5. Other Agreements.

5.1 Releases.

(a) If in connection with any Enforcement Action by the Super Senior Collateral Agent, in each case prior to the Discharge of Super Senior Obligations, the Super Senior Collateral Agent, for itself or on behalf of any other Super Senior Claimholder, releases any of its Liens on any part of the Collateral or, in connection with the sale or disposition of all or substantially all of the equity interests of any Guarantor Subsidiary, releases any Guarantor Subsidiary from its obligations under its guaranty of the Super Senior Obligations, then the Liens, if any, of the Subordinated Lien Collateral Agent, for itself or for the benefit of the Subordinated Lien Claimholders, on such Collateral, and the obligations of such Guarantor Subsidiary under its guaranty of the Subordinated Lien Obligations, shall be automatically released to the same extent as the Liens of the Super Senior Collateral Agent so long as the proceeds are applied in accordance with Section 4.1. If in connection with any Enforcement Action or other exercise of rights and remedies by the Super Senior Collateral Agent, in each case prior to the Discharge of Super Senior Obligations, the Equity Interests of any Person are foreclosed upon or otherwise disposed of and the Super Senior Collateral Agent releases its Lien on the property or assets of such Person then the Liens of Subordinated Lien Collateral Agent with respect to the property or assets of such Person will be automatically released to the same extent as the Liens of the Super Senior Collateral Agent. The Subordinated Lien Collateral Agent, for itself or on behalf of any such Subordinated Lien Claimholders, promptly shall execute and deliver to the Super Senior Collateral Agent or such Guarantor Subsidiary such termination statements, releases and other documents as the Super Senior Collateral Agent or such Guarantor Subsidiary may reasonably request to effectively confirm the foregoing releases.

(b) If in connection with any sale, lease, exchange, transfer or other disposition of any Collateral by any Grantor (collectively, a **"Disposition"**) permitted under the terms of the Super Senior Securities Purchase Documents and permitted under the terms of the Subordinated Lien Loan Documents (other than

in connection with an Enforcement Action of the Super Senior Collateral Agent's remedies in respect of the Collateral which shall be governed by Section 5.1(a) above), the Super Senior Collateral Agent, for itself or on behalf of any other Super Senior Claimholder, releases any of its Liens on any part of the Collateral, or releases any Guarantor Subsidiary from its obligations under its guaranty of the Super Senior Obligations, in each case other than in connection with, or following, the Discharge of Super Senior Obligations, then the Liens, if any, of the Subordinated Lien Collateral Agent, for itself or for the benefit of the Subordinated Lien Claimholders, on such Collateral, and the obligations of such Guarantor Subsidiary under its guaranty of the Subordinated Lien Obligations, shall be automatically, unconditionally and simultaneously released. The Subordinated Lien Collateral Agent, for itself or on behalf of any such Subordinated Lien Claimholders, promptly shall execute and deliver to the Super Senior Collateral Agent or such Guarantor Subsidiary such termination statements, releases and other documents as the Super Senior Collateral Agent or such Grantor may reasonably request to effectively confirm such release.

(c) Until the Discharge of Super Senior Obligations occurs and upon the occurrence and during the continuance of an Event of Default under the Super Senior Securities Agreement, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby irrevocably constitutes and appoints the Super Senior Collateral Agent and any officer or agent of the Super Senior Collateral Agent, 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 Subordinated Lien Collateral Agent or such holder or in the Super Senior Collateral Agent's own name, from time to time in the Super Senior Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release, solely to the extent the Subordinated Lien Collateral Agent failed to take such actions within a commercially reasonable period of time. This power is coupled with an interest and is irrevocable until the Discharge of Super Senior Obligations.

(d) Until the Discharge of Super Senior Obligations occurs, to the extent that the Super Senior Collateral Agent or the Super Senior Claimholders (i) have released any Lien on Collateral or any Guarantor Subsidiary from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtain any new Liens or additional guarantees from any Guarantor Subsidiary, then the Subordinated Lien Collateral Agent, for itself and for the Subordinated Lien Claimholders, shall automatically be deemed to have been granted a Lien on any such Collateral (except to the extent such Lien represents a Subordinated Lien Declined Lien with respect to the Indebtedness represented by the Subordinated Lien Collateral Agent), subject to the lien

subordination provisions of this Agreement, and the Subordinated Lien Collateral Agent shall be granted an additional guaranty, as the case may be, and each applicable Grantor shall execute any documentation reasonably requested by the Subordinated Lien Collateral Agent to evidence any such grant.

5.2 Insurance. Until the earlier to occur of the Discharge of Super Senior Obligations or the expiration of the Standstill Period, the Super Senior Collateral Agent and the Super Senior Claimholders shall have the sole and exclusive right, subject to the rights of the Grantors under the Super Senior Securities Purchase Documents, to adjust settlement for any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of Super Senior Obligations has occurred, and subject to the rights of the Grantors under the Super Senior Securities Purchase Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect of the Collateral shall be paid to the Super Senior Collateral Agent for the benefit of the Super Senior Claimholders pursuant to the terms of the Super Senior Securities Purchase Documents and thereafter, if a Discharge of Super Senior Obligations has occurred, and subject to the rights of the Grantors under the Subordinated Lien Loan Documents, to the Subordinated Lien Collateral Agent for the benefit of the Subordinated Lien Claimholders to the extent required under the Subordinated Lien Collateral Documents and then, if a Discharge of Subordinated Lien Obligations has occurred, to the payment of any Excess Super Senior Obligations and, thereafter, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. Until the Discharge of Super Senior Obligations has occurred, if the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, then it shall segregate and hold in trust and forthwith pay such proceeds over to the Super Senior Collateral Agent in accordance with the terms of Section 4.2.

