IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Fisker Inc., *et al.*,[1]	)	Case No. 24-11390 (TMH)
Debtors.	)	(Jointly Administered)
	)	**Re: D.I. 38, 320**

DECLARATION OF ELIZABETH FELD IN SUPPORT OF CVI INVESTMENTS, INC.'S STATEMENT IN SUPPORT OF CONSENSUAL USE OF CASH COLLATERAL AND OBJECTION TO NONCONSENSUAL USE OF CASH COLLATERAL

1. I, Elizabeth Feld, pursuant to 28 U.S.C. § 1746, declare as follows:

2. I am an attorney with the law firm of White & Case LLP, counsel to CVI Investments, Inc. ("CVI"). I am admitted to practice *pro hac vice* before the Court in the above-captioned chapter 11 cases [D.I. 42].

3. I submit this declaration in support of *CVI Investments, Inc.'s Statement in Support of Consensual Use of Cash Collateral and Objection to Any Nonconsensual Use of Cash Collateral* (the "Statement in Support").[2] This Declaration is based on my personal knowledge and upon my review of the records of this and related matters.[3]

4. Attached hereto as **Exhibit A** is a true and correct copy of that certain Series A-1 Senior Unsecured Convertible Note, dated July 11, 2023, issued by Fisker Inc. to CVI.

[1] The debtors and debtors in possession in these chapter 11 cases (collectively, the "Debtors"), along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors' corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the Statement in Support, filed simultaneously herewith.

[3] CVI is party to numerous agreements evidencing its liens on property of certain non-Debtors as security for the Prepetition Secured Notes (the "Non-Debtor Security Documents"). The Non-Debtor Security Documents are omitted from this Declaration.

2411390240728000000000018

5. Attached hereto as **Exhibit B** is a true and correct copy of that certain Series B-1 Senior Unsecured Convertible Note, dated September 29, 2023, issued by Fisker Inc. to CVI.

6. Attached hereto as **Exhibit C** is a true and correct copy of that certain Securities Purchase Agreement, dated July 10, 2023, by and among Fisker Inc. and CVI.

7. Attached hereto as **Exhibit C-1** is a true and correct copy of that certain Amendment No. 1 to Securities Purchase Agreement, dated September 29, 2023, by and among Fisker Inc. and the investors signatory thereto.

8. Attached hereto as **Exhibit C-2** is a true and correct copy of that certain Amendment and Waiver Agreement, date November 22, 2023, by and among Fisker Inc. and CVI.

9. Attached hereto as **Exhibit C-3** is a true and correct copy of that certain Second Amendment and Waiver Agreement, dated January 21, 2024, by and among Fisker Inc. and CVI.

10. Attached hereto as **Exhibit C-4** is a true and correct copy of that certain Amendment and Waiver Agreement, dated March 18, 2024, by and among Fisker Inc. and CVI.

11. Attached hereto as **Exhibit D** is a true and correct copy of that certain Senior Indenture, dated July 11, 2023, by and among Fisker Inc. and Wilmington Savings Fund Society, FSB, as trustee.

12. Attached hereto as **Exhibit D-1** is a true and correct copy of that certain First Supplemental Indenture, dated July 11, 2023, by and among Fisker Inc. and Wilmington Savings Fund Society, FSB, as trustee.

13. Attached hereto as **Exhibit D-2** is a true and correct copy of that certain Second Supplemental Indenture, dated September 29, 2023, by and among Fisker Inc. and Wilmington Savings Fund, FSB, as trustee.

14. Attached hereto as **Exhibit D-3** is a true and correct copy of that certain Third Supplemental Indenture, dated November 22, 2023, by and among Fisker Inc., CVI, the guarantors party thereto, and Wilmington Savings Fund Society, FSB, as trustee.

15. Attached hereto as **Exhibit E** is a true and correct copy of that certain Pledge Agreement, dated as of November 22, 2023, by and among Fisker Inc. and each grantor party thereto in favor of CVI.

16. Attached hereto as **Exhibit E-1** is a true and correct copy of that certain Amended and Restated Security and Pledge Agreement, dated December 28, 2023, by and among Fisker Inc. and each grantor party thereto in favor of CVI.

17. Attached hereto as **Exhibit F** is a true and correct copy of that certain Guaranty, dated December 28, 2023, made by each guarantor party thereto in favor of CVI.

18. Attached hereto as **Exhibit G** is a true and correct copy of that certain Intellectual Property Security Agreement, dated December 15, 2023, made by the grantors party thereto in favor of CVI.

19. Attached hereto as **Exhibit G-1** is a true and correct copy of that certain Intellectual Property Security Agreement, dated January 31, 2024, made by the grantors party thereto in favor of CVI.

20. Attached hereto as **Exhibit G-2** is a true and correct copy of that certain Supplemental Intellectual Property Security Agreement, dated March 29, 2024, made by the grantors party thereto in favor of CVI.

21. Attached hereto as **Exhibit H** are true and correct copies of the UCC-1 financing statements filed by CVI with respect to the liens securing the Prepetition 2025 Notes.

22. Attached hereto as **Exhibit I** is a true and correct copy of that certain Control Agreement, dated January 23, 2024, by and among SS&C GIDS, Inc., as transfer agent of JPMorgan Prime Money Market Fund and other JPMorgan Mutual Funds, CVI, and Fisker Group Inc.

23. Attached hereto as **Exhibit J** is a true and correct copy of that certain Blocked Account Control Agreement, dated January 18, 2024, by and among the Debtors listed on Schedule 1 thereto, CVI, and JPMorgan Chase Bank, N.A.

24. Attached hereto as **Exhibit K** is a true and correct copy of that certain Share Pledge Agreement, January 19, 2024, by and among Fisker Group Inc. and CVI, concerning the equity interests in Fisker GmbH (Austria).

25. Attached hereto as **Exhibit L** is a true and correct copy of that certain Securities Purchase Agreement, dated May 10, 2024, by and among Fisker Inc. and CVI.

26. Attached hereto as **Exhibit M** is a true and correct copy of that certain Senior Secured Note due 2024, dated May 10, 2024, issued by Fisker Inc. to CVI.

27. Attached hereto as **Exhibit N** is a true and correct copy of that certain Guaranty, dated May 10, 2024, by and among each guarantor party thereto and CVI.

28. Attached hereto as **Exhibit O** is a true and correct copy of that certain Security and Pledge Agreement, dated May 10, 2024, by and among the Debtors, the other grantors party thereto and CVI.

29. Attached hereto as **Exhibit P** is a true and correct copy of that certain Intellectual Property Security Agreement, dated May 10, 2024, granted by Fisker Inc. in favor of CVI.

30. Attached hereto as **Exhibit Q** is a true and correct copy of that certain Share Pledge Agreement in respect of shares in Fisker Belgium SRL, dated June 5, 2024, by and among Fisker Group Inc. and CVI.

31. Attached hereto as **Exhibit R** is a true and correct copy of that certain Securities Account Pledge Agreement, dated May 30, 2024, by and among Fisker Group Inc. and CVI in respect of the equity interests of Fisker France S.A..

32. Attached hereto as **Exhibit S** is a true and correct copy of that certain Charge Over Shares, dated May 10, 2024, by and among Fisker Inc. and CVI in respect of the equity interests in Fisker (GB) Limited.

33. Attached hereto as **Exhibit T** is a true and correct copy of that certain Share Pledge Agreement over the shares in Fisker GmbH (Germany), dated May 17, 2024, by and among Fisker Group Inc., Fisker GmbH (Germany), and CVI.

34. Attached hereto as **Exhibit U** is a true and correct copy of that certain Senior Intercreditor Agreement, dated May 10, 2024, by and among CVI, the Debtors and the other subsidiaries of Fisker Inc. party thereto.

35. Attached hereto as **Exhibit V** are true and correct copies of the UCC-1 financing statements filed by CVI with respect to the liens securing the Bridge Secured Note.

Executed on July 27, 2024 in New York, New York.

/s/ Elizabeth Feld

EXHIBIT A

SERIES A-1 SENIOR CONVERTIBLE NOTE

THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), COREY MACGILLIVRAY, A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). THE COMPANY'S CHIEF FINANCIAL OFFICER MAY BE REACHED AT TELEPHONE NUMBER (833) 434-7537.

FISKER INC.

Series A-1 SENIOR UNSECURED CONVERTIBLE NOTE

Issuance Date: July 11, 2023	Original Principal Amount: U.S. $340,000,000

FOR VALUE RECEIVED, Fisker Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of CVI Investments, Inc. or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date (each as defined below), or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and upon the occurrence and continuance of an Event of Default (as defined below) to pay interest ("**Interest**") on any outstanding Principal at the applicable Default Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date, or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Series A-1 Senior Unsecured Convertible Note (including all Senior Unsecured Convertible Notes issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Unsecured Convertible Notes (collectively, the "**Notes**", and such other Senior Unsecured Convertible Notes, the "**Other Notes**") issued pursuant to (i) Section 1 of that certain Securities Purchase Agreement, dated as of July 10, 2023 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (the "**Securities Purchase Agreement**"), (ii) the Indenture, (iii) a Supplemental Indenture, and (iv) the Company's Registration Statement on Form S-3 (File number 333-261875) (the "**Registration Statement**"). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On each Installment Date, the Company shall pay to the Holder an amount equal to the Installment Amount due on such Installment Date in accordance with Section 8. On the Maturity Date, the Company shall pay to the Holder an amount in cash (excluding any amounts paid in shares of Common Stock on the Maturity Date in accordance with Section 8) representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Other than as specifically permitted or required by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any. Notwithstanding anything herein to the contrary, with respect to any conversion or redemption hereunder, as applicable, the Company shall convert or redeem, as applicable, First, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document, Second, all accrued and unpaid Interest, if any, hereunder and under any Other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any Other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any Other Notes held by such Holder, in each case, allocated pro rata among this Note and such Other Notes held by such Holder.

2. INTEREST; DEFAULT RATE. No Interest shall accrue hereunder unless and until an Event of Default (as defined below) has occurred. From and after the occurrence and during the continuance of any Event of Default, Interest shall accrue hereunder at eighteen percent (18.0%) per annum (the "**Default Rate**") and shall be computed on the basis of a 360-day year and twelve 30-day months, shall compound each calendar month and shall be payable in arrears on the first Trading Day of each such calendar month in which Interest accrues hereunder (each, an "**Interest Date**"). Accrued and unpaid Interest, if any, shall also be payable by way of inclusion of such Interest in the Conversion Amount (as defined below) on each Conversion Date (as defined below) in accordance with in accordance with Section 3(b)(i) or upon any redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below). In the event that such Event of Default is subsequently cured (and no other Event of Default then exists (including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date, unless waived in writing by the Holder)), 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 or waiver; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of Default, unless waived in writing by the Holder.

3. CONVERSION OF NOTES. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(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 (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the sum of (x) portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made and (y) all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $7.80, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall deliver (whether via electronic mail or as otherwise provided in Section 23(a)), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (each, a "**Conversion Notice**") to the Company and the Trustee. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 17(b)). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment, in the form attached hereto as Exhibit II, of confirmation of receipt of such Conversion Notice and representation that such shares of Common Stock may then be freely resold by the Holder without restriction (each, an "**Acknowledgement**") to the Holder, the Trustee and the Company's transfer agent (the "**Transfer Agent**") which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the second (2nd) Trading Day following the 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 shares of Common Stock 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's

("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the 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, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 17(d)) representing the outstanding Principal (and accrued and unpaid Interest thereon) not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. In the event of a partial conversion of this Note pursuant hereto, the Principal amount converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining Installment Amount(s) relating to the Installment Date(s) as set forth in the applicable Conversion Notice.

(ii) 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, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock 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 shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to one percent (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 Share Delivery Deadline and to which the Holder is entitled, multiplied by (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 applicable Conversion Date and ending on the applicable Share Delivery Deadline and (2) the 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) any portion of this Note 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 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's

share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to 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 is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below, and if on or after such Share Delivery Deadline 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 conversion that the 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 the Holder, the Company shall, within two (2) Business Days after receipt of 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 (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 issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the 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) (the "**Buy-In Payment Amount**"). 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) upon the conversion of this Note as required pursuant to the terms hereof.

(iii) Registration; Book-Entry. The Trustee shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "**Registered Notes**") as provided in Section 2.06 of the Indenture. The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof,

the Trustee shall record the information contained therein in the Register and issue one or more new Registered Notes (to be executed by the Company and authenticated and delivered by the Trustee) in the same aggregate principal amount as the principal amount of the surrendered Registered Note in the name of the designated assignee or transferee pursuant to Section 16, provided that if the Company or the Trustee does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note 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). Every Registered Note presented or surrendered for registration of transfer, or for exchange or redemption shall (if so required by the Company or the Registrar for such Notes presented) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the holder thereof or his attorney duly authorized in writing. Notwithstanding anything to the contrary set forth in this Section 3 or in the Indenture or in any applicable Supplemental Indenture, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder, the Trustee and the Company shall maintain records showing the Principal, Interest and Late Charges 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 the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3(d), shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22. If a Conversion Notice delivered to the Company would result in a breach of Section 3(d) below, and the 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 3(d) below (with such calculations thereunder made as of the date

such Conversion Notice was initially delivered to the Company).

(d) Limitations on Conversions.

(i) Beneficial Ownership. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d)(i). For purposes of this Section 3(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the 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 the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d)(i), to exceed the Maximum Percentage, the 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 (which may be an e-mail) or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported

Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes (each, an "**Other Holder**", and collectively, the "**Other Holders**") that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) Principal Market Regulation The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note 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 Notes or otherwise pursuant to the terms of the Notes without breaching 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 Section 312.03(c) of the NYSE Listed Company Manual, the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, no Buyer shall be issued in the aggregate, upon conversion of any Notes or otherwise pursuant to the terms of the Notes, shares of Common Stock in an

amount greater than the product of (i) the Exchange Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the original principal amount of Notes issued to such Buyer pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) divided by (2) the aggregate original principal amount of all Notes issued to the Buyers pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each Buyer, the "**Exchange Cap Allocation**"). In the event that any Buyer shall sell or otherwise transfer any of such Buyer's Notes, the transferee shall be allocated a pro rata portion of such Buyer's Exchange Cap Allocation with respect to such portion of such Notes 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 Notes, 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 Notes shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the shares of Common Stock underlying the Notes then held by each such holder of Notes. At any time after the three month anniversary of the Initial Closing Date (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 3(d)(i) (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such portion of this Note 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 Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 3(d)(i) and (ii) to the extent of any Buy-In related thereto, any Buy-In Payment Amount, 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**").