5.3 Amendments to Super Senior Securities Purchase Documents and Subordinated Lien Loan Documents.

(a) The Super Senior Securities Purchase Documents may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms; provided that any such amendment, restatement, supplement or modification shall not, without the consent of the Subordinated Lien Collateral Agent (acting at the direction of a majority in interest of the Subordinated Lien Claimholders):

(1) increase the then-outstanding principal amount of the Super Senior Obligations in excess of the Super Senior Cap Amount;

(2) prohibit payments of principal and interest on the Subordinated Lien Obligations or any exercise of the Equity Rights in connection therewith;

(3) increase the interest rate or yield, including by increasing the "applicable margin" or similar component of the interest rate (other than any increase occurring because of fluctuations in underlying rate indices, pricing grids, the imposition of the default rate of interest in accordance with the terms of the Super Senior Securities Agreement, or changes in interest rates resulting from the replacement of any rate index/indices with an alternative rate index/indices), by imposing fees or premiums, or by modifying the method of computing interest, or modify or implement any letter of credit, commitment, facility, utilization, make-whole or similar fee so that the combined interest rate and fees are increased by more than 2.0% per annum in excess of the total yield on Indebtedness outstanding thereunder as in effect on the date hereof (excluding any (x) customary amendment or consent fees or (y) increases resulting from the accrual of interest at the default rate);

(4) shorten the scheduled maturity of the Super Senior Obligations or provide for any scheduled principal amortization other than those provided for in the Super Senior Securities Agreement as in effect on the date hereof, other than with respect to the exercise of any Equity Rights; or

(5) amend the Super Senior Securities Purchase Documents in any manner which would have the effect of contravening the terms of this Agreement.

(b) Without the prior written consent of a majority in interest of the Super Senior Buyers, no Subordinated Lien Loan Document may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time or entered into (1) unless such amendment, supplement, waiver or modification relates to the Subordinated Lien Equity Rights and (2) to the extent such amendment, restatement, supplement or modification, or the terms of any new Subordinated Lien Loan Document, would:

(1) increase the then-outstanding principal amount of the Subordinated Lien Obligations in excess of amount as of the date hereof plus (y) any accrued pay-in-kind interest on such principal amount;

(2) prohibit payments of principal and interest on the Super Senior Obligations (other than payment of principal thereof in excess of the Super Senior Cap Amount) or any exercise of the Equity Rights in connection therewith;

(3) increase the interest rate or yield, including by increasing the "applicable margin" or similar component of the interest rate (other than any increase occurring because of fluctuations in underlying rate indices, pricing grids, the imposition of the default rate of interest in accordance with the terms of the Super Senior Securities Agreement, or changes in interest rates resulting from the replacement of any rate index/indices with an alternative rate index/indices), by imposing fees or premiums, or by modifying the method of computing interest, or modify or implement any letter of credit, commitment, facility, utilization, make-whole or similar fee so that the combined interest rate and fees are increased by a rate that would result in such interest rate or yield being in excess of 2.0% per annum less than such interest rate or yield accruing with respect to the Super Senior Obligations (excluding any (a) customary amendment or consent fees or (b) increases resulting from the accrual of interest at the default rate), other than with respect to the exercise of any Equity Rights;

(1) shorten the scheduled maturity of the Subordinated Lien Obligations or provide for any scheduled principal amortization other than those provided for in the Subordinated Lien Credit Agreement as in effect on the date hereof, other than with respect to the exercise of any Equity Rights;

(4) amend the Subordinated Lien Loan Documents in any manner which would have the effect of contravening the terms of this Agreement.

5.4 Confirmation of Lien Subordination in Subordinated Lien Collateral Documents. The Company and each other Grantor agrees that, each Subordinated Lien Collateral Document executed and delivered after the date hereof shall include the following language (or language to similar effect approved by the Super Senior Collateral Agent):

"Notwithstanding anything herein to the contrary, the liens and security interests granted to the Subordinated Lien Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Subordinated Lien Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of November 4, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**2024 Super Senior Intercreditor Agreement**"), among ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Super Senior Collateral Agent, and ATW SPECIAL SITUATIONS I LLC, as Subordinated Lien Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor

Agreement and this Agreement, the terms of the 2024 Super Senior Intercreditor Agreement shall govern and control."

5.5 Gratuitous Bailee/Agent for Perfection.

(a) The Super Senior Collateral Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to or does perfect a Lien thereon under the UCC (such Collateral being the **"Pledged Collateral"**) as collateral agent for the Super Senior Claimholders and as gratuitous bailee for the Subordinated Lien Collateral Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the UCC) and any assignee thereof solely for the purpose of perfecting the security interest granted under the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents, respectively, subject to the terms and conditions of this Section 5.5. Solely with respect to any deposit accounts under the control (within the meaning of Section 9-104 of the UCC) of the Super Senior Collateral Agent, the Super Senior Collateral Agent agrees to also hold control over such deposit accounts as gratuitous agent for the Subordinated Lien Collateral Agent, subject to the terms and conditions of this Section 5.5.

(b) The Super Senior Collateral Agent shall have no obligation whatsoever to the Super Senior Claimholders, the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder to ensure that the Pledged Collateral is genuine or owned by any of the Grantors, to perfect the security interest of the Subordinated Lien Collateral Agent or other Subordinated Lien Claimholders or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.5. The duties or responsibilities of the Super Senior Collateral Agent under this Section 5.5 shall be limited solely to holding the Pledged Collateral as bailee (and with respect to deposit accounts, agent) in accordance with this Section 5.5 and delivering the Pledged Collateral upon a Discharge of Super Senior Obligations as provided in paragraph (d) below.

(c) None of the Super Senior Collateral Agent and the Super Senior Claimholders shall have by reason of the Super Senior Collateral Documents, the Subordinated Lien Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders hereby waive and release the Super Senior Collateral Agent and the Super Senior Claimholders from all claims and liabilities arising pursuant to the Super Senior Collateral Agent's role under this Section 5.5 as gratuitous bailee and gratuitous agent with respect to the Pledged Collateral. It is understood and agreed that the interests of the Super Senior Collateral Agent and the Super Senior Claimholders, on the one hand, and

the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders on the other hand, may differ and the Super Senior Collateral Agent and the Super Senior Claimholders shall be fully entitled to act in their own interest without taking into account the interests of the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders.