(e) Right of Alternate Conversion Upon a Triggering Event.

(i) General. Upon the occurrence of a Triggering Event with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Triggering Event Notice**") to the Holder and the Trustee. At any time after the earlier of the Holder's receipt of an Triggering Event Notice and the Holder becoming aware of an Triggering Event (such earlier date, the "**Triggering Event Right Commencement Date**") and ending (such ending date, the "**Triggering Event Right Expiration Date**", and each such period, an "**Triggering Event Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Triggering Event is cured and (y) the Holder's receipt of an Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the 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 Triggering Event Right Expiration Date, but subject to Section 3(d), (regardless of whether such Triggering Event has been cured, or if the Company has delivered a Triggering Notice to the Holder or otherwise notified the Company that a Triggering Event has occurred), the Holder may, at the Holder's option, convert (each, an "**Alternate Conversion**", and the date of each such Alternate Conversion, an "**Alternate Conversion Date**") all, or any part of, the Conversion Amount (such portion of the Conversion Amount subject to such Alternate Conversion, 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 3(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and with "Redemption Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate above with respect to such Alternate Conversion) by designating in the Conversion Notice delivered pursuant to this Section 3(e) of this Note that the Holder is electing to use the Alternate Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), 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 3(c) without regard to this Section 3(e).

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) 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;

(ii) 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 the Notes, 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 Notes into shares of Common Stock that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3(d);

(iii) except to the extent the Company is in compliance with Section 10(b) below, at any time following the tenth (10^{th}) consecutive day that the Holder's Authorized Share Allocation (as defined in Section 10(a) below) is less than the Required Reserve Amount (without regard to any limitations on conversion set forth in

Section 3(d) or otherwise);

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least three (3) Trading Days;

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

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $25,000,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(vii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Significant Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(viii) the commencement by the Company or any Significant 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 Significant 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 Significant 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 Significant 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 against the assets of the Company or any Significant Subsidiary;

(ix) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Significant 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 Significant 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 Significant 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 Significant 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 forty-five (45) consecutive days;

(x) a final judgment or judgments for the payment of money aggregating in excess of $25,000,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within forty-five (45) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within forty-five (45) 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 $25,000,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the 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 forty-five (45) days of the issuance of such judgment;

(xi) 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 $25,000,000 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 $25,000,000, which breach or violation (i) results in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constitutes a failure to pay the principal or interest of any such debt when due and payable (after giving effect to any applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(xii) other than as specifically set forth in another clause of this Section 4(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 five (5) consecutive Trading Days;

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

(xiv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13(a)-(d), (f), (g) or (h) of this Note;

(xv) any Event of Default (as defined in the Other Notes) occurs and is continuing with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder and the Trustee. The obligation of the Company to deliver an Event of Default Notice is in addition to, and may not be substituted by, the Trustee's delivery of notice of the same Event of Default to the Holder in accordance with Section 10.02 of the Indenture. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the "**Event of Default Right Commencement Date**") and ending (such ending date, the "**Event of Default Right Expiration Date**", and each such period, an "**Event of Default Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company and the Trustee, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate (calculated

assuming an Alternate Conversion as of the date of the Event of Default Redemption Notice) with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Event of Default Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the 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 the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the

Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders (as defined in the Securities Purchase Agreement) and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes reasonably satisfactory to the Required Holders, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking to the Notes and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note 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 6 and 14, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes 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 the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder and the Trustee (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the 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, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company and the Trustee, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the greatest of (i) the product of (w) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (A) the Conversion Amount being redeemed 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 the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (A) the Conversion Amount 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 the 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 (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 5(b), the 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 the Holder. Accordingly, any Redemption Premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Sections 7 or 14 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 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 Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date as of the applicable record date) 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Purchase Right shall be granted, issued or sold to the Holder, as applicable, with a limitation on conversion and/or exercise, as applicable, in the form of 3(d)(i) herein, *mutatis mutandis*; provided, that, if such Purchase Right (and/or on any subsequent Purchase Right held similarly) has an expiration date, maturity date or other similar provision, such term also shall be extended, on a day-by-day basis, by such aggregate number of days that the exercise or conversion (as applicable) of such Purchase Right (and/or any subsequent Purchase Right held similarly) (in each case, without regard to the limitation on conversion or exercise thereto, as applicable) would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage.

(b) 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 the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) 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 the Holder would have been entitled to receive had this Note 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. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any

limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. 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 7(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 7(a)), 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 7(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.

(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 7(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 7(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) upon the issue, conversion, exercise or exchange of any Options or Convertible Securities, or the rate at which any Convertible Securities or Options 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 7(b) 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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 7(a)(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 7(a) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right and/or any other security (as applicable) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right or any other security or instrument of the Company intended to convey value to any participant in such transaction, in any form whatsoever, 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 7(a)(i) or 7(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 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 and/or any other security or instrument (as applicable), if any, in each case, as determined on a per share basis in accordance with this Section 7(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 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, the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute. 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).

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) 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.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 7 or in the Securities Purchase Agreement, 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 (any such securities, "**Variable Price Securities**") regardless of whether securities have been sold pursuant to such agreement and whether such agreement has subsequently been terminated, prior to or after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock, in each case, 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 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 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 Note by designating in the Conversion Notice delivered upon any conversion of this Note 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 Note shall not obligate the Holder to rely on a Variable Price for any future conversion of this Note. In addition, from and after the date the Company enters into such agreement or issues any such Variable Price Securities, for purposes of calculating the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of any time of determination, the "Conversion Price" as used therein shall mean the lower of (x) the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of such time of determination and (y) the Variable Price as of such time of determination.

(d) 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 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock 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 7(d) will increase the Conversion Price as otherwise determined pursuant to this Section 7, 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.

(e) Calculations. All calculations under this Section 7 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.

(f) Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time during the term of this Note, 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 Notes to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. INSTALLMENT CONVERSION OR REDEMPTION.

(a) General. On each applicable Installment Date, provided there has been no Equity Conditions Failure, the Company shall pay to the Holder of this Note the applicable Installment Amount due on such date by converting such Installment Amount in accordance with this Section 8 (a "**Installment Conversion**"); provided, however, that the Company may, at its option following notice to the Holder (with a copy to the Trustee) as set forth below, pay the Installment Amount by redeeming such Installment Amount in cash (a "**Installment Redemption**") or by any combination of an Installment Conversion and an Installment Redemption so long as all of the outstanding applicable Installment Amount due on any Installment Date shall be converted and/or redeemed by the Company on the applicable Installment Date, subject to the provisions of this Section 8. On the date which is the sixth (6th) Trading Day prior to each Installment Date (each, an "**Installment Notice Due Date**"), the Company shall deliver written notice (each, a "**Installment Notice**" and the date all of the holders receive such notice is referred to as to the "**Installment Notice Date**"), to each holder of Notes (with a copy to the Trustee) and such Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of such holder's Note shall be converted in whole pursuant to an Installment Conversion or (B) (1) state that the Company elects to redeem for cash, or is required to redeem for cash in accordance with the provisions of the Notes, in whole or in part, the applicable Installment Amount pursuant to an Installment Redemption and (2) specify the portion of such Installment Amount which the Company elects or is required to redeem pursuant to an Installment Redemption (such amount to be redeemed in cash, the "**Installment Redemption Amount**") and the portion of the applicable Installment Amount, if any, with respect to which the Company will, and is permitted to, effect an Installment Conversion (such amount of the applicable Installment Amount so specified to be so converted pursuant to this Section 8 is referred to herein as the "**Installment Conversion Amount**"), which amounts when added together, must at least equal the entire applicable Installment Amount and (ii) if the applicable Installment Amount is to be paid, in whole or in part, pursuant to an Installment Conversion, certify that there is not then an Equity Conditions Failure as of the applicable Installment Notice Date. Each Installment Notice shall be irrevocable. If the Company does not timely deliver an Installment Notice in accordance with this Section 8 with respect to a particular Installment Date, then the Company shall

be deemed to have delivered an irrevocable Installment Notice confirming an Installment Conversion of the entire Installment Amount payable on such Installment Date and shall be deemed to have certified that there is not then an Equity Conditions Failure in connection with such Installment Conversion. Except as expressly provided in this Section 8(a), the Company shall convert and/or redeem the applicable Installment Amount of this Note pursuant to this Section 8 and the corresponding Installment Amounts of the Other Notes pursuant to the corresponding provisions of the Other Notes in the same ratio of the applicable Installment Amount being converted and/or redeemed hereunder. The applicable Installment Conversion Amount (whether set forth in the applicable Installment Notice or by operation of this Section 8) shall be converted in accordance with Section 8(b) and the applicable Installment Redemption Amount shall be redeemed in accordance with Section 8(c).

(b) Mechanics of Installment Conversion. Subject to Section 3(d), if the Company delivers an Installment Notice or is deemed to have delivered an Installment Notice certifying that such Installment Amount is being paid, in whole or in part, in an Installment Conversion in accordance with Section 8(a), then the remainder of this Section 8(b) shall apply. The applicable Installment Conversion Amount, if any, shall be converted on the applicable Installment Date at the applicable Installment Conversion Price and the Company shall, on such Installment Date, (A) deliver to the Holder's account with DTC such shares of Common Stock issued upon such conversion (subject to the reduction contemplated by the immediately following sentence and, if applicable, the penultimate sentence of this Section 8(b)), and (B) in the event of the Conversion Floor Price Condition, the Company shall deliver to the Holder the applicable Conversion Installment Floor Amount, provided that the Equity Conditions are then satisfied (or waived in writing by the Holder) on such Installment Date and an Installment Conversion is not otherwise prohibited under any other provision of this Note. If the Company confirmed (or is deemed to have confirmed by operation of Section 8(a)) the conversion of the applicable Installment Conversion Amount, in whole or in part, and there was no Equity Conditions Failure as of the applicable Installment Notice Date (or is deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied by operation of Section 8(a)) but an Equity Conditions Failure occurred between the applicable Installment Notice Date and any time through the applicable Installment Date (the "**Interim Installment Period**"), the Company shall provide the Holder a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Interim Installment Period or an Installment Conversion is not otherwise permitted under any other provision of this Note, then, at the option of the Holder designated in writing to the Company, the Holder may require the Company to do any one or more of the following: (i) the Company shall redeem all or any part designated by the Holder of the unconverted Installment Conversion Amount (such designated amount is referred to as the "**Designated Redemption Amount**") and the Company shall pay to the Holder within five (5) Trading Days of such Installment Date, by wire transfer of immediately available funds, an amount in cash equal to 125% of such Designated Redemption Amount, and/or (ii) the Installment Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Installment Conversion Amount and the Holder shall be entitled to all the rights of a holder of this Note with respect to such designated part of the Installment Conversion Amount; provided,

however, the Conversion Price for such designated part of such unconverted Installment Conversion Amount shall thereafter be adjusted to equal the lesser of (A) the Installment Conversion Price as in effect on the date on which the Holder voided the Installment Conversion and (B) the Installment Conversion Price that would be in effect on the date on which the Holder delivers a Conversion Notice relating thereto as if such date was an Installment Date. If the Company fails to redeem any Designated Redemption Amount by the second (2nd) day following the applicable Installment Date by payment of such amount by such date, then the Holder shall have the rights set forth in Section 11(a) as if the Company failed to pay the applicable Installment Redemption Price (as defined below) and all other rights under this Note (including, without limitation, such failure constituting an Event of Default described in Section 4(a)(iv)). Notwithstanding anything to the contrary in this Section 8(b), but subject to 3(d), until the Company delivers Common Stock representing the Installment Conversion Amount to the Holder, the Installment Conversion Amount may be converted by the Holder into Common Stock pursuant to Section 3. In the event that the Holder elects to convert the Installment Conversion Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Conversion Amount so converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of any shares of Common Stock in any Installment Conversion hereunder.

(c) Mechanics of Installment Redemption. If the Company elects or is required to effect an Installment Redemption, in whole or in part, in accordance with Section 8(a), then the Installment Redemption Amount, if any, shall be redeemed by the Company in cash on the applicable Installment Date by wire transfer to the Holder of immediately available funds in an amount equal to 103% of the applicable Installment Redemption Amount (the "**Installment Redemption Price**"). If the Company fails to redeem such Installment Redemption Amount on such Installment Date by payment of the Installment Redemption Price, then, at the option of the Holder designated in writing to the Company (any such designation shall be a "**Conversion Notice**" for purposes of this Note), the Holder may require the Company to convert all or any part of the Installment Redemption Amount at the Installment Conversion Price (determined as of the date of such designation as if such date were an Installment Date). Conversions required by this Section 8(c) shall be made in accordance with the provisions of Section 3(c). Notwithstanding anything to the contrary in this Section 8(c), but subject to Section 3(d), until the Installment Redemption Price (together with any Late Charges thereon) is paid in full, the Installment Redemption Amount (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event the Holder elects to convert all or any portion of the Installment Redemption Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Redemption Amount so converted shall be deducted from the Principal amount outstanding hereunder, including for purposes of determining the Installment Amounts relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. Redemptions required by this Section 8(c) shall be made in accordance with the provisions of Section 11.

(d) Deferred Installment Amount. Notwithstanding any provision of this Section 8(d) to the contrary, the Holder may, at its option and in its sole discretion, deliver a written notice to the Company no later than the Trading Day immediately prior to the applicable Installment Date electing to have the payment of all or any portion of an Installment Amount payable on such Installment Date deferred (such amount deferred, the "**Deferral Amount**", and such deferral, each a "**Deferral**") until any subsequent Installment Date selected by the Holder, in its sole discretion, in which case, the Deferral Amount shall be added to, and become part of, such subsequent Installment Amount and such Deferral Amount shall continue to accrue Interest hereunder. Any notice delivered by the Holder pursuant to this Section 8(d) shall set forth (i) the Deferral Amount and (ii) the date that such Deferral Amount shall now be payable.

(e) Acceleration of Installment Amounts. Notwithstanding any provision of this Section 8 to the contrary, but subject to Section 3(d), during the period commencing on an Installment Date (a "**Current Installment Date**") and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Installment Period**"), at the option of the Holder, at one or more times, the Holder may convert other Installment Amounts (each, an "**Acceleration**", and each such amount, an "**Acceleration Amount**", and the Conversion Date of any such Acceleration, each an "**Acceleration Date**"), in whole or in part, at the Acceleration Conversion Price of such Current Installment Date in accordance with the conversion procedures set forth in Section 3 hereunder (with "Acceleration Conversion Price" replacing "Conversion Price" for all purposes therein), *mutatis mutandis;* provided, that if a Conversion Floor Price Condition exists with respect to such Acceleration Date, with each Acceleration the Company shall also deliver to the Holder the Acceleration Floor Amount on the applicable Share Delivery Deadline. Notwithstanding anything to the contrary in this Section 8(e), with respect to each period commencing on an Installment Date and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Acceleration Measuring Period**"), the Holder may not elect to effect an Acceleration (the "**Current Acceleration**", and such date of determination, the "**Current Acceleration Determination Date**") during such Acceleration Measuring Period if the Holder shall have converted pursuant to this Section 8 either on such Current Installment Date and/or on any Acceleration Date during such Acceleration Measuring Period, as applicable, such portion of the Conversion Amount of this Note equal to the sum of (x) the Installment Amount for such Installment Date (whether on the Current Installment Date or, if subject to a Deferral, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date) and (y) an additional 200% of the Installment Amount for such Current Installment Date, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date (or such greater amount as the Company and the Holder shall mutually agree).

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, and (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 nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(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 permit such conversion into shares of Common Stock.

10. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as any Notes remain outstanding, the Company shall at all times reserve (I) if prior to Reserve Increase Deadline (as defined in the Securities Purchase Agreement), 275,000,000 shares of Common Stock for conversion (including without limitation, Installment Conversions, Alternate Conversions and Accelerations) of all of the Notes then outstanding (without regard to any limitations on conversions) or (ii) if on or after the Reserve Increase Deadline, at least 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion, including without limitation, Installment Conversions, Alternate Conversions and Accelerations, of all of the Notes then outstanding (without regard to any limitations on conversions and assuming such Notes remain outstanding until the Maturity Date) at the Floor Price then in effect (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 of the Notes based on the original principal amount of the Notes held by each holder on the Initial Closing 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 Notes, 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 Notes shall be allocated to the remaining holders of Notes, pro rata based on the principal amount of the Notes then held by such holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 10(a), and not in limitation thereof, at any time while any of the Notes 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 Notes 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 Notes then outstanding. 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 sixty (60) 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. 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 pursuant to the terms of this Note 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 the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount 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 the 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 10(a); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in Section 10(a) or this Section 10(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

11. REDEMPTIONS.

(a) Mechanics. The Company, or at the Company's written direction and at the Company's expense, the Trustee, shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company, or at the Company's direction, the Trustee, shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise. The Company shall deliver the applicable Installment Redemption Price to the Holder in cash on the applicable Installment Date. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the 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. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of this Note or such new Notes (as the case may be) shall be automatically adjusted with respect to each conversion effected thereafter by the Holder to the lowest of (A) the Conversion Price as in effect on the date on which the applicable Redemption Notice is voided, (B) 75% of the Market Price of the Common Stock for the period ending on and including the date on which the applicable Redemption Notice is voided and (C) 75% of the Market Price of the Common Stock for the period ending as of the applicable Conversion Date (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by electronic mail a copy of such notice (with a copy to the Trustee). If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company

during such seven (7) Business Day period.

12. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

13. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. The Company shall designate all payments due under this Note as senior unsecured Indebtedness, and (a) the Notes shall rank *pari passu* with all Other Notes and (b) shall be at least *pari passu* in right of payment with all other Indebtedness of the Company and its Subsidiaries (other than Permitted Indebtedness secured by Permitted Liens).

(b) 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 (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) 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; provided, however, that the Company shall be deemed to be in breach of this Section 13(c) only if such breach remains uncured for a period of five (5) Trading Days.

(d) 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 than the Notes) 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 an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) 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.

(f) 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 (including, without limitation, in connection with joint ventures) in the ordinary course of business consistent with its past practice and (ii) sales of inventory and product in the ordinary course of business; provided, however, that the Company shall be deemed to be in breach of this Section 13(f) if such breach was an involuntary sale, lease, license, assignment, transfer, spin-off, split-off, close, conveyance or otherwise disposal that remains uncured for a period of five (5) Trading Days.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date (except, solely from and after the Stockholder Approval Date (as defined in the Securities Purchase Agreement), up to $100 million of Permitted Indebtedness in any three month period).

(h) 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 Subscription 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 other than for tax or other general corporate purposes that are not meant to (and do not) change the nature of the business of the Company currently conducted as of the Issuance Date.

(i) 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.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its 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 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.

(k) 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 (as defined in the Securities Purchase Agreement) 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.

(l) 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 (including, without limitation, and for the avoidance of doubt, at least $5,000,000 in director's and officer's insurance).

(m) 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.

(n) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Financial Covenants; Announcement of Operating Results.

(i) The Company shall maintain, as of the end of each Fiscal Quarter (and/or Fiscal Year, as applicable) a balance of Available Cash in an aggregate amount equal to or greater than $340,000,000 (the "**Financial Test**").

(ii) Operating Results Announcement. Commencing on the Fiscal Quarter ending September 30, 2023, the Company shall publicly disclose and disseminate (such date, the "**Announcement Date**"), if the Financial Test has not been satisfied for such Fiscal Quarter or Fiscal Year, as applicable, a statement to that effect no later than (x) if prior to March 31, 2024, the fifteenth (15th) Trading Day or (y) if on or after March 31, 2024, the tenth (10^{th}) Trading Day, in either case, after the end of such Fiscal Quarter or Fiscal Year, as applicable, and such announcement shall include a statement to the effect that the Company is (or is not, as applicable) in breach of the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable. Notwithstanding the foregoing, in the event no Financial Covenant Failure (as defined below) has occurred and the Company reasonably determines, with the advice of legal counsel, that the disclosure referred to in the immediately preceding sentence does not constitute material non-public information, the Company shall make a statement to that effect in the applicable certification required below and no disclosure with the SEC shall be required to be made by the Company. On the Announcement Date, the Company shall also provide to the Holder a certification,

executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Company satisfied the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable, if that is the case. If the Company has failed to meet the Financial Test for a Fiscal Quarter or Fiscal Year, as applicable, (each a "**Financial Covenant Failure**"), the Company shall provide to the Holder a written certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Financial Test has not been met for such Fiscal Quarter or Fiscal Year, as applicable (a "**Financial Covenant Failure Notice**"). Concurrently with the delivery of each Financial Covenant Failure Notice to the Holder, the Company shall also make publicly available (as part of a Quarterly Report on Form 10-Q, Annual Report on Form 10-K or on a Current Report on Form 8-K, or otherwise) the Financial Covenant Failure Notice and the fact that an Event of Default has occurred under the Notes.

(p) PCAOB Registered Auditor. At all times any Notes 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.

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

(r) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to 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.

(s) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent

Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note 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 (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

14. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Sections 6 or 7, 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 the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date 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 the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the 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 the extent of any such excess)) and in lieu of delivering to the Holder such portion of such Distribution in excess of the Maximum Percentage, the Holder shall receive a right to receive such portion of such Distribution, exercisable into such Distribution at any time, in whole or in part, at the option of the Holder (or any successor thereto), without the payment of any additional consideration, but subject to a limitation on exercise in the form of 3(d)(i) herein, *mutatis mutandis*.

15. AMENDING THE TERMS OF THIS NOTE. Except for Section 3(d), which may not be amended, modified or waived by the parties hereto, the prior written consent of the

Company and the Holder shall be required for any change, waiver or amendment to this Note; provided, however, no change, waiver or amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent.

16. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company; provided, that the Holder shall not transfer this Note to any competitor of the Company without the prior written consent of the Company (not to be unreasonably withheld).

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note. Upon compliance with Section 2.02 of the Indenture, the Company shall execute and, following authentication of such new Note, deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16(a) or Section 16(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such

new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, (v) shall be duly authenticated in accordance with the Indenture and (vi) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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 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 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 Note (including, without limitation, compliance with Section 7).

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note and/or any other Transaction Document or to enforce the provisions of this Note and/or any other Transaction Document or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note and/or any other Transaction Document, as applicable, shall

be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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. Notwithstanding the foregoing, nothing contained in this Section 21 shall permit any waiver of any provision of Section 3(d).

22. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Installment Conversion Price, an Acceleration Conversion Price, an Alternate Conversion Price, a Black Scholes Consideration Value, 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 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 learning of the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder at any time after the Holder learned of the circumstances giving rise to such dispute. If the 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 Installment Conversion Price, such Acceleration Conversion Price, such Alternate Conversion Price, such Black Scholes Consideration Value, 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 fifth (5^{th}) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the

Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The 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 22 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 (5^{th}) Business Day immediately following the date on which the 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 the 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 the Holder or otherwise requested by such investment bank, neither the Company nor the 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).

(iii) The Company and the Holder shall use reasonable best efforts to cause such investment bank to determine the resolution of such dispute and notify the Company and the 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 solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 22 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 22, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 7(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the terms of this Note 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 Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 22 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 22 and (v) nothing in this Section 22 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 22).

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement, or, with respect to the Trustee, in accordance with Section 10.02 of the Indenture. The Company shall provide the Holder and the Trustee with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder and the Trustee (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, (B) with respect to any grant, issuances, or sales of any Common Stock, Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock (including, without limitation, whether a Dilutive Issuance has occurred hereunder) or (C) 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 the Holder.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note 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 Note, 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).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such

Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note or any other Transaction Documents have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **THE COMPANY 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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

27. JUDGMENT CURRENCY.

(a) 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 Note, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) 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

(ii) 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**").

(b) 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.

(c) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

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

(c) "**Acceleration Conversion Price**" means, with respect to any given Acceleration Date, the lower of (i) the Installment Conversion Price for such Current Installment Date related to such Acceleration Date and (ii) the greater of (x) the Floor Price and (y) 93% of the Acceleration Market Price.

(d) "**Acceleration Market Price**" means, with respect to any given Acceleration Date, the lesser of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such Acceleration Date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock for each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such Acceleration Date, divided by (y) five (5). All such determinations to be appropriately adjusted for any share split, share dividend, share combination or other similar transaction during any such measuring period.

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

(f) "**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 7) of shares of Common Stock (other than rights of the type described in Section 6(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).

(g) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(h) "**Alternate Conversion Price**" means, with respect to any Alternate Conversion that price which shall be the lower of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) 80% of the Market Price as of the Trading Day of 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.

(i) "**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 Subscription Date pursuant to which shares of 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.

(j) "**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 Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the 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 the 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 the Holder and all other Attribution Parties to the Maximum Percentage.

(k) "**Available Cash**" means, with respect to any date of determination, an amount equal to the aggregate amount of the Cash of the Company and its Subsidiaries (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of its Subsidiaries for any reason) and Reclaimable Cash as of such date of determination held in bank accounts of financial banking institutions in the United States of America or in bank accounts of reputable financial banking institutions in such other country or countries as the Company has a bona fide business purpose to hold such Cash (other than with a purpose to circumvent or otherwise misrepresent the aggregate amount of Available Cash required pursuant to the terms and conditions of this Note).

(l) "**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 30 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).

(m) "**Bloomberg**" means Bloomberg, L.P.

(n) "**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.

(o) "**Cash**" of the Company and its Subsidiaries on any date shall be determined from such Persons' books maintained in accordance with GAAP, and means, without duplication, the cash, cash equivalents and Eligible Marketable Securities accrued by the Company and its wholly owned Subsidiaries on a consolidated basis on such date.

(p) "**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.

(q) "**Change of Control Redemption Premium**" means 125%.

(r) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(s) "**Common Stock**" means (i) the Company's shares of Class A common stock, $0.00001 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.

(t) "**Conversion Floor Price Condition**" means that the relevant Acceleration Conversion Price (including any Installment Conversion Price referred to therein) or Installment Conversion Price, as applicable, is being determined based on sub-clause (x) of such definitions.

(u) "**Conversion Installment Floor Amount**" means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) the higher of (I) the highest price that the shares of Common Stock trades at on the Trading Day immediately preceding the relevant Installment Date and (II) the applicable Installment Conversion Price and (B) the difference obtained by subtracting (I) the number of shares of Common Stock delivered (or to be delivered) to the Holder on the applicable Installment Date with respect to such Installment Conversion from (II) the quotient obtained by dividing (x) the applicable Installment Amount subject to such Installment Conversion, by (y) the applicable Installment Conversion Price without giving effect to clause (x) of such definition.

(v) "**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.

(w) "**Current Public Information Failure**" means the Company's failure 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 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).

(x) "**Eligible Market**" means the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the Principal Market.

(y) "**Eligible Marketable Securities**" as of any date means marketable securities which would be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared as of such date in accordance with GAAP, and which are permitted under the Company's investment policies as in effect on the Issuance Date or approved thereafter by the Company's Board of Directors.

(z) "**Equity Conditions**" means, with respect to any given date of determination: (i) 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 Underlying Securities (as defined in the Securities Purchase Agreement)) 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); (ii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of this Note on a timely basis as set forth in Section 3 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; (iii) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3(d) hereof; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) 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); (v) 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; (vi) no Current Public Information Failure then exists or is continuing; (vii) the Holder shall not be in (and no Other Holder 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; (viii) 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, in each case, which has not been waived; (ix) 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; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Alternate Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) (each, a "**Required Minimum Securities Amount**") are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default (as defined in the Notes) or an event that with the passage of time or giving of notice would constitute an Event of Default (regardless of whether the Holder has submitted an Event of Default Redemption Notice), in each case, which has not been waived; (xii) no bona fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document and (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.