(d) Upon the Discharge of Super Senior Obligations under the Super Senior Securities Purchase Documents to which the Super Senior Collateral Agent is a party, the Super Senior Collateral Agent shall deliver the remaining Pledged Collateral in its possession (if any) as provided in Section 4.1. The Super Senior Collateral Agent further agrees to take all other action reasonably requested by the Subordinated Lien Collateral Agent at the expense of the Subordinated Lien Collateral Agent or the Company in connection with the Subordinated Lien Collateral Agent obtaining a first-priority interest in the Collateral.

5.6 When Discharge of Super Senior Obligations Deemed to Not Have Occurred. If, substantially contemporaneously with the Discharge of Super Senior Obligations, the Company or any other Grantor enters into any refinancing of the Super Senior Securities Agreement, which refinancing is permitted by the Subordinated Lien Loan Documents, then such Discharge of Super Senior Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Super Senior Obligations), and, from and after the date on which the New Super Senior Lien Debt Notice is delivered to the Subordinated Lien Collateral Agent in accordance with the next sentence, the obligations under such refinancing of the Super Senior Securities Purchase Documents shall automatically be treated as Super Senior Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the Super Senior Collateral Agent under such Super Senior Securities Purchase Documents shall be the Super Senior Collateral Agent for all purposes of this Agreement. Upon the Subordinated Lien Collateral Agent's receipt of a written notice (the **"New Super Senior Lien Debt Notice"**) stating that the Company or any other Grantor has entered into a new Super Senior Securities Agreement (which notice shall include such new Super Senior Securities Agreement and all Super Senior Securities Purchase Documents (other than any fee letters or other documents containing confidential business information) executed or delivered in connection therewith, and the identity of the new first lien collateral agent, such agent, the **"New Agent"**), the Subordinated Lien Collateral Agent shall promptly enter into amendments or supplements to this Agreement to the extent necessary to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. The New Agent shall agree in a writing reasonably satisfactory to the Subordinated Lien Collateral Agent and addressed to the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders to be bound by the terms of this Agreement. If the new Super Senior Obligations under the new Super Senior Securities Purchase Documents are secured by assets of the Grantors constituting Collateral that do

not also secure the Subordinated Lien Obligations, then the Subordinated Lien Obligations shall be secured at such time by a junior subordinated Lien, subject in priority to the Super Senior Obligations, on such assets to the same extent provided in the Subordinated Lien Collateral Documents and this Agreement except to the extent such Lien on such assets constitutes a Subordinated Lien Declined Lien.

5.7 Purchase Right.

(a) Without prejudice to the enforcement of any of the Super Senior Claimholders' remedies under the Super Senior Securities Purchase Documents, this Agreement, at law or in equity or otherwise, the Super Senior Claimholders agree at any time following the first to occur of (1) the commencement of any Insolvency or Liquidation Proceeding, (2) the acceleration of the Super Senior Obligations or taking of any Enforcement Action, (3) a payment default with respect to any Super Senior Obligations that has not been cured or waived within 60 days after the occurrence thereof or (4) delivery of an Enforcement Notice, the Subordinated Lien Claimholders will have the option to purchase, and the Super Senior Claimholders shall be obligated to sell on the date provided in the notice to Super Senior Claimholders of the exercise of such purchase option by the Subordinated Lien Claimholders (the "**Proposed Purchase Date**"), the entire aggregate amount (but not less than the entirety) of outstanding Super Senior Obligations (but specifically excluding any Excess Super Senior Obligations on or prior to the Proposed Purchase Date) at the Purchase Price without warranty or representation or recourse except as provided in Section 5.7(d), on a pro rata basis among the Super Senior Claimholders, which option may be exercised by less than all of the Subordinated Lien Claimholders so long as all the accepting Subordinated Lien Claimholders shall when taken together purchase such entire aggregate amount as set forth above; provided that (A) the Proposed Purchase Date must be no later than ten (10) Business Days after the date upon which any Subordinated Lien Claimholder provides notice to the Super Senior Claimholders of its intent to exercise the purchase right contemplated hereby, (B) if any Subordinated Lien Claimholder fails to purchase the Super Senior Obligations on the Proposed Purchase Date in accordance with the provisions of this Section 5.7, such Subordinated Lien Claimholder and its Affiliates shall no longer have the right to exercise a purchase right under this Section 5.7 and (C) prior to the Proposed Purchase Date the Super Senior Claimholders may exercise any Equity Rights in accordance with the Super Senior Securities Purchase Documents.

(a) The **"Purchase Price"** will equal the sum of (1) the full amount of all Super Senior Obligations (other than any Excess Super Senior Obligations) then-outstanding and unpaid at par (including principal, accrued but unpaid interest and fees and any other unpaid amounts, including breakage costs and, in the case of any secured hedging obligations, the amount that would be payable by the relevant Grantor thereunder if such Grantor were to terminate the

hedge agreement in respect thereof on the date of the purchase or, if not terminated, an amount determined by the relevant Super Senior Claimholder to be necessary to collateralize its credit risk arising out of such agreement, but excluding any prepayment penalties or premiums) (which, for the avoidance of doubt, shall not include any acceleration prepayment penalties or premiums), and (2) all accrued and unpaid fees and expenses (including reasonable and documented outside attorneys' fees and expenses) owed to the Super Senior Claimholders under or pursuant to the Super Senior Securities Purchase Documents on the date of purchase to the extent not allocable to Excess Super Senior Obligations, solely to the extent Grantors are obligated to reimburse the Super Senior Claimholders therefor.

(b) If the Subordinated Lien Claimholders (or any subset of them) exercise the purchase option pursuant to Section 5.7(a) above, it shall be exercised pursuant to documentation mutually acceptable to each of the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent and the parties shall use commercially reasonable efforts to close promptly after such exercise. Each Super Senior Claimholder will retain all rights to indemnification provided in the relevant Super Senior Securities Purchase Documents for all claims and other amounts relating to periods prior to the purchase of the Super Senior Obligations pursuant to this Section 5.7.