(aa) "**Equity Conditions Failure**" means that on any day during the period commencing twenty (20) Trading Days prior to the applicable Installment Notice Date through the later of the applicable Installment Date and the date on which the applicable shares of Common Stock are actually delivered to the Holder, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(bb) "**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 Subscription Date 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 Subscription 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 of Notes; (ii) shares of Common Stock issued upon the conversion or exercise 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 Subscription Date, provided that the conversion price of any such Convertible Securities (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 of Notes; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; provided, that the terms of the Notes are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date); and (iv) shares of Common Stock issued and sold, in one or more transactions, pursuant to a Permitted ATM (as defined in the Securities Purchase Agreement), provided that the aggregate purchase price for such shares of Common Stock in such transaction or transactions shall not exceed $10,000,000. For the avoidance of doubt, any sales of shares of Common Stock pursuant to a Permitted ATM in excess of $10,000,000 shall not be included in this definition of "Excluded Securities".

(cc) "**Floor Price**" means $1.16, subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events; provided, that the Company may reduce the Floor Price to any amount set forth in a written notice to the Holder with at least five (5) Trading Day prior written notice (or such other time as the Company and the Holder shall mutually agree); provided, further, that any such reduction shall be irrevocable and shall not be subject to increase thereafter.

(dd) "**Fiscal Quarter**" means each of the fiscal quarters adopted by the Company for financial reporting purposes that correspond to the Company's fiscal year as of the date hereof that ends on December 31.

(ee) "**Fiscal Year**" means the fiscal year adopted by the Company for financial reporting purposes as of the date hereof that ends on December 31.

(ff) "**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 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 Note 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.

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

(hh) "**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.

(ii) "**Holder Pro Rata Amount**" means a fraction (i) the numerator of which is the original Principal amount of this Note issued to the Holder on the Initial Closing Date and (ii) the denominator of which is the aggregate original principal amount of all Notes issued to the initial purchasers pursuant to the Securities Purchase Agreement on the Initial Closing Date.

(jj) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(kk) "**Initial Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(ll) "**Installment Amount**" means the sum of (A) (i) with respect to any Installment Date other than the Maturity Date, the lesser of (x) the Holder Pro Rata Amount of $37,777,777.78 and (y) the Principal amount then outstanding under this Note as of such Installment Date, and (ii) with respect to the Installment Date that is the Maturity Date, the Principal amount then outstanding under this Note as of such Installment Date (in each case, as any such Installment Amount may be reduced pursuant to the terms of this Note, whether upon conversion, redemption or Deferral), (B) any Deferral Amount deferred pursuant to Section 8(d) and included in such Installment Amount in accordance therewith, (C) any Acceleration Amount accelerated pursuant to Section 8(e) and included in such Installment Amount in accordance therewith and (D) in each case of clauses (A) through (C) above, the sum of any accrued and unpaid Interest as of such Installment Date under this Note, if any, and accrued and unpaid Late Charges, if any, under this Note as of such Installment Date. In the event the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of each unpaid Installment Amount hereunder.

(mm) "**Installment Conversion Price**" means, with respect to a particular date of determination, the lower of (i) the Conversion Price then in effect, and (ii) the greater of (x) the Floor Price and (y) 93% of the Market Price of the applicable Installment Date. All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

(nn) "**Installment Date**" means (i) July 11, 2023, (ii) then, each three month anniversary thereafter until the Maturity Date, and (iii) the Maturity Date; provided that if any such date is not a Business Day, the next Business Day.

(oo) "**Indenture**" means that certain Indenture for Debt Securities dated as of the Initial Closing Date, by and between the Company and the Trustee, as may be amended, modified or supplemented from time to time, including, without limitation, by any Supplemental Indenture (as defined below).

(pp) "**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.

(qq) "**Market Price**" shall mean, as of any given date, the lower of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock on each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such date, divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period).

(rr) "**Maturity Date**" shall mean July 11, 2025; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

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

(tt) "**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.

(uu) "**Permitted Convertible Securities**" means (a) any Convertible Securities of the Company issued after July 11, 2023 in exchange for Indebtedness of the Company outstanding as of the Subscription Date; provided, that (i) such Convertible Securities are *pari passu* or subordinate to the terms of the Notes, (ii) the terms of such Convertible Securities are not more favorable to such holders of Convertible Securities than the terms of the Notes, (iii) the amounts outstanding under such Convertible Securities do not increase as a result of such exchange and (iv) such Convertible Securities shall not prohibit

or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes; and (b) any Convertible Securities issued after the 12-month anniversary of the Initial Closing Date; provided, that (i) such Convertible Securities are pari passu or subordinate to the terms of the Notes, and (ii) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(vv) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date, (iv) Permitted Convertible Securities, (v) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens, (vi) non-convertible Indebtedness to trade creditors incurred in the ordinary course of business (not otherwise excluded from the definition of Indebtedness), including non-convertible Indebtedness incurred in the ordinary course of business with corporate credit cards, (vii) non-convertible Indebtedness arising from letters of credit (or similar instruments) in the ordinary course of business, (viii) non-convertible Indebtedness arising from operating and financing leases in the ordinary course of business, (ix) non-convertible Indebtedness incurred under working capital facilities entered into in the ordinary course of business, provided such facilities do not exceed $200,000,000 in the aggregate (the "**Permitted WC Facility**"), (x) non-convertible intercompany Indebtedness owed between the Company and/or any Subsidiary (or between any Subsidiaries), as applicable, (xi) non-convertible Indebtedness consisting of subsidized loans made, or guaranteed, by a governmental entity, (xii) to the extent constituting non-convertible Indebtedness, obligations owed to an insurance company incurred in the ordinary course of business with respect to premiums payable for property, casualty, or other insurance, so long as such indebtedness shall not be in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such indebtedness is incurred and such indebtedness shall be outstanding only during such year, (xiii) non-convertible Indebtedness in respect of surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantees and similar obligations incurred in the ordinary course of business, and (xiv) other non-convertible Indebtedness not to exceed $25,000,000; provided, that (A) all Permitted Indebtedness must be pari passu or subordinate to the terms of the Notes (other than Permitted Indebtedness secured by Permitted Liens), and (B) no Permitted Indebtedness shall prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance

with the terms of the Notes.

(ww) "**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 $200,000,000, (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, (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, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 4(a)(x) and (viii) Liens with respect to any accounts receivables or inventory of the Company and its Subsidiaries securing the Permitted WC Facility.

(xx) "**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.

(yy) **"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 $1.16 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription 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.

(zz) "**Principal Market**" means the New York Stock Exchange.

(aaa) "**Reclaimable Cash**" means, as of any given date of determination, (i) unavailable Cash as of such date of determination that is eligible to be returned to the Company or any of its Subsidiaries, as applicable, at the conclusion of any agreement where such Cash would otherwise not be considered cash and cash equivalents for purposes of GAAP, but which is reasonably expected to be released as unrestricted Cash of the Company or any of its Subsidiaries within 90 days of such date of determination (including,

for the avoidance of doubt, any Cash amounts so restricted due to a letter of credit supporting supplier contractual obligations) and (ii) order deposits made through credit card transactions whereby Cash payments are held by financial institutions until the vehicle being purchased by any such applicable customer is delivered to such applicable customer (but solely with respect to such Cash payments that are reasonably expected to be released to the Company or any of its Subsidiaries, as applicable, within 90 days of such date of determination upon delivery of such applicable vehicle(s) to such applicable customer(s) and/or non-refundable payments that with the passage of time will become an asset of the Company (or such applicable Subsidiary) under GAAP)(regardless of whether the vehicle(s) is delivered)) at which time the Cash is deposited into the Company's (or such applicable Subsidiary's) bank account and available for the Company's (or such applicable Subsidiary's) unrestricted use.

(bbb) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices, the Installment Notices with respect to any Installment Redemption, and the Change of Control Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(ccc) "**Redemption Premium**" means 125%.

(ddd) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices, the Change of Control Redemption Prices, and the Installment Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

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

(fff) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.

(ggg) "**Significant Subsidiaries**" or "**Significant Subsidiary**" means, as of any time of determination, any of the "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) of the Company as of such time of determination.

(hhh) "**Subscription Date**" means July 10, 2023.

(iii) "**Subsidiaries**" shall have the meaning as set forth in the Securities Purchase Agreement.

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

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

(lll) "**Supplemental Indenture**" shall have the meaning ascribed to such term in the Securities Purchase Agreement, as each such supplemental indenture may be amended, modified or supplemented from time to time.

(mmm)"**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 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.

(nnn) "**Triggering Event**" means the occurrence of any Event of Default (assuming for such purpose that "$10,000,000" replaces "$25,000,000", where applicable, in each clause of the definition of Event of Default).

(ooo) "**Trustee**" means Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Indenture, or any successor or any additional trustee appointed with respect to the Notes pursuant to the Indenture.

(ppp) "**Volume Failure**" means, with respect to a particular date of determination, if either (x) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on more than five (5) Trading Days during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination, or (y) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the five (5) Trading Day period ending on the Trading Day immediately preceding such date of determination, as applicable, is less than $25,000,000.

(qqq) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

31. DISCLOSURE. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries (it being understood that a Dilutive Issuance, which results in an adjustment of the Conversion Price, shall always be deemed material for the purpose of this Section 31), 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 Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(l) of the Securities Purchase Agreement.

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

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture and the applicable Supplemental Indenture.

Dated: _____, 20__

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as the
Trustee

By:_____
Name:
Title:

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture and the applicable Supplemental Indenture.

Dated: July 11, 2023

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: Patrick J. Healy
Name: Patrick J. Healy
Title: Senior Vice President

EXHIBIT I

FISKER INC.
CONVERSION NOTICE

Reference is made to the Series A-1 Senior Convertible Note (the "**Note**") issued to the undersigned by Fisker Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Class A Common Stock, $0.00001 par value per share (the "**Common Stock**"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges 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: _____

Installment Amount(s) to be reduced (and corresponding Installment Date(s)) and amount of reduction: _____

☐ 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:_____

☐ If this Conversion Notice is being delivered with respect to an Acceleration, check here if Holder is electing to use _____ as the Installment Conversion Price (as applicable) related to the following Installment Date:_____

Please issue the Common Stock into which the Note 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: _____

DTC Participant Phone Number: _____

Account Number: _____

The source for these shares of Common Stock is reserve account **[●]**, with an effective date of [●], 20[●].

Date: _____ __, _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____

E-mail Address:

Mailing Address:

Exhibit II

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock are eligible to be resold by the Holder without restriction and 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 _____.

FISKER INC.

By: _____
Name:
Title:

EXHIBIT B

THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), COREY MACGILLIVRAY, A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). THE COMPANY'S CHIEF FINANCIAL OFFICER MAY BE REACHED AT TELEPHONE NUMBER (833) 434-7537.

FISKER INC.

Series B-1 SENIOR UNSECURED CONVERTIBLE NOTE

Issuance Date: September 29, 2023	Original Principal Amount: U.S. $170,000,000

FOR VALUE RECEIVED, Fisker Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of CVI Investments, Inc. or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date (each as defined below), or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and upon the occurrence and continuance of an Event of Default (as defined below) to pay interest ("**Interest**") on any outstanding Principal at the applicable Default Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date, or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Series B-1 Senior Unsecured Convertible Note (including all Senior Unsecured Convertible Notes issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Unsecured Convertible Notes (collectively, the "**Notes**", and such other Senior Unsecured Convertible Notes, the "**Other Notes**") issued pursuant to (i) Section 1 of that certain Securities Purchase Agreement, dated as of July 10, 2023 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (the "**Securities Purchase Agreement**"), (ii) the Indenture, (iii) a Supplemental Indenture, and (iv) the Company's Registration Statement on Form S-3 (File number 333-261875) (the "**Registration Statement**"). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On each Installment Date, the Company shall pay to the Holder an amount equal to the Installment Amount due on such Installment Date in accordance with Section 8. On the Maturity Date, the Company shall pay to the Holder an amount in cash (excluding any amounts paid in shares of Common Stock on the Maturity Date in accordance with Section 8) representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Other than as specifically permitted or required by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any. Notwithstanding anything herein to the contrary, with respect to any conversion or redemption hereunder, as applicable, the Company shall convert or redeem, as applicable, First, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document, Second, all accrued and unpaid Interest, if any, hereunder and under any Other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any Other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any Other Notes held by such Holder, in each case, allocated pro rata among this Note and such Other Notes held by such Holder.

2. INTEREST; DEFAULT RATE. No Interest shall accrue hereunder unless and until an Event of Default (as defined below) has occurred. From and after the occurrence and during the continuance of any Event of Default, Interest shall accrue hereunder at eighteen percent (18.0%) per annum (the "**Default Rate**") and shall be computed on the basis of a 360-day year and twelve 30-day months, shall compound each calendar month and shall be payable in arrears on the first Trading Day of each such calendar month in which Interest accrues hereunder (each, an "**Interest Date**"). Accrued and unpaid Interest, if any, shall also be payable by way of inclusion of such Interest in the Conversion Amount (as defined below) on each Conversion Date (as defined below) in accordance with in accordance with Section 3(b)(i) or upon any redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below). In the event that such Event of Default is subsequently cured (and no other Event of Default then exists (including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date, unless waived in writing by the Holder)), 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 or waiver; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of Default, unless waived in writing by the Holder.

3. CONVERSION OF NOTES. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(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 (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the sum of (x) portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made and (y) all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $ 7.5986, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall deliver (whether via electronic mail or as otherwise provided in Section 23(a)), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (each, a "**Conversion Notice**") to the Company and the Trustee. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 17(b)). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment, in the form attached hereto as Exhibit II, of confirmation of receipt of such Conversion Notice and representation that such shares of Common Stock may then be freely resold by the Holder without restriction (each, an "**Acknowledgement**") to the Holder, the Trustee and the Company's transfer agent (the "**Transfer Agent**") which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the second (2nd) Trading Day following the 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 shares of Common Stock 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's

("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the 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, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 17(d)) representing the outstanding Principal (and accrued and unpaid Interest thereon) not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. In the event of a partial conversion of this Note pursuant hereto, the Principal amount converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining Installment Amount(s) relating to the Installment Date(s) as set forth in the applicable Conversion Notice.