(c) The purchase and sale of the Super Senior Obligations under this Section 5.7 will be without recourse and without representation or warranty of any kind by the Super Senior Claimholders, except that the Super Senior Claimholders shall severally and not jointly represent and warrant to the Subordinated Lien Claimholders that on the date of such purchase, immediately before giving effect to the purchase:

(1) the principal of and accrued and unpaid interest on the Super Senior Obligations, and the fees and expenses thereof owed to the respective Super Senior Claimholders, are as stated in any assignment agreement prepared in connection with the purchase and sale of the Super Senior Obligations; and

(2) each Super Senior Claimholder owns the Super Senior Obligations purported to be owned by it free and clear of any Liens granted by it.

Section 6. Insolvency or Liquidation Proceedings.

6.1 [Reserved].

6.2 Relief from the Automatic Stay. Until the Discharge of Super Senior Obligations has occurred, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that none of them shall: (i)

seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral other than with respect to the exercise of Equity Rights, without the prior written consent of the Super Senior Collateral Agent, unless the Super Senior Agent has been granted such relief or a motion for adequate protection permitted under Section 6.3 has been denied by a bankruptcy court or (ii) oppose (or support any other Person in opposing) any request by the Super Senior Collateral Agent for relief from such stay.

6.3 Adequate Protection.

(a) Until the Discharge of Super Senior Obligations has occurred, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that none of them shall contest (or support any other Person contesting):

(1) any request by the Super Senior Collateral Agent or the Super Senior Claimholders for adequate protection under any Bankruptcy Law that does not contravene the terms of this Agreement; or

(2) any objection by the Super Senior Collateral Agent or the Super Senior Claimholders to any motion, relief, action or proceeding based on the Super Senior Collateral Agent or the Super Senior Claimholders claiming a lack of adequate protection.

(b) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency or Liquidation Proceeding:

(1) if the Super Senior Claimholders (or any subset thereof) are granted adequate protection in the form of additional collateral or an administrative claim in connection with any Cash Collateral use or any financing under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("**DIP Financing**"), then the Subordinated Lien Collateral Agent, for itself or any of the other Subordinated Lien Claimholders, may seek or request adequate protection in the form of a Lien on such additional collateral and junior administrative claims, which Lien will be subordinated to the Liens securing the Super Senior Obligations and such Cash Collateral use or DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Subordinated Lien Obligations are so subordinated to the Super Senior Obligations under this Agreement, and which administrative claims shall be subordinated in right of payment to the administrative claims provided to the Super Senior Claimholders (or any subset thereof) to the same extent as Liens of the Subordinated Lien Claimholders are subordinated to the Liens of the Super Senior Claimholders hereunder; and

(2) The Subordinated Lien Collateral Agent and Subordinated Lien Claimholders shall only be permitted to seek adequate protection with respect to their rights in the Collateral in any Insolvency or Liquidation Proceeding in the form of (A) additional collateral; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted a Lien on such additional collateral, which Lien shall be senior to any Lien of the Subordinated Lien Representatives, Subordinated Lien Collateral Agents and Subordinated Lien Claimholders on such additional collateral; (B) replacement Liens on the Collateral; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted replacement Liens on the Collateral, which Liens shall be senior to the Liens of the Subordinated Lien Representatives, Subordinated Lien Collateral Agents and Subordinated Lien Claimholders on the collateral; (C) an administrative expense claim; provided that as adequate protection for the Super Senior Obligations, the Super Senior Collateral Agent, on behalf of the Super Senior Claimholders, is also granted an administrative expense claim which is senior and prior to the administrative expense claim of the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders and (D) periodic interest payments at the non-default rate and the payment of reasonable out-of-pocket expenses.

(c) The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees that notice of a hearing to approve DIP Financing or use of Cash Collateral on an interim basis shall be adequate if delivered to the Subordinated Lien Collateral Agent at least five (5) full Business Days in advance of such hearing.

6.4 [Reserved].

6.5 Avoidance Issues. If any Super Senior Claimholder or Subordinated Lien Claimholder is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor any amount paid in respect of Super Senior Obligations or Subordinated Lien Obligations, as applicable (a "**Recovery**"), then such Super Senior Claimholder or Subordinated Lien Claimholder shall be entitled to a reinstatement of its Super Senior Obligations or Subordinated Lien Claimholder, as applicable, with respect to all such recovered amounts on the date of such Recovery, and from and after the date of such reinstatement the Discharge of Super Senior Obligations or Discharge of Subordinated Lien Obligations, as applicable, shall be deemed not to have occurred for all purposes hereunder. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties

hereto from such date of reinstatement. This Section 6.5 shall survive termination of this Agreement.

6.6 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization, arrangement, compromise or liquidation or similar dispositive restructuring plan, both on account of Super Senior Obligations and on account of Subordinated Lien Obligations, then, to the extent the debt obligations distributed on account of the Super Senior Obligations and on account of the Subordinated Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

6.7 Post-Petition Interest.

(a) Neither the Subordinated Lien Collateral Agent nor any Subordinated Lien Claimholder shall oppose or seek to challenge any claim by the Super Senior Collateral Agent or any Super Senior Claimholder for allowance in any Insolvency or Liquidation Proceeding of Super Senior Obligations consisting of Post-Petition Interest to the extent of the value of any Super Senior Claimholder's Lien on the Collateral, without regard to the existence of the Lien of the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders on the Collateral.

(b) Neither the Super Senior Collateral Agent nor any other Super Senior Claimholder shall oppose or seek to challenge any claim by the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Subordinated Lien Obligations consisting of Post-Petition Interest to the extent of the value of the Lien of the Subordinated Lien Collateral Agent, on behalf of the Subordinated Lien Claimholders, on the Collateral (after taking into account the amount of the Super Senior Obligations); provided that if the Super Senior Collateral Agent shall have made any such claim, such claim either has been approved or will be approved contemporaneously with the approval of the Subordinated Lien Collateral Agent's claim.

6.8 Waiver. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, waives any claim it may hereafter have against any Super Senior Claimholder arising out of the election of any Super Senior Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code.

6.9 Separate Grants of Security and Separate Classification. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated

Lien Claimholder, and the Super Senior Collateral Agent for itself and on behalf of each other Super Senior Claimholder, acknowledges and agrees that

(a) the grants of Liens pursuant to the Super Senior Collateral Documents and the Subordinated Lien Collateral Documents constitute two separate and distinct grants of Liens; and

(b) because of, among other things, their differing rights in the Collateral, the Subordinated Lien Obligations are fundamentally different from the Super Senior Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Super Senior Claimholders and the Subordinated Lien Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Collateral (with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Subordinated Lien Claimholders), the Super Senior Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or that would be owing if there were such separate classes of senior and junior secured claims) in respect of Post-Petition Interest (including any additional interest payable pursuant to the Super Senior Securities Purchase Documents arising from or related to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding) in all cases to the extent constituting Super Senior Obligations, before any distribution is made in respect of the claims held by the Subordinated Lien Claimholders with respect to the Collateral, with the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby acknowledging and agreeing to turn over to the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, Collateral or proceeds of Collateral otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Subordinated Lien Claimholders); provided that the foregoing shall not require the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder to turnover distributions that do not constitute Collateral or proceeds of Collateral.

6.10 Effectiveness in Insolvency or Liquidation Proceedings. The Parties acknowledge that this Agreement is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, which will be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor will include such Person as a debtor-in-possession and any receiver or trustee for such Person in an Insolvency or Liquidation Proceeding.

Section 7. Reliance; Waivers; Etc.

7.1 Reliance. Other than any reliance on the terms of this Agreement, the Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, acknowledges that it and such Super Senior Claimholders have, independently and without reliance on the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Super Senior Securities Purchase Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Super Senior Securities Purchase Documents or this Agreement. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, acknowledges that it and such Subordinated Lien Claimholders have, independently and without reliance on the Super Senior Collateral Agent or any Super Senior Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Subordinated Lien Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Subordinated Lien Loan Documents or this Agreement.

7.2 No Warranties or Liability. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder, acknowledges and agrees that each of the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Subordinated Lien Loan Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the Subordinated Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Subordinated Lien Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, acknowledges and agrees that each of the Super Senior Collateral Agent and the Super Senior Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Super Senior Securities Purchase Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon, in each case whether existing on or prior to the date hereof or otherwise. Except as otherwise provided herein, the Super Senior Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Super Senior Securities Purchase Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders shall have no duty to the Super Senior Collateral Agent or any of the other Super Senior Claimholders, and the Super Senior Collateral Agent and the Super Senior Claimholders shall have no duty to the Subordinated Lien Collateral Agent or any of the other Subordinated Lien Claimholders,

to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any other Grantor (including the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 No Waiver of Lien Priorities.

(a) Except with respect to a Declined Lien, no right of the Super Senior Claimholders, the Super Senior Collateral Agent or any of them to enforce any provision of this Agreement or any Super Senior Securities Purchase Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any other Grantor or by any act or failure to act by any Super Senior Claimholder or the Super Senior Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Super Senior Securities Purchase Documents or any of the Subordinated Lien Loan Documents, regardless of any knowledge thereof which the Super Senior Collateral Agent or the Super Senior Claimholders, or any of them, may have or be otherwise charged with.

(b) Until the Discharge of Super Senior Obligations, the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. All rights, interests, agreements and obligations of the Super Senior Collateral Agent and the Super Senior Claimholders and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Super Senior Securities Purchase Documents or any Subordinated Lien Loan Documents;

(b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Super Senior Obligations or Subordinated Lien Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Super Senior Securities Purchase Document or any Subordinated Lien Loan Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Super Senior Obligations or Subordinated Lien Obligations or any guaranty thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the Super Senior Collateral Agent, the Super Senior Obligations, any Super Senior Claimholder, the Subordinated Lien Collateral Agent, the Subordinated Lien Obligations or any Subordinated Lien Claimholder in respect of this Agreement other than the defense that the Discharge of the Super Senior Obligations has occurred.

Section 8. Miscellaneous.

8.1 Integration/Conflicts. This Agreement, the Super Senior Securities Purchase Documents and the Subordinated Lien Loan Documents represent the entire agreement of the Grantors, the Super Senior Claimholders and the Subordinated Lien Claimholders with respect to the subject matter hereof and thereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by the Super Senior Claimholder or the Subordinated Lien Claimholders relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein. In the event of any conflict between the provisions of this Agreement and the provisions of the Super Senior Securities Purchase Documents or the Subordinated Lien Loan Documents, the provisions of this Agreement shall govern and control. The Super Senior Claimholders and the Subordinated Lien Claimholders acknowledge and agree that they have each entered into other intercreditor arrangements with other claimholders and their rights and remedies are also subject to the terms and conditions of each of those agreements.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination. The Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions. All references to the Company or any other Grantor shall include the Company or such Grantor as debtor and debtor-in-possession and any receiver, trustee or similar Person for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to the Super Senior Collateral Agent, the Super Senior Claimholders and the Super Senior Obligations, upon the date upon which the Super Senior Obligations are Discharged, subject to the rights of such Super Senior Claimholders under Sections 5.6 and 6.5; and

(b) with respect to the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and the Subordinated Lien Obligations, the date upon which the Subordinated Lien Obligations are Discharged subject to the rights of such Subordinated Lien Claimholders under Sections 5.6 and 6.5;

provided, however, that in each case, such termination shall not relieve any such party of its obligations incurred hereunder prior to the date of such termination.

8.3 Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the Subordinated Lien Collateral Agent or the Super Senior Collateral Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time; provided, however, that this Agreement may be amended from time to time, without the consent of either the Subordinated Lien Collateral Agent or the Super Senior Collateral Agent, to add additional Grantors, whereupon such Person will be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof. Notwithstanding the foregoing, the Company and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent (i) its rights are directly and adversely affected by any such amendment, modification or waiver, (ii) any such amendment, modification or waiver reduces the amount of debt available to be incurred by the Borrower under the Super Senior Securities Purchase Documents or Subordinated Lien Loan Documents, or (iii) any such amendment, modification or waiver increases the obligations of Borrower under this Agreement.