(ii) 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, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock 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 shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to one percent (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 Share Delivery Deadline and to which the Holder is entitled, multiplied by (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 applicable Conversion Date and ending on the applicable Share Delivery Deadline and (2) the 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) any portion of this Note 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 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's

share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to 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 is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below, and if on or after such Share Delivery Deadline 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 conversion that the 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 the Holder, the Company shall, within two (2) Business Days after receipt of 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 (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 issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the 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) (the "**Buy-In Payment Amount**"). 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) upon the conversion of this Note as required pursuant to the terms hereof.

(iii) Registration; Book-Entry. The Trustee shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "**Registered Notes**") as provided in Section 2.06 of the Indenture. The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof,

the Trustee shall record the information contained therein in the Register and issue one or more new Registered Notes (to be executed by the Company and authenticated and delivered by the Trustee) in the same aggregate principal amount as the principal amount of the surrendered Registered Note in the name of the designated assignee or transferee pursuant to Section 16, provided that if the Company or the Trustee does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note 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). Every Registered Note presented or surrendered for registration of transfer, or for exchange or redemption shall (if so required by the Company or the Registrar for such Notes presented) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the holder thereof or his attorney duly authorized in writing. Notwithstanding anything to the contrary set forth in this Section 3 or in the Indenture or in any applicable Supplemental Indenture, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder, the Trustee and the Company shall maintain records showing the Principal, Interest and Late Charges 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 the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3(d), shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22. If a Conversion Notice delivered to the Company would result in a breach of Section 3(d) below, and the 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 3(d) below (with such calculations thereunder made as of the date

such Conversion Notice was initially delivered to the Company).

(d) Limitations on Conversions.

(i) Beneficial Ownership. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d)(i). For purposes of this Section 3(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the 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 the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d)(i), to exceed the Maximum Percentage, the 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 (which may be an e-mail) or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported

Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes (each, an "**Other Holder**", and collectively, the "**Other Holders**") that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) Principal Market Regulation The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note 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 Notes or otherwise pursuant to the terms of the Notes without breaching 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 Section 312.03(c) of the NYSE Listed Company Manual, the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, no Buyer shall be issued in the aggregate, upon conversion of any Notes or otherwise pursuant to the terms of the Notes, shares of Common Stock in an

amount greater than the product of (i) the Exchange Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the original principal amount of Notes issued to such Buyer pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) divided by (2) the aggregate original principal amount of all Notes issued to the Buyers pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each Buyer, the "**Exchange Cap Allocation**"). In the event that any Buyer shall sell or otherwise transfer any of such Buyer's Notes, the transferee shall be allocated a pro rata portion of such Buyer's Exchange Cap Allocation with respect to such portion of such Notes 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 Notes, 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 Notes shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the shares of Common Stock underlying the Notes then held by each such holder of Notes. At any time after the three month anniversary of the Initial Closing Date (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 3(d)(i) (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such portion of this Note 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 Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 3(d)(i) and (ii) to the extent of any Buy-In related thereto, any Buy-In Payment Amount, 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**").

(e) Right of Alternate Conversion Upon a Triggering Event.

(i) General. Upon the occurrence of a Triggering Event with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Triggering Event Notice**") to the Holder and the Trustee. At any time after the earlier of the Holder's receipt of an Triggering Event Notice and the Holder becoming aware of an Triggering Event (such earlier date, the "**Triggering Event Right Commencement Date**") and ending (such ending date, the "**Triggering Event Right Expiration Date**", and each such period, an "**Triggering Event Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Triggering Event is cured and (y) the Holder's receipt of an Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the 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 Triggering Event Right Expiration Date, but subject to Section 3(d), (regardless of whether such Triggering Event has been cured, or if the Company has delivered a Triggering Notice to the Holder or otherwise notified the Company that a Triggering Event has occurred), the Holder may, at the Holder's option, convert (each, an "**Alternate Conversion**", and the date of each such Alternate Conversion, an "**Alternate Conversion Date**") all, or any part of, the Conversion Amount (such portion of the Conversion Amount subject to such Alternate Conversion, 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 3(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and with "Redemption Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate above with respect to such Alternate Conversion) by designating in the Conversion Notice delivered pursuant to this Section 3(e) of this Note that the Holder is electing to use the Alternate Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), 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 3(c) without regard to this Section 3(e).

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) 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;

(ii) 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 the Notes, 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 Notes into shares of Common Stock that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3(d);

(iii) except to the extent the Company is in compliance with Section 10(b) below, at any time following the tenth (10^{th}) consecutive day that the Holder's Authorized Share Allocation (as defined in Section 10(a) below) is less than the Required Reserve Amount (without regard to any limitations on conversion set forth in

Section 3(d) or otherwise);

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least three (3) Trading Days;

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

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $25,000,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(vii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Significant Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(viii) the commencement by the Company or any Significant 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 Significant 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 Significant 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 Significant 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 against the assets of the Company or any Significant Subsidiary;

(ix) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Significant 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 Significant 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 Significant 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 Significant 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 forty-five (45) consecutive days;

(x) a final judgment or judgments for the payment of money aggregating in excess of $25,000,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within forty-five (45) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within forty-five (45) 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 $25,000,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the 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 forty-five (45) days of the issuance of such judgment;

(xi) 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 $25,000,000 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 $25,000,000, which breach or violation (i) results in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constitutes a failure to pay the principal or interest of any such debt when due and payable (after giving effect to any applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(xii) other than as specifically set forth in another clause of this Section 4(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 five (5) consecutive Trading Days;

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

(xiv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13(a)-(d), (f), (g) or (h) of this Note;

(xv) any Event of Default (as defined in the Other Notes) occurs and is continuing with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder and the Trustee. The obligation of the Company to deliver an Event of Default Notice is in addition to, and may not be substituted by, the Trustee's delivery of notice of the same Event of Default to the Holder in accordance with Section 10.02 of the Indenture. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the "**Event of Default Right Commencement Date**") and ending (such ending date, the "**Event of Default Right Expiration Date**", and each such period, an "**Event of Default Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company and the Trustee, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate (calculated

assuming an Alternate Conversion as of the date of the Event of Default Redemption Notice) with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Event of Default Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the 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 the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the

Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders (as defined in the Securities Purchase Agreement) and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes reasonably satisfactory to the Required Holders, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking to the Notes and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note 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 6 and 14, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes 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 the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder and the Trustee (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the 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, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company and the Trustee, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the greatest of (i) the product of (w) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (A) the Conversion Amount being redeemed 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 the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (A) the Conversion Amount 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 the 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 (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 5(b), the 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 the Holder. Accordingly, any Redemption Premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Sections 7 or 14 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 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 Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date as of the applicable record date) 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Purchase Right shall be granted, issued or sold to the Holder, as applicable, with a limitation on conversion and/or exercise, as applicable, in the form of 3(d)(i) herein, *mutatis mutandis*; provided, that, if such Purchase Right (and/or on any subsequent Purchase Right held similarly) has an expiration date, maturity date or other similar provision, such term also shall be extended, on a day-by-day basis, by such aggregate number of days that the exercise or conversion (as applicable) of such Purchase Right (and/or any subsequent Purchase Right held similarly) (in each case, without regard to the limitation on conversion or exercise thereto, as applicable) would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage.

(b) 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 the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) 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 the Holder would have been entitled to receive had this Note 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. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any

limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. 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 7(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 7(a)), 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 7(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.

(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 7(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 7(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) upon the issue, conversion, exercise or exchange of any Options or Convertible Securities, or the rate at which any Convertible Securities or Options 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 7(b) 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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 7(a)(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 7(a) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right and/or any other security (as applicable) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right or any other security or instrument of the Company intended to convey value to any participant in such transaction, in any form whatsoever, 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 7(a)(i) or 7(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 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 and/or any other security or instrument (as applicable), if any, in each case, as determined on a per share basis in accordance with this Section 7(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 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, the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute. 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).

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) 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.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 7 or in the Securities Purchase Agreement, 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 (any such securities, "**Variable Price Securities**") regardless of whether securities have been sold pursuant to such agreement and whether such agreement has subsequently been terminated, prior to or after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock, in each case, 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 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 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 Note by designating in the Conversion Notice delivered upon any conversion of this Note 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 Note shall not obligate the Holder to rely on a Variable Price for any future conversion of this Note. In addition, from and after the date the Company enters into such agreement or issues any such Variable Price Securities, for purposes of calculating the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of any time of determination, the "Conversion Price" as used therein shall mean the lower of (x) the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of such time of determination and (y) the Variable Price as of such time of determination.

(d) 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 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock 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 7(d) will increase the Conversion Price as otherwise determined pursuant to this Section 7, 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.

(e) Calculations. All calculations under this Section 7 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.

(f) Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time during the term of this Note, 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 Notes to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. INSTALLMENT CONVERSION OR REDEMPTION.

(a) General. On each applicable Installment Date, provided there has been no Equity Conditions Failure, the Company shall pay to the Holder of this Note the applicable Installment Amount due on such date by converting such Installment Amount in accordance with this Section 8 (a "**Installment Conversion**"); provided, however, that the Company may, at its option following notice to the Holder (with a copy to the Trustee) as set forth below, pay the Installment Amount by redeeming such Installment Amount in cash (a "**Installment Redemption**") or by any combination of an Installment Conversion and an Installment Redemption so long as all of the outstanding applicable Installment Amount due on any Installment Date shall be converted and/or redeemed by the Company on the applicable Installment Date, subject to the provisions of this Section 8. On the date which is the sixth (6th) Trading Day prior to each Installment Date (each, an "**Installment Notice Due Date**"), the Company shall deliver written notice (each, a "**Installment Notice**" and the date all of the holders receive such notice is referred to as to the "**Installment Notice Date**"), to each holder of Notes (with a copy to the Trustee) and such Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of such holder's Note shall be converted in whole pursuant to an Installment Conversion or (B) (1) state that the Company elects to redeem for cash, or is required to redeem for cash in accordance with the provisions of the Notes, in whole or in part, the applicable Installment Amount pursuant to an Installment Redemption and (2) specify the portion of such Installment Amount which the Company elects or is required to redeem pursuant to an Installment Redemption (such amount to be redeemed in cash, the "**Installment Redemption Amount**") and the portion of the applicable Installment Amount, if any, with respect to which the Company will, and is permitted to, effect an Installment Conversion (such amount of the applicable Installment Amount so specified to be so converted pursuant to this Section 8 is referred to herein as the "**Installment Conversion Amount**"), which amounts when added together, must at least equal the entire applicable Installment Amount and (ii) if the applicable Installment Amount is to be paid, in whole or in part, pursuant to an Installment Conversion, certify that there is not then an Equity Conditions Failure as of the applicable Installment Notice Date. Each Installment Notice shall be irrevocable. If the Company does not timely deliver an Installment Notice in accordance with this Section 8 with respect to a particular Installment Date, then the Company shall

be deemed to have delivered an irrevocable Installment Notice confirming an Installment Conversion of the entire Installment Amount payable on such Installment Date and shall be deemed to have certified that there is not then an Equity Conditions Failure in connection with such Installment Conversion. Except as expressly provided in this Section 8(a), the Company shall convert and/or redeem the applicable Installment Amount of this Note pursuant to this Section 8 and the corresponding Installment Amounts of the Other Notes pursuant to the corresponding provisions of the Other Notes in the same ratio of the applicable Installment Amount being converted and/or redeemed hereunder. The applicable Installment Conversion Amount (whether set forth in the applicable Installment Notice or by operation of this Section 8) shall be converted in accordance with Section 8(b) and the applicable Installment Redemption Amount shall be redeemed in accordance with Section 8(c).

(b) Mechanics of Installment Conversion. Subject to Section 3(d), if the Company delivers an Installment Notice or is deemed to have delivered an Installment Notice certifying that such Installment Amount is being paid, in whole or in part, in an Installment Conversion in accordance with Section 8(a), then the remainder of this Section 8(b) shall apply. The applicable Installment Conversion Amount, if any, shall be converted on the applicable Installment Date at the applicable Installment Conversion Price and the Company shall, on such Installment Date, (A) deliver to the Holder's account with DTC such shares of Common Stock issued upon such conversion (subject to the reduction contemplated by the immediately following sentence and, if applicable, the penultimate sentence of this Section 8(b)), and (B) in the event of the Conversion Floor Price Condition, the Company shall deliver to the Holder the applicable Conversion Installment Floor Amount, provided that the Equity Conditions are then satisfied (or waived in writing by the Holder) on such Installment Date and an Installment Conversion is not otherwise prohibited under any other provision of this Note. If the Company confirmed (or is deemed to have confirmed by operation of Section 8(a)) the conversion of the applicable Installment Conversion Amount, in whole or in part, and there was no Equity Conditions Failure as of the applicable Installment Notice Date (or is deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied by operation of Section 8(a)) but an Equity Conditions Failure occurred between the applicable Installment Notice Date and any time through the applicable Installment Date (the "**Interim Installment Period**"), the Company shall provide the Holder a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Interim Installment Period or an Installment Conversion is not otherwise permitted under any other provision of this Note, then, at the option of the Holder designated in writing to the Company, the Holder may require the Company to do any one or more of the following: (i) the Company shall redeem all or any part designated by the Holder of the unconverted Installment Conversion Amount (such designated amount is referred to as the "**Designated Redemption Amount**") and the Company shall pay to the Holder within five (5) Trading Days of such Installment Date, by wire transfer of immediately available funds, an amount in cash equal to 125% of such Designated Redemption Amount, and/or (ii) the Installment Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Installment Conversion Amount and the Holder shall be entitled to all the rights of a holder of this Note with respect to such designated part of the Installment Conversion Amount; provided,

however, the Conversion Price for such designated part of such unconverted Installment Conversion Amount shall thereafter be adjusted to equal the lesser of (A) the Installment Conversion Price as in effect on the date on which the Holder voided the Installment Conversion and (B) the Installment Conversion Price that would be in effect on the date on which the Holder delivers a Conversion Notice relating thereto as if such date was an Installment Date. If the Company fails to redeem any Designated Redemption Amount by the second (2nd) day following the applicable Installment Date by payment of such amount by such date, then the Holder shall have the rights set forth in Section 11(a) as if the Company failed to pay the applicable Installment Redemption Price (as defined below) and all other rights under this Note (including, without limitation, such failure constituting an Event of Default described in Section 4(a)(iv)). Notwithstanding anything to the contrary in this Section 8(b), but subject to 3(d), until the Company delivers Common Stock representing the Installment Conversion Amount to the Holder, the Installment Conversion Amount may be converted by the Holder into Common Stock pursuant to Section 3. In the event that the Holder elects to convert the Installment Conversion Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Conversion Amount so converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of any shares of Common Stock in any Installment Conversion hereunder.