8.4 Information Concerning Financial Condition of the Company and its Subsidiaries. The Super Senior Collateral Agent and the Super Senior Claimholders,

on the one hand, and the Subordinated Lien Claimholders and the Subordinated Lien Collateral Agent, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of the Company and its Subsidiaries and all endorsers and/or guarantors of the Super Senior Obligations or the Subordinated Lien Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Super Senior Obligations or the Subordinated Lien Obligations. The Super Senior Collateral Agent and the Super Senior Claimholders, on the one hand, and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, on the other hand, shall have no duty to advise the Subordinated Lien Collateral Agent or any Subordinated Lien Claimholder, on the one hand, or the Super Senior Collateral Agent or any Super Senior Claimholder, on the other hand, of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the Super Senior Collateral Agent, any of the other Super Senior Claimholders, the Subordinated Lien Collateral Agent or any of the other Subordinated Lien Claimholders in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Subordinated Lien Collateral Agent, any Subordinated Lien Claimholder, the Super Senior Collateral Agent or any Super Senior Claimholder, it or they shall be under no obligation:

(a) to make, and the Super Senior Collateral Agent and the Super Senior Claimholders or the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, as applicable, shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

Notwithstanding any provision herein to the contrary, the Super Senior Collateral Agent and the Subordinated Lien Collateral Agent shall each endeavor to promptly provide (i) upon request of the other party, information and particulars as to the amounts owing by the Company in respect of the Super Senior Obligations and Subordinated Lien Obligations, respectively, and (ii) to the other party, copies of any written waivers of any events of default granted pursuant to their respective loan documents and copies of all amendments to their respective loan documents; provided, however, that the failure to provide such information or copies of such instruments shall not affect the validity or enforceability of such instruments or give rise to any claim against such Person.

8.5 Subrogation. With respect to the value of any payments or distributions in cash, property or other assets that any of the Subordinated Lien

Claimholders or the Subordinated Lien Collateral Agent pays over to the Super Senior Collateral Agent or the Super Senior Claimholders under the terms of this Agreement, the Subordinated Lien Claimholders and the Subordinated Lien Collateral Agent shall be subrogated to the rights of the Super Senior Collateral Agent and the Super Senior Claimholders; provided that the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder, hereby agrees not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Super Senior Obligations has occurred. The Company acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the Subordinated Lien Collateral Agent or the Subordinated Lien Claimholders that are paid over to the Super Senior Collateral Agent or the Super Senior Claimholders pursuant to this Agreement shall not reduce any of the Subordinated Lien Obligations. Following the Discharge of Super Senior Obligations, the Super Senior Collateral Agent agrees to execute such documents, agreements, and instruments as the Subordinated Lien Collateral Agent may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Super Senior Obligations resulting from payments to the Super Senior Collateral Agent by such Person.

8.6 [Reserved].

8.7 Submission to Jurisdiction; Certain Waivers. Each of the Company, each Grantor and each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Collateral Documents (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court;

(c) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law and that nothing in this Agreement or any other Super Senior Securities Purchase Document shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Super Senior Securities Purchase Document or Subordinated Lien Loan Document against such Grantor or any of its assets in the courts of any jurisdiction;

(d) waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any

action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section 8.7 (and irrevocably waives to the fullest extent permitted by applicable law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(e) consents to service of process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the applicable party at its address provided in accordance with Section 8.8 (and agrees that nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law);

(f) agrees that service as provided in clause (e) above is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and

(g) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

8.8 WAIVER OF JURY TRIAL. **EACH PARTY HERETO, THE COMPANY AND EACH OTHER GRANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL**.

8.9 Notices. All notices to the Subordinated Lien Claimholders and the Super Senior Claimholders permitted or required under this Agreement shall also be sent to the Subordinated Lien Collateral Agent and the Super Senior Collateral Agent,

respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by facsimile or electronic mail or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile, telex, or electronic mail or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto or in the Joinder Agreement pursuant to which it becomes a party hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.10 Further Assurances. The Super Senior Collateral Agent, for itself and on behalf of each other Super Senior Claimholder under the Super Senior Securities Purchase Documents, and the Subordinated Lien Collateral Agent, for itself and on behalf of each other Subordinated Lien Claimholder under the Subordinated Lien Loan Documents, and the Company and each other Grantor, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

8.11 APPLICABLE LAW. **THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS IN THE COLLATERAL).**

8.12 Binding on Successors and Assigns. This Agreement shall be binding upon the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and their respective successors and assigns from time to time; provided, however, Super Senior Collateral Agent and the Super Senior Claimholders agree that no assignment shall be made to any Grantor or any affiliate of any Grantor (other than an affiliate that is a wholly owned subsidiary of a Super Senior Claimholder (or a parent company thereof) as of the date hereof). If either of the Super Senior Collateral Agent or the Subordinated Lien Collateral Agent resigns or is replaced pursuant to the Super Senior Securities Agreement or the Subordinated Lien Credit Agreement, as applicable, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement. No provision of this Agreement will inure to the

benefit of a trustee, debtor-in-possession, creditor trust or other representative of an estate or creditor of any Grantor, including where any such trustee, debtor-in-possession, creditor trust or other representative of an estate is the beneficiary of a Lien securing Collateral by virtue of the avoidance of such Lien in an Insolvency or Liquidation Proceeding.

8.13 Section Headings. The section headings and table of contents used in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose, be given any substantive effect, affect the construction hereof or be taken into consideration in the interpretation hereof.

8.14 Counterparts. This Agreement may be executed (including electronic execution) by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

8.15 Authorization. By its signature, each Person executing this Agreement, on behalf of Person but not in his or her personal capacity as a signatory, represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.16 No Third Party Beneficiaries/ Provisions Solely to Define Relative Rights. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the Collateral Agents, the Super Senior Claimholders and the Subordinated Lien Claimholders and their respective successors and assigns from time to time. The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Super Senior Collateral Agent and the Super Senior Claimholders on the one hand and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders on the other hand. Nothing herein shall be construed to limit the relative rights and obligations as among the Super Senior Claimholders or as among the Subordinated Lien Claimholders. Other than as set forth in Section 8.3, none of the Company, any other Grantor or any other creditor thereof shall have any rights hereunder and neither the Company, nor any Grantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor, which are absolute and unconditional, to pay the Super Senior Obligations and the Subordinated Lien Obligations as and when the same shall become due and payable in accordance with their terms.