(c) Mechanics of Installment Redemption. If the Company elects or is required to effect an Installment Redemption, in whole or in part, in accordance with Section 8(a), then the Installment Redemption Amount, if any, shall be redeemed by the Company in cash on the applicable Installment Date by wire transfer to the Holder of immediately available funds in an amount equal to 103% of the applicable Installment Redemption Amount (the "**Installment Redemption Price**"). If the Company fails to redeem such Installment Redemption Amount on such Installment Date by payment of the Installment Redemption Price, then, at the option of the Holder designated in writing to the Company (any such designation shall be a "**Conversion Notice**" for purposes of this Note), the Holder may require the Company to convert all or any part of the Installment Redemption Amount at the Installment Conversion Price (determined as of the date of such designation as if such date were an Installment Date). Conversions required by this Section 8(c) shall be made in accordance with the provisions of Section 3(c). Notwithstanding anything to the contrary in this Section 8(c), but subject to Section 3(d), until the Installment Redemption Price (together with any Late Charges thereon) is paid in full, the Installment Redemption Amount (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event the Holder elects to convert all or any portion of the Installment Redemption Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Redemption Amount so converted shall be deducted from the Principal amount outstanding hereunder, including for purposes of determining the Installment Amounts relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. Redemptions required by this Section 8(c) shall be made in accordance with the provisions of Section 11.

(d) Deferred Installment Amount. Notwithstanding any provision of this Section 8(d) to the contrary, the Holder may, at its option and in its sole discretion, deliver a written notice to the Company no later than the Trading Day immediately prior to the applicable Installment Date electing to have the payment of all or any portion of an Installment Amount payable on such Installment Date deferred (such amount deferred, the "**Deferral Amount**", and such deferral, each a "**Deferral**") until any subsequent Installment Date selected by the Holder, in its sole discretion, in which case, the Deferral Amount shall be added to, and become part of, such subsequent Installment Amount and such Deferral Amount shall continue to accrue Interest hereunder. Any notice delivered by the Holder pursuant to this Section 8(d) shall set forth (i) the Deferral Amount and (ii) the date that such Deferral Amount shall now be payable.

(e) Acceleration of Installment Amounts. Notwithstanding any provision of this Section 8 to the contrary, but subject to Section 3(d), during the period commencing on an Installment Date (a "**Current Installment Date**") and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Installment Period**"), at the option of the Holder, at one or more times, the Holder may convert other Installment Amounts (each, an "**Acceleration**", and each such amount, an "**Acceleration Amount**", and the Conversion Date of any such Acceleration, each an "**Acceleration Date**"), in whole or in part, at the Acceleration Conversion Price of such Current Installment Date in accordance with the conversion procedures set forth in Section 3 hereunder (with "Acceleration Conversion Price" replacing "Conversion Price" for all purposes therein), *mutatis mutandis;* provided, that if a Conversion Floor Price Condition exists with respect to such Acceleration Date, with each Acceleration the Company shall also deliver to the Holder the Acceleration Floor Amount on the applicable Share Delivery Deadline. Notwithstanding anything to the contrary in this Section 8(e), with respect to each period commencing on an Installment Date and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Acceleration Measuring Period**"), the Holder may not elect to effect an Acceleration (the "**Current Acceleration**", and such date of determination, the "**Current Acceleration Determination Date**") during such Acceleration Measuring Period if the Holder shall have converted pursuant to this Section 8 either on such Current Installment Date and/or on any Acceleration Date during such Acceleration Measuring Period, as applicable, such portion of the Conversion Amount of this Note equal to the sum of (x) the Installment Amount for such Installment Date (whether on the Current Installment Date or, if subject to a Deferral, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date) and (y) an additional 200% of the Installment Amount for such Current Installment Date, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date (or such greater amount as the Company and the Holder shall mutually agree).

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, and (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 nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(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 permit such conversion into shares of Common Stock.

10. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as any Notes remain outstanding, the Company shall at all times reserve (I) if prior to Reserve Increase Deadline (as defined in the Securities Purchase Agreement), 275,000,000 shares of Common Stock for conversion (including without limitation, Installment Conversions, Alternate Conversions and Accelerations) of all of the Notes then outstanding (without regard to any limitations on conversions) or (ii) if on or after the Reserve Increase Deadline, at least 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion, including without limitation, Installment Conversions, Alternate Conversions and Accelerations, of all of the Notes then outstanding (without regard to any limitations on conversions and assuming such Notes remain outstanding until the Maturity Date) at the Floor Price then in effect (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 of the Notes based on the original principal amount of the Notes held by each holder on the Initial Closing 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 Notes, 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 Notes shall be allocated to the remaining holders of Notes, pro rata based on the principal amount of the Notes then held by such holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 10(a), and not in limitation thereof, at any time while any of the Notes 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 Notes 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 Notes then outstanding. 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 sixty (60) 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. 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 pursuant to the terms of this Note 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 the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount 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 the 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 10(a); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in Section 10(a) or this Section 10(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

11. REDEMPTIONS.

(a) Mechanics. The Company, or at the Company's written direction and at the Company's expense, the Trustee, shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company, or at the Company's direction, the Trustee, shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise. The Company shall deliver the applicable Installment Redemption Price to the Holder in cash on the applicable Installment Date. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the 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. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of this Note or such new Notes (as the case may be) shall be automatically adjusted with respect to each conversion effected thereafter by the Holder to the lowest of (A) the Conversion Price as in effect on the date on which the applicable Redemption Notice is voided, (B) 75% of the Market Price of the Common Stock for the period ending on and including the date on which the applicable Redemption Notice is voided and (C) 75% of the Market Price of the Common Stock for the period ending as of the applicable Conversion Date (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by electronic mail a copy of such notice (with a copy to the Trustee). If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company

during such seven (7) Business Day period.

12. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

13. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. The Company shall designate all payments due under this Note as senior unsecured Indebtedness, and (a) the Notes shall rank *pari passu* with all Other Notes and (b) shall be at least *pari passu* in right of payment with all other Indebtedness of the Company and its Subsidiaries (other than Permitted Indebtedness secured by Permitted Liens).

(b) 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 (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) 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; provided, however, that the Company shall be deemed to be in breach of this Section 13(c) only if such breach remains uncured for a period of five (5) Trading Days.

(d) 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 than the Notes) 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 an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) 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.

(f) 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 (including, without limitation, in connection with joint ventures) in the ordinary course of business consistent with its past practice and (ii) sales of inventory and product in the ordinary course of business; provided, however, that the Company shall be deemed to be in breach of this Section 13(f) if such breach was an involuntary sale, lease, license, assignment, transfer, spin-off, split-off, close, conveyance or otherwise disposal that remains uncured for a period of five (5) Trading Days.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date (except, solely from and after the Stockholder Approval Date (as defined in the Securities Purchase Agreement), up to $100 million of Permitted Indebtedness in any three month period).

(h) 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 Subscription 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 other than for tax or other general corporate purposes that are not meant to (and do not) change the nature of the business of the Company currently conducted as of the Issuance Date.

(i) 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.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its 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 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.

(k) 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 (as defined in the Securities Purchase Agreement) 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.

(l) 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 (including, without limitation, and for the avoidance of doubt, at least $5,000,000 in director's and officer's insurance).

(m) 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.

(n) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Financial Covenants; Announcement of Operating Results.

(i) The Company shall maintain, as of the end of each Fiscal Quarter (and/or Fiscal Year, as applicable) a balance of Available Cash in an aggregate amount equal to or greater than $340,000,000 (the "**Financial Test**").

(ii) Operating Results Announcement. Commencing on the Fiscal Quarter ending September 30, 2023, the Company shall publicly disclose and disseminate (such date, the "**Announcement Date**"), if the Financial Test has not been satisfied for such Fiscal Quarter or Fiscal Year, as applicable, a statement to that effect no later than (x) if prior to March 31, 2024, the fifteenth (15th) Trading Day or (y) if on or after March 31, 2024, the tenth (10^{th}) Trading Day, in either case, after the end of such Fiscal Quarter or Fiscal Year, as applicable, and such announcement shall include a statement to the effect that the Company is (or is not, as applicable) in breach of the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable. Notwithstanding the foregoing, in the event no Financial Covenant Failure (as defined below) has occurred and the Company reasonably determines, with the advice of legal counsel, that the disclosure referred to in the immediately preceding sentence does not constitute material non-public information, the Company shall make a statement to that effect in the applicable certification required below and no disclosure with the SEC shall be required to be made by the Company. On the Announcement Date, the Company shall also provide to the Holder a certification,

executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Company satisfied the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable, if that is the case. If the Company has failed to meet the Financial Test for a Fiscal Quarter or Fiscal Year, as applicable, (each a "**Financial Covenant Failure**"), the Company shall provide to the Holder a written certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Financial Test has not been met for such Fiscal Quarter or Fiscal Year, as applicable (a "**Financial Covenant Failure Notice**"). Concurrently with the delivery of each Financial Covenant Failure Notice to the Holder, the Company shall also make publicly available (as part of a Quarterly Report on Form 10-Q, Annual Report on Form 10-K or on a Current Report on Form 8-K, or otherwise) the Financial Covenant Failure Notice and the fact that an Event of Default has occurred under the Notes.

(p) PCAOB Registered Auditor. At all times any Notes 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.

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

(r) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to 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.

(s) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent

Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note 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 (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

14. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Sections 6 or 7, 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 the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date 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 the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the 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 the extent of any such excess)) and in lieu of delivering to the Holder such portion of such Distribution in excess of the Maximum Percentage, the Holder shall receive a right to receive such portion of such Distribution, exercisable into such Distribution at any time, in whole or in part, at the option of the Holder (or any successor thereto), without the payment of any additional consideration, but subject to a limitation on exercise in the form of 3(d)(i) herein, *mutatis mutandis*.

15. AMENDING THE TERMS OF THIS NOTE. Except for Section 3(d), which may not be amended, modified or waived by the parties hereto, the prior written consent of the

Company and the Holder shall be required for any change, waiver or amendment to this Note; provided, however, no change, waiver or amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent.

16. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company; provided, that the Holder shall not transfer this Note to any competitor of the Company without the prior written consent of the Company (not to be unreasonably withheld).

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note. Upon compliance with Section 2.02 of the Indenture, the Company shall execute and, following authentication of such new Note, deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16(a) or Section 16(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such

new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, (v) shall be duly authenticated in accordance with the Indenture and (vi) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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 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 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 Note (including, without limitation, compliance with Section 7).

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note and/or any other Transaction Document or to enforce the provisions of this Note and/or any other Transaction Document or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note and/or any other Transaction Document, as applicable, shall

be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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. Notwithstanding the foregoing, nothing contained in this Section 21 shall permit any waiver of any provision of Section 3(d).

22. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Installment Conversion Price, an Acceleration Conversion Price, an Alternate Conversion Price, a Black Scholes Consideration Value, 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 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 learning of the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder at any time after the Holder learned of the circumstances giving rise to such dispute. If the 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 Installment Conversion Price, such Acceleration Conversion Price, such Alternate Conversion Price, such Black Scholes Consideration Value, 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 fifth (5^{th}) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the

Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The 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 22 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 (5^{th}) Business Day immediately following the date on which the 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 the 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 the Holder or otherwise requested by such investment bank, neither the Company nor the 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).

(iii) The Company and the Holder shall use reasonable best efforts to cause such investment bank to determine the resolution of such dispute and notify the Company and the 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 solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 22 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 22, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 7(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the terms of this Note 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 Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 22 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 22 and (v) nothing in this Section 22 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 22).

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement, or, with respect to the Trustee, in accordance with Section 10.02 of the Indenture. The Company shall provide the Holder and the Trustee with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder and the Trustee (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, (B) with respect to any grant, issuances, or sales of any Common Stock, Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock (including, without limitation, whether a Dilutive Issuance has occurred hereunder) or (C) 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 the Holder.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note 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 Note, 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).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such

Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note or any other Transaction Documents have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **THE COMPANY 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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

27. JUDGMENT CURRENCY.

(a) 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 Note, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) 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

(ii) 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**").

(b) 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.

(c) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

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

(c) "**Acceleration Conversion Price**" means, with respect to any given Acceleration Date, the lower of (i) the Installment Conversion Price for such Current Installment Date related to such Acceleration Date and (ii) the greater of (x) the Floor Price and (y) 93% of the Acceleration Market Price.

(d) "**Acceleration Market Price**" means, with respect to any given Acceleration Date, the lesser of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such Acceleration Date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock for each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such Acceleration Date, divided by (y) five (5). All such determinations to be appropriately adjusted for any share split, share dividend, share combination or other similar transaction during any such measuring period.

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

(f) "**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 7) of shares of Common Stock (other than rights of the type described in Section 6(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).

(g) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(h) "**Alternate Conversion Price**" means, with respect to any Alternate Conversion that price which shall be the lower of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) 80% of the Market Price as of the Trading Day of 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.

(i) "**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 Subscription Date pursuant to which shares of 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.

(j) "**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 Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the 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 the 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 the Holder and all other Attribution Parties to the Maximum Percentage.

(k) "**Available Cash**" means, with respect to any date of determination, an amount equal to the aggregate amount of the Cash of the Company and its Subsidiaries (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of its Subsidiaries for any reason) and Reclaimable Cash as of such date of determination held in bank accounts of financial banking institutions in the United States of America or in bank accounts of reputable financial banking institutions in such other country or countries as the Company has a bona fide business purpose to hold such Cash (other than with a purpose to circumvent or otherwise misrepresent the aggregate amount of Available Cash required pursuant to the terms and conditions of this Note).

(l) "**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 30 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).

(m) "**Bloomberg**" means Bloomberg, L.P.

(n) "**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.

(o) "**Cash**" of the Company and its Subsidiaries on any date shall be determined from such Persons' books maintained in accordance with GAAP, and means, without duplication, the cash, cash equivalents and Eligible Marketable Securities accrued by the Company and its wholly owned Subsidiaries on a consolidated basis on such date.

(p) "**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.

(q) "**Change of Control Redemption Premium**" means 125%.

(r) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(s) "**Common Stock**" means (i) the Company's shares of Class A common stock, $0.00001 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.

(t) "**Conversion Floor Price Condition**" means that the relevant Acceleration Conversion Price (including any Installment Conversion Price referred to therein) or Installment Conversion Price, as applicable, is being determined based on sub-clause (x) of such definitions.

(u) "**Conversion Installment Floor Amount**" means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) the higher of (I) the highest price that the shares of Common Stock trades at on the Trading Day immediately preceding the relevant Installment Date and (II) the applicable Installment Conversion Price and (B) the difference obtained by subtracting (I) the number of shares of Common Stock delivered (or to be delivered) to the Holder on the applicable Installment Date with respect to such Installment Conversion from (II) the quotient obtained by dividing (x) the applicable Installment Amount subject to such Installment Conversion, by (y) the applicable Installment Conversion Price without giving effect to clause (x) of such definition.

(v) "**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.

(w) "**Current Public Information Failure**" means the Company's failure 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 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).

(x) "**Eligible Market**" means the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the Principal Market.

(y) "**Eligible Marketable Securities**" as of any date means marketable securities which would be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared as of such date in accordance with GAAP, and which are permitted under the Company's investment policies as in effect on the Issuance Date or approved thereafter by the Company's Board of Directors.

(z) "**Equity Conditions**" means, with respect to any given date of determination: (i) 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 Underlying Securities (as defined in the Securities Purchase Agreement)) 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); (ii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of this Note on a timely basis as set forth in Section 3 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; (iii) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3(d) hereof; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) 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); (v) 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; (vi) no Current Public Information Failure then exists or is continuing; (vii) the Holder shall not be in (and no Other Holder 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; (viii) 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, in each case, which has not been waived; (ix) 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; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Alternate Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) (each, a "**Required Minimum Securities Amount**") are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default (as defined in the Notes) or an event that with the passage of time or giving of notice would constitute an Event of Default (regardless of whether the Holder has submitted an Event of Default Redemption Notice), in each case, which has not been waived; (xii) no bona fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document and (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.

(aa) "**Equity Conditions Failure**" means that on any day during the period commencing twenty (20) Trading Days prior to the applicable Installment Notice Date through the later of the applicable Installment Date and the date on which the applicable shares of Common Stock are actually delivered to the Holder, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(bb) "**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 Subscription Date 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 Subscription 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 of Notes; (ii) shares of Common Stock issued upon the conversion or exercise 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 Subscription Date, provided that the conversion price of any such Convertible Securities (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 of Notes; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; provided, that the terms of the Notes are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date); and (iv) shares of Common Stock issued and sold, in one or more transactions, pursuant to a Permitted ATM (as defined in the Securities Purchase Agreement), provided that the aggregate purchase price for such shares of Common Stock in such transaction or transactions shall not exceed $10,000,000. For the avoidance of doubt, any sales of shares of Common Stock pursuant to a Permitted ATM in excess of $10,000,000 shall not be included in this definition of "Excluded Securities".

(cc) "**Floor Price**" means $1.16, subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events; provided, that the Company may reduce the Floor Price to any amount set forth in a written notice to the Holder with at least five (5) Trading Day prior written notice (or such other time as the Company and the Holder shall mutually agree); provided, further, that any such reduction shall be irrevocable and shall not be subject to increase thereafter.

(dd) "**Fiscal Quarter**" means each of the fiscal quarters adopted by the Company for financial reporting purposes that correspond to the Company's fiscal year as of the date hereof that ends on December 31.

(ee) "**Fiscal Year**" means the fiscal year adopted by the Company for financial reporting purposes as of the date hereof that ends on December 31.

(ff) "**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 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 Note 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.

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

(hh) "**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.

(ii) "**Holder Pro Rata Amount**" means a fraction (i) the numerator of which is the original Principal amount of this Note issued to the Holder on the Initial Closing Date and (ii) the denominator of which is the aggregate original principal amount of all Notes issued to the initial purchasers pursuant to the Securities Purchase Agreement on the Initial Closing Date.

(jj) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(kk) "**Initial Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(ll) "**Installment Amount**" means the sum of (A) (i) with respect to any Installment Date other than the Maturity Date, the lesser of (x) the Holder Pro Rata Amount of $18,888,888.89 and (y) the Principal amount then outstanding under this Note as of such Installment Date, and (ii) with respect to the Installment Date that is the Maturity Date, the Principal amount then outstanding under this Note as of such Installment Date (in each case, as any such Installment Amount may be reduced pursuant to the terms of this Note, whether upon conversion, redemption or Deferral), (B) any Deferral Amount deferred pursuant to Section 8(d) and included in such Installment Amount in accordance therewith, (C) any Acceleration Amount accelerated pursuant to Section 8(e) and included in such Installment Amount in accordance therewith and (D) in each case of clauses (A) through (C) above, the sum of any accrued and unpaid Interest as of such Installment Date under this Note, if any, and accrued and unpaid Late Charges, if any, under this Note as of such Installment Date. In the event the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of each unpaid Installment Amount hereunder.

(mm) "**Installment Conversion Price**" means, with respect to a particular date of determination, the lower of (i) the Conversion Price then in effect, and (ii) the greater of (x) the Floor Price and (y) 93% of the Market Price of the applicable Installment Date. All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

(nn) "**Installment Date**" means (i) September 29, 2023, (ii) then, each three month anniversary thereafter until the Maturity Date, and (iii) the Maturity Date; provided that if any such date is not a Business Day, the next Business Day.

(oo) "**Indenture**" means that certain Indenture for Debt Securities dated as of the Initial Closing Date, by and between the Company and the Trustee, as may be amended, modified or supplemented from time to time, including, without limitation, by any Supplemental Indenture (as defined below).

(pp) "**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.

(qq) "**Market Price**" shall mean, as of any given date, the lower of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock on each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such date, divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period).

(rr) "**Maturity Date**" shall mean September 29, 2025; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

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

(tt) "**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.

(uu) "**Permitted Convertible Securities**" means (a) any Convertible Securities of the Company issued after July 11, 2023 in exchange for Indebtedness of the Company outstanding as of the Subscription Date; provided, that (i) such Convertible Securities are *pari passu* or subordinate to the terms of the Notes, (ii) the terms of such Convertible Securities are not more favorable to such holders of Convertible Securities than the terms of the Notes, (iii) the amounts outstanding under such Convertible Securities do not increase as a result of such exchange and (iv) such Convertible Securities shall not prohibit

or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes; and (b) any Convertible Securities issued after the 12-month anniversary of the Initial Closing Date; provided, that (i) such Convertible Securities are pari passu or subordinate to the terms of the Notes, and (ii) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(vv) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date, (iv) Permitted Convertible Securities, (v) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens, (vi) non-convertible Indebtedness to trade creditors incurred in the ordinary course of business (not otherwise excluded from the definition of Indebtedness), including non-convertible Indebtedness incurred in the ordinary course of business with corporate credit cards, (vii) non-convertible Indebtedness arising from letters of credit (or similar instruments) in the ordinary course of business, (viii) non-convertible Indebtedness arising from operating and financing leases in the ordinary course of business, (ix) non-convertible Indebtedness incurred under working capital facilities entered into in the ordinary course of business, provided such facilities do not exceed $200,000,000 in the aggregate (the "**Permitted WC Facility**"), (x) non-convertible intercompany Indebtedness owed between the Company and/or any Subsidiary (or between any Subsidiaries), as applicable, (xi) non-convertible Indebtedness consisting of subsidized loans made, or guaranteed, by a governmental entity, (xii) to the extent constituting non-convertible Indebtedness, obligations owed to an insurance company incurred in the ordinary course of business with respect to premiums payable for property, casualty, or other insurance, so long as such indebtedness shall not be in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such indebtedness is incurred and such indebtedness shall be outstanding only during such year, (xiii) non-convertible Indebtedness in respect of surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantees and similar obligations incurred in the ordinary course of business, and (xiv) other non-convertible Indebtedness not to exceed $25,000,000; provided, that (A) all Permitted Indebtedness must be pari passu or subordinate to the terms of the Notes (other than Permitted Indebtedness secured by Permitted Liens), and (B) no Permitted Indebtedness shall prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance

with the terms of the Notes.

(ww) "**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 $200,000,000, (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, (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, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 4(a)(x) and (viii) Liens with respect to any accounts receivables or inventory of the Company and its Subsidiaries securing the Permitted WC Facility.

(xx) "**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.

(yy) **"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 $1.16 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription 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.

(zz) "**Principal Market**" means the New York Stock Exchange.

(aaa) "**Reclaimable Cash**" means, as of any given date of determination, (i) unavailable Cash as of such date of determination that is eligible to be returned to the Company or any of its Subsidiaries, as applicable, at the conclusion of any agreement where such Cash would otherwise not be considered cash and cash equivalents for purposes of GAAP, but which is reasonably expected to be released as unrestricted Cash of the Company or any of its Subsidiaries within 90 days of such date of determination (including,

for the avoidance of doubt, any Cash amounts so restricted due to a letter of credit supporting supplier contractual obligations) and (ii) order deposits made through credit card transactions whereby Cash payments are held by financial institutions until the vehicle being purchased by any such applicable customer is delivered to such applicable customer (but solely with respect to such Cash payments that are reasonably expected to be released to the Company or any of its Subsidiaries, as applicable, within 90 days of such date of determination upon delivery of such applicable vehicle(s) to such applicable customer(s) and/or non-refundable payments that with the passage of time will become an asset of the Company (or such applicable Subsidiary) under GAAP)(regardless of whether the vehicle(s) is delivered)) at which time the Cash is deposited into the Company's (or such applicable Subsidiary's) bank account and available for the Company's (or such applicable Subsidiary's) unrestricted use.

(bbb) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices, the Installment Notices with respect to any Installment Redemption, and the Change of Control Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(ccc) "**Redemption Premium**" means 125%.

(ddd) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices, the Change of Control Redemption Prices, and the Installment Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

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

(fff) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.

(ggg) "**Significant Subsidiaries**" or "**Significant Subsidiary**" means, as of any time of determination, any of the "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) of the Company as of such time of determination.

(hhh) "**Subscription Date**" means July 10, 2023.

(iii) "**Subsidiaries**" shall have the meaning as set forth in the Securities Purchase Agreement.

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

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

(lll) "**Supplemental Indenture**" shall have the meaning ascribed to such term in the Securities Purchase Agreement, as each such supplemental indenture may be amended, modified or supplemented from time to time.

(mmm)"**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 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.

(nnn) "**Triggering Event**" means the occurrence of any Event of Default (assuming for such purpose that "$10,000,000" replaces "$25,000,000", where applicable, in each clause of the definition of Event of Default).

(ooo) "**Trustee**" means Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Indenture, or any successor or any additional trustee appointed with respect to the Notes pursuant to the Indenture.

(ppp) "**Volume Failure**" means, with respect to a particular date of determination, if either (x) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on more than five (5) Trading Days during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination, or (y) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the five (5) Trading Day period ending on the Trading Day immediately preceding such date of determination, as applicable, is less than $25,000,000.

(qqq) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

31. DISCLOSURE. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries (it being understood that a Dilutive Issuance, which results in an adjustment of the Conversion Price, shall always be deemed material for the purpose of this Section 31), 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 Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(l) of the Securities Purchase Agreement.

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

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: Geeta Gupta-Fisker (Sep 28, 2023 07:23 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture and the applicable Supplemental Indenture.

Dated: September 29, 2023

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: _____
Name: Patrick J. Healy
Title: Senior Vice President

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: _____
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture and the applicable Supplemental Indenture.

Dated: September 29, 2023

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: Patrick J. Healy
Name: Patrick J. Healy
Title: Senior Vice President

EXHIBIT I

FISKER INC.
CONVERSION NOTICE

Reference is made to the Series B-1 Senior Convertible Note (the "**Note**") issued to the undersigned by Fisker Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Class A Common Stock, $0.00001 par value per share (the "**Common Stock**"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges 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: _____

Installment Amount(s) to be reduced (and corresponding Installment Date(s)) and amount of reduction: _____

☐ 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:_____

☐ If this Conversion Notice is being delivered with respect to an Acceleration, check here if Holder is electing to use _____ as the Installment Conversion Price (as applicable) related to the following Installment Date:_____

Please issue the Common Stock into which the Note 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: _____

DTC Participant Phone Number: _____

Account Number: _____

The source for these shares of Common Stock is reserve account **[●]**, with an effective date of [●], 20[●].

Date: _____ __, _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____

E-mail Address:

Mailing Address:

Exhibit II

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock are eligible to be resold by the Holder without restriction and 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 _____.

FISKER INC.

By: _____
Name:
Title:

EXHIBIT C

EXECUTION COPY

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of July 10, 2023, is by and among Fisker Inc., a Delaware corporation with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (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 desire to enter into this transaction to purchase Notes (as defined below) pursuant to a currently effective shelf registration statement on Form S-3, which has sufficient availability for the issuance of the Securities (as defined below) on each Closing Date (as defined below) (Registration Number 333-261875) (the "**Registration Statement**") and has been declared effective in accordance with the 1933 Act, by the SEC.

B. The Company has authorized one or more new series of senior unsecured convertible notes of the Company (with a new series of senior unsecured convertible notes to be established for each Closing (as defined below) hereunder), in the aggregate original principal amount of up to $680,000,000, substantially in the form attached hereto as **Exhibit A-1** (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, and issued pursuant to and by, the provisions of (x) an Indenture dated as of the Initial Closing Date (as defined below), by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (the "**Trustee**"), in substantially the form attached hereto as **Exhibit A-2** (as amended and/or supplemented from time to time, including, without limitation, by any Supplemental Indenture (as defined below), the "**Indenture**"), and (y) one or more supplemental indentures with respect to the Notes in the form attached hereto as **Exhibit A-3** (each, a "**Supplemental Indenture**", and collectively, the "**Supplemental Indentures**").

C. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, at the Initial Closing (as defined below) a Note (established under the Series A of the Notes) in the aggregate original principal amount 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 $340,000,000) (each an "**Initial Note**", and collectively, the "**Initial Notes**").

D. Subject to the terms and conditions set forth in this Agreement, each Buyer may require the Company to participate in one or more Additional Optional Closings (as defined below) for the purchase by such Buyer, and the sale by the Company, of one or more additional Notes (with each established under the Series B of the Notes) with an aggregate original principal amount for all Additional Optional Closings not to exceed the maximum aggregate principal amount 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 Optional Closings shall not exceed

$226,666,667) (each an "**Additional Optional Notes**", and collectively, the "**Additional Optional Notes**").

E. Subject to the terms and conditions set forth in this Agreement, the Company may require each Buyer to participate in an Additional Mandatory Closing (as defined below) for the purchase by such Buyer, and the sale by the Company, of additional Notes (established under the Series C of the Notes) (each an "**Additional Mandatory Note**", and collectively, the "**Additional Mandatory Notes**", and together with the Additional Optional Notes, each an "**Additional Note**", and collectively, the "**Additional Notes**") each with an aggregate original principal amount as set forth opposite such Buyer's name in column (5) on the Schedule of Buyers (which aggregate principal amount for all Buyers for the Additional Mandatory Closing shall not exceed $113,333,333).

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

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)(i), 6(b) and 7(b) below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, shall purchase from the Company on such Additional Closing Date (as defined below), an Additional Note in such aggregate principal amount as specified in such Additional Mandatory Closing Notice (as defined below) or Additional Closing Notice (as defined below), as applicable (each, an "**Additional Closing Notice**", and 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 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 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.

(1) Additional Closing Date. If the Company has delivered an Additional Mandatory Closing Notice to each of the Buyers or a Buyer has delivered an Additional Closing Notice to the Company, the date and time of the applicable Additional Closing (each, an "**Additional Closing Date**," and the Initial Closing Date and each Additional Closing Date, each, a "**Closing Date**") shall be 10:00 a.m., New York time, on the first (1st) Business Day on which the conditions to such Additional Closing set forth in this Section 1(b)(ii), 6(b) and 7(b) below are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer).

(2) Additional Optional Closings at Buyer's Election. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6(b) and 7(b) below, at any time on or after the first anniversary of the Initial Closing Date (unless amended or waived to an earlier date by the Company, which amendment or waiver shall not require the consent of the Buyers hereunder), each Buyer, severally, shall have the right, exercisable by delivery by e-mail of a written notice to the Company (each, an "**Additional Optional Closing Notice**", and the date hereof, each an "**Additional Optional 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 (each, an "**Additional Optional Notes Amount**"). Each Additional Optional Closing Notice shall specify (A) the proposed date and time of the Additional Closing (which, if unspecified in such Additional Optional Closing Notice, shall be the second (2^{nd}) Trading Day after such Additional Optional Closing Notice or such other date as is mutually agreed to by the Company and each Buyer, each, an "**Additional Optional Closing Date**", and each such Additional Closing, an "**Additional Optional Closing**") and (B) the applicable Additional Optional Notes Amount of the Additional Notes to be issued to such applicable Buyer at such Additional Closing, but in no event less than the lesser of (x) $50,000,000 and (y) the remaining Additional Optional Notes Amount of Additional Notes of such Buyer that has not been purchased by such Buyer at one or more Additional Optional Closings on or prior to such time of determination. If a Buyer has not elected to effect an Additional Closing with respect to all of the Additional Optional Notes Amount of such Buyer on or prior to the eighteen-month

anniversary of the Initial Closing Date (the "**Additional Optional Closing Expiration Date**"), such Buyer shall have no further right to effect an Additional Closing hereunder.

(3) Additional Mandatory Closing at Company's Election. Subject to the satisfaction of the conditions to closing set forth in this Section 1(b)(ii) and Sections 6(b) and 7(b) below, at any time after the tenth (10^{th}) calendar day after the Additional Optional Closing Date pursuant to which the Buyers shall have purchased the entire Additional Optional Notes Amount (the "**Additional Mandatory Closing Eligibility Date**") of each Buyer hereunder, the Company shall have the right to require each Buyer to purchase (such Additional Closing, the "**Additional Mandatory Closing**", and such Additional Closing Date, the "**Additional Mandatory Closing Date**") an Additional Note in the original principal amount set forth opposite such Buyer's name in column (5) on the Schedule of Buyers (the "**Additional Mandatory Note Amount**"). Subject to the satisfaction of the conditions to closing set forth in this Section 1(b)(ii) and Sections 6(b) and 7(b) below, the Company may exercise its right to require the Additional Mandatory Closing by delivering, at any time on or after the applicable Additional Mandatory Closing Eligibility Date and prior to the Additional Closing Expiration Date, a written notice thereof by e-mail and overnight courier to each Buyer (the "**Additional Mandatory Closing Notice**", and together with each Additional Optional Closing Notice, each an "**Additional Closing Notice**", and the date of the applicable Additional Mandatory Closing Notice, the **"Additional Mandatory Closing Notice Date**", and together with each Additional Optional Closing Notice Date, each an "**Additional Closing Notice Date**"). The Company shall only be permitted to submit one (1) Additional Mandatory Closing Notice to the Buyers hereunder and the Additional Mandatory Closing Notice shall be irrevocable. The Additional Mandatory Closing Notice shall (A) certify that the Additional Mandatory Closing Eligibility Date with respect to the proposed Additional Mandatory Closing has occurred and, other than with respect to deliverables to be delivered to each Buyer at the Additional Mandatory Closing, all the conditions to closing set forth in this Section 1(b)(ii) and Sections 6(b) and 7(b) below have been satisfied in full as of the Additional Mandatory Closing Notice Date, (B) specify the proposed date of the Additional Mandatory Closing (which shall be sixty (60) calendar days after the Additional Mandatory Closing Notice Date, subject to the right of each Buyer, by written notice to the Company, to accelerate the Additional Mandatory Closing Date to an earlier date, not less than two (2) Trading Days after the Additional Mandatory Closing Notice Date (or such other date as such Buyer and the Company shall mutually agree)) and (C) specify the aggregate principal amount of Additional Notes to be purchased by each Buyer at the Additional Mandatory Closing, which shall equal the Additional Mandatory Note Amount of such applicable Buyer (or such other amount as the Company and such Buyer shall mutually agree) (such aggregate principal amount of Additional Notes set forth in such Additional Mandatory Closing Notice to be purchased by such Buyer, each, an "**Additional Note Amount**"). For the avoidance of doubt, the Company shall not be entitled to effect the Additional Mandatory Closing if on the Additional Mandatory Closing Date there is an Equity Conditions Failure (as defined in the

Initial Notes) on the Additional Mandatory Closing Date or if the Company fails to satisfy any of the other conditions to closing herein (unless waived in writing by the applicable Buyer participating in such Additional Closing). The Company's right to affect the Additional Mandatory Closing hereunder shall automatically terminate at 9:00 AM, New York City time on the tenth (10^{th}) calendar day after the Additional Mandatory Closing Eligibility Date (as applicable, the "**Additional Closing Expiration Date**").

(c) Purchase Price. The aggregate purchase price for the 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 $882.35294 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 Closings, shall not exceed the aggregate amount set forth opposite such Buyer's name in column (6) on 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(j)) 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 applicable Additional Purchase Price for such Additional Closing (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(j)) to the Company for the Additional Notes to be issued and sold to such Buyer at such Additional Closing, by wire transfer of immediately available funds in accordance with the applicable 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) Validity; Enforcement. This Agreement 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 its 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.

(c) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement 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.

(d) No Group. Other than affiliates of such Buyer who are also Buyers under this Agreement, such Buyer is not under common control with or acting in concert with any other Buyer and is not part of a "group" for purposes of the 1934 Act.

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 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, 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 at least 10% of the outstanding capital stock or holds at least 10% of the 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. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company 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 (other than (i) the filing with the SEC of (A) the applicable 8-K Filing (as defined below), (B) a prospectus supplement in connection with the applicable Closing as required by the Registration Statement pursuant to Rule 424(b) under the 1933 Act (the "**Prospectus Supplement**") supplementing the base prospectus forming part of the Registration Statement (the "**Prospectus**")), (C) with respect to the Additional Closings, the Indenture (and/or any amendment or supplement thereto) and a Form T-1, (D) the filing of an Additional Listing Application with the Principal Market and (E) any other filings as may be required by any state securities agencies (collectively, the "**Required Approvals**") and no further filing, consent or authorization is required by the Company, its board of directors or its stockholders or other governing body. This Agreement has been, and the other 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. "**Transaction Documents**" means, collectively, this Agreement, the Notes, the Custodian Agreements, the Indenture, the Supplemental Indentures, the Irrevocable Transfer Agent Instructions, the Voting Agreement (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; Registration Statement. 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 applicable Closing, the Company shall have reserved from its duly authorized capital stock not less than (I) if prior to the second (2nd) Trading Day after the Stockholder Meeting Deadline (the "**Reserve Increase Deadline**"), 275 million shares of Common Stock for conversion of the Notes or (II) if on or after the Reserve Increase Deadline, the maximum number of Conversion Shares issuable upon conversion of the Notes (assuming for purposes hereof that (x) the Notes are convertible at the Floor Price (as defined in the Notes), and (y) 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. The issuance by the Company of the Securities has been registered under the 1933 Act, the Securities are being issued pursuant to the Registration Statement and all of the Securities are freely transferable and freely tradable by each of the Buyers without restriction, whether by way of registration or some exemption therefrom. The Registration Statement is effective and available for the issuance of the Securities thereunder and the Company has not received any notice that the SEC has issued or intends to issue a stop-order with respect to the Registration Statement or that the SEC otherwise has suspended or withdrawn the effectiveness of the Registration Statement, either temporarily or permanently, or intends or has threatened in writing to do so. The "Plan of Distribution" section under the Registration Statement permits the issuance and sale of the Securities hereunder and as contemplated by the other Transaction Documents. Upon receipt of the Securities, each of the Buyers will have good and marketable title to the Securities. The Registration Statement and any prospectus included therein, including the Prospectus and the Prospectus Supplement, complied in all material respects with the requirements of the 1933 Act and the Securities Exchange Act of 1934, as amended (the "**1934 Act**") and the rules and regulations of the SEC promulgated thereunder and all other applicable laws and regulations. At the time the Registration Statement and any amendments thereto became effective, at the date of this Agreement and at each deemed effective date thereof pursuant to Rule 430B(f)(2) of the 1933 Act, the Registration Statement and any amendments thereto complied and will comply in all material respects with the requirements of the 1933 Act and did not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus and any amendments or supplements thereto (including, without limitation the Prospectus Supplement), at the time the Prospectus or any amendment or supplement thereto was issued and at the applicable Closing Date, complied, and will comply, in all material respects with the requirements of the 1933 Act and did not, and will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company meets all of the requirements for the use of Form S-3 under the 1933 Act for the offering and sale of the Securities contemplated by this Agreement and the other Transaction Documents, and the SEC has not notified the Company of any objection to the use of the form of the Registration Statement pursuant to Rule 401(g)(1) under the 1933 Act. The Registration Statement meets the requirements set forth in Rule 415(a)(1)(x) under the 1933 Act. At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the 1933 Act) relating to any of the Securities, the Company was not and is not an "Ineligible Issuer" (as defined in Rule 405 under the 1933 Act). The Registration Statement has been filed with the SEC not earlier than three years prior to the date hereof; and no notice of objection of the SEC to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the 1933 Act has been received by the Company. No order suspending the effectiveness of the Registration Statement has been issued by the SEC and no proceeding for that purpose or pursuant to Section 8A of the 1933 Act against the Company or related to the offering has been initiated or threatened by the SEC; as of the effective time of the Registration Statement, the Registration Statement complied and will comply in all material respects with the 1933 Act

and the TIA (as defined below) and did not contain and will 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 therein not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of such applicable Closing Date, the Prospectus did not and will 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 therein, in the light of the circumstances under which they were made, not misleading; *provided* that the Company makes no representation and warranty with respect to (i) that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the TIA or (ii) any statements or omissions in the Registration Statement and the Prospectus and any amendment or supplement thereto made in reliance upon and in conformity with information relating to any underwriter or placement agent furnished to the Company in writing by such underwriter or placement agent expressly for use therein. The Company (i) has not distributed any offering material in connection with the offer or sale of any of the Securities and (ii) until no Buyer holds any of the Securities, shall not distribute any offering material in connection with the offer or sale of any of the Securities to, or by, any of the Buyers (if required), in each case, other than the Registration Statement, the Prospectus or the Prospectus Supplement. In accordance with Rule 5110(b)(7)(C)(i) of the Financial Industry Regulatory Authority Manual, the offering of the Securities has been registered with the SEC on Form S-3 under the 1933 Act pursuant to the standards for Form S-3 in effect prior to October 21, 1992, and the Securities are being offered pursuant to Rule 415 promulgated under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company 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 New York Stock Exchange (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 Required Approvals), 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 such 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. 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) 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 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 represents to each Buyer that the Company'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 and its representatives.

(g) Financial Advisory Fees. 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, including, without limitation, financial advisory fees payable to Cowen and Co., as financial advisor (the "**Financial Advisor**") in connection with the sale of the Securities. The fees and expenses of the Financial Advisor be paid by the Company or any of its Subsidiaries are as set forth on Schedule 3(g) attached hereto. 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. The Company acknowledges that it has engaged the Financial Advisor in connection with the sale of the Securities. Other than the Financial Advisor, 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 cause this offering of the 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 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 is, 