8.17 No Indirect Actions. Unless otherwise expressly stated, if a party may not take an action under this Agreement, then it may not take that action indirectly, or support any other Person in taking that action directly or indirectly. "Taking an action

indirectly" means taking an action that is not expressly prohibited for the party but is intended to have substantially the same effects as the prohibited action.

8.18 Additional Grantors. Each Grantor agrees that it shall ensure that each of its Subsidiaries that is or is to become a party to any Super Senior Securities Purchase Document or Subordinated Lien Loan Document shall either execute this Agreement on the date hereof or shall confirm that it is a Grantor hereunder pursuant to a Joinder Agreement substantially in the form attached hereto as Exhibit A that is executed and delivered by such Subsidiary prior to or concurrently with its execution and delivery of such Super Senior Securities Purchase Document or such Subordinated Lien Loan Document.

8.19 Equity Rights. Nothing in this Agreement shall prevent any of the following actions: (a) the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from exercising any of the Equity Rights; (b) the Company from paying, or the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from receiving, any dividends, distributions or other payments on account of its Equity Rights or any other Equity Rights Proceeds; or (c) the Super Senior Collateral Agent, the Super Senior Claimholders, the Subordinated Lien Collateral Agent, the Subordinated Lien Claimholders and/or any of their respective affiliates or agents, as applicable, from exercising any rights under any organization documents of any Grantors or any subscription agreement, registration rights agreement, Equity Interest or other agreement or security of any Grantor related to the Equity Rights (excluding, for the avoidance of doubt, any rights under any such agreement or security relating to Liens on the Collateral).

8.20 Acknowledgment of Other Agreements. All rights, interests, agreements and obligations of the Super Senior Collateral Agent and the Super Senior Claimholders and the Subordinated Lien Collateral Agent and the Subordinated Lien Claimholders, respectively, hereunder are subject to (a) that certain Intercreditor Agreement, dated as of September 18, 2023, by and among ATW Special Situations II LLC, as succeeded by Acquiom Agency Services LLC, in its capacity as First Lien Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Second Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors, (b) that certain Intercreditor Agreement, dated as of January 30, 2024, by and among ATW Special Situations II LLC, as succeeded by ATW Special Situations Management LLC, in its capacity as First Lien Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors, (c) that certain Pari Passu Intercreditor Agreement, dated as of January 30, 2024, by and among ATW Special Situations Management LLC, in its capacity as Credit Agreement Collateral Agent (as defined therein), Acquiom Agency Services LLC, in its capacity as the 2023

First Lien Agent (as defined therein), and the Grantors, (d) that certain Intercreditor Agreement, dated as of even date herewith, by and among ATW Special Situations Management LLC, in its capacity as Super Senior Collateral Agent (as defined therein), and Acquiom Agency Services LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors and (e) that certain Intercreditor Agreement, dated as of even date herewith, by and among ATW Special Situations Management LLC, in its capacity as Super Senior Collateral Agent (as defined therein), and ATW Special Situations I LLC, in its capacity as Subordinated Lien Collateral Agent (as defined therein) and acknowledged and agreed to by the Grantors.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first written above.

Super Senior Collateral Agent:

ATW SPECIAL SITUATIONS MANAGEMENT LLC

By: ____
Name:
Title:

Notice Information:

1 Pennsylvania Plaza, Suite 4810
New York, N.Y. 10119
Attention: Alex LaViolette, Isaac Barber,
Antonio Ruiz-Gimenez
Email: notice@atwpartners.com,
operations@atwpartners.com

Subordinated Lien Collateral Agent:

ATW SPECIAL SITUATIONS I LLC

By: ____
Name:
Title:

Notice Information:

1 Pennsylvania Plaza, Suite 4810
New York, N.Y. 10119
Attention: Alex LaViolette, Isaac Barber,
Antonio Ruiz-Gimenez
Email: notice@atwpartners.com,
operations@atwpartners.com

Acknowledged and Agreed to by:

NAUTICUS ROBOTICS, INC.

By:
Name:
Title:

NAUTICUS ROBOTICS HOLDINGS, INC.

By:
Name:
Title:

NAUTIWORKS LLC

By:
Name:
Title:

NAUTICUS ROBOTICS FLEET LLC

By:
Name:
Title:

NAUTICUS ROBOTICS USA LLC

By:
Name:
Title:

Notice Information:

17146 Feathercraft Lane, Suite 450
Webster, TX 77598

Attention: Mr. Nicholas Bigney
Email: nbigney@nauticusrobotics.com

[FORM OF] GRANTOR JOINDER AGREEMENT NO. [ ] dated as of [ ], 20[ ] (the "**Grantor Joinder Agreement**") to the INTERCREDITOR AGREEMENT dated as of November 4, 2024 (the "**Intercreditor Agreement**"), among ATW SPECIAL SITUATIONS MANAGEMENT LLC, as Super Senior Collateral Agent, ATW SPECIAL SITUATIONS I LLC, as Subordinated Lien Collateral Agent, and acknowledged and agreed to by NAUTICUS ROBOTICS, INC., a Delaware corporation (the "**Company**"), and certain subsidiaries of the Company (each a "**Grantor**").

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

The undersigned, [_____], a [_____], (the "New Grantor") wishes to acknowledge and agree to the Intercreditor Agreement and become a party thereto to the limited extent contemplated by Section 8.16 thereof and to acquire and undertake the rights and obligations of a Grantor thereunder.

Accordingly, the New Grantor agrees as follows for the benefit of the Collateral Agents and the Claimholders:

Section 1. Accession to the Intercreditor Agreement. The New Grantor (a) acknowledges and agrees to, and becomes a party to the Intercreditor Agreement as a Grantor to the limited extent contemplated by Section 8.16 thereof, (b) agrees to all the terms and provisions of the Intercreditor Agreement and (c) shall have all the rights and obligations of a Grantor under the Intercreditor Agreement. This Grantor Joinder Agreement supplements the Intercreditor Agreement and is being executed and delivered by the New Grantor pursuant to Section 8.18 of the Intercreditor Agreement.

Section 2. Representations, Warranties and Acknowledgement of the New Grantor. The New Grantor represents and warrants to each Collateral Agent and to the Claimholders that (a) it has full power and authority to enter into this Grantor Joinder Agreement, in its capacity as Grantor and (b) this Grantor Joinder Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Grantor Joinder Agreement.

Section 3. Counterparts. This Grantor Joinder Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Grantor Joinder Agreement or any document or instrument delivered in connection herewith by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Grantor Joinder Agreement or such other document or instrument, as applicable.

Section 4. Section Headings. Section heading used in this Grantor Joinder Agreement are for convenience of reference only and are not to affect the construction hereof or to be taken in consideration in the interpretation hereof.

Section 5. Benefit of Agreement. The agreements set forth herein or undertaken pursuant hereto are for the benefit of, and may be enforced by, any party to the Intercreditor Agreement subject to any limitations set forth in the Intercreditor Agreement with respect to the Grantors.

Section 6. Governing Law. THIS GRANTOR JOINDER AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 7. Severability. In case any one or more of the provisions contained in this Grantor Joinder Agreement should be held invalid, illegal or unenforceable in any respect, none of the parties hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 8. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 8.8 of the Intercreditor Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature hereto, which information supplements Section 8.8 of the Intercreditor Agreement.

Section 9. Miscellaneous. The provisions of Section 8 of the Intercreditor Agreement will apply with like effect to this Grantor Joinder Agreement.

Exhibit A

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EXHIBIT 99.1

Nauticus Robotics Debtholders Agree to Exchange $33M of Debt to Equity

HOUSTON, November 05, 2024 – Nauticus Robotics, Inc. (NASDAQ: KITT), a leading innovator in autonomous subsea robotics and software, announces that it has entered into an agreement with existing debtholders to convert $33M dollars of debt into equity through a preferred stock exchange. The company anticipates that this exchange will allow the company to substantially deleverage the balance sheet and believes that it would resolve NASDAQ compliance issues previously reported. The existing convertible debenture will be exchanged for a new class of convertible preferred stock.

About Nauticus Robotics

Nauticus Robotics, Inc. develops autonomous robots for the ocean industries. Autonomy requires the extensive use of sensors, artificial intelligence, and effective algorithms for perception and decision allowing the robot to adapt to changing environments. The company's business model includes using robotic systems for service, selling vehicles and components, and licensing of related software to both the commercial and defense business sectors. Nauticus has designed and is currently testing and certifying a new generation of vehicles to reduce operational cost and gather data to maintain and operate a wide variety of subsea infrastructure. Besides a standalone service offering and forward-facing products, Nauticus' approach to ocean robotics has also resulted in the development of a range of technology products for retrofit/upgrading traditional ROV operations and other third-party vehicle platforms. Nauticus' services provide customers with the necessary data collection, analytics, and subsea manipulation capabilities to support and maintain assets while reducing their operational footprint, operating cost, and greenhouse gas emissions, to improve offshore health, safety, and environmental exposure.

Cautionary Language Regarding Forward-Looking Statements

This press release contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Act"), and are intended to enjoy the protection of the safe harbor for forward-looking statements provided by the Act as well as protections afforded by other federal securities laws. Such forward-looking statements include but are not limited to: the expected timing of product commercialization or new product releases; customer interest in Nauticus' products; estimated operating results and use of cash; and Nauticus' use of and needs for capital. Generally, statements that are not historical facts, including statements concerning possible or assumed future actions, business strategies, events, or results of operations, are forward-looking statements. These statements may be preceded by, followed by, or include the words "believes," "estimates," "expects," "projects," "forecasts," "may," "will," "should," "seeks," "plans," "scheduled," "anticipates," "intends," or "continue" or similar expressions. Forward-looking statements inherently involve risks and uncertainties that may cause actual events, results, or performance to differ materially from those indicated by such statements. These forward-looking statements are based on Nauticus' management's current expectations and beliefs, as well as a number of assumptions concerning future events. There can be no assurance that the events, results, or trends identified in these forward-looking statements will occur or be achieved. Forward-looking statements speak only as of the date they are made, and Nauticus is not under any obligation and expressly disclaims any obligation, to update, alter, or otherwise revise any forward-looking statement, whether as a result of new information, future events, or otherwise, except as required by law. Readers should carefully review the statements set forth in the reports which Nauticus has filed or will file from time to time with the Securities and Exchange Commission (the "SEC") for a more complete discussion of the risks and uncertainties facing the Company and that could cause actual outcomes to be materially different from those indicated in the forward-looking statements made by the

Company, in particular the sections entitled “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements” in documents filed from time to time with the SEC, including Nauticus’ Annual Report on Form 10-K filed with the SEC on April 10, 2024. Should one or more of these risks, uncertainties, or other factors materialize, or should assumptions underlying the forward-looking information or statements prove incorrect, actual results may vary materially from those described herein as intended, planned, anticipated, believed, estimated, or expected. The documents filed by Nauticus with the SEC may be obtained free of charge at the SEC’s website at www.sec.gov.

EXHIBIT 99.2

Nauticus Robotics Completes Initial 2024 Gulf of Mexico Field Survey Work for Shell

HOUSTON, November 05, 2024 – Nauticus Robotics, Inc. (NASDAQ: KITT), a leading innovator in autonomous subsea robotics and software, successfully completed its initial 2024 Gulf of Mexico (GOM) survey scope for Shell Exploration and Production Inc ("Shell"), a subsidiary of Shell plc (NYSE: SHEL), an international energy company based in the United Kingdom. The successful completion of this work combined with the submission of a final report completes the initial 2024 scope for the service contract awarded in 2023.

The project covered inactive and active assets off the Louisiana coast. All testing was completed autonomously without a tether at depths up to 1000 meters. A detailed analysis of the results is underway.

Nauticus Robotics' CEO and President, John Gibson, commented, "This project continues the significant transformation of our company to sustainable, commercial operations. We have successfully demonstrated a viable product without tether on an active field in a deepwater environment. In light of this and similar demonstrations, our 2025 pipeline for commercial work is filling. We are grateful to Shell for the opportunity to show the capabilities of our technologies and services under real-time operating conditions."

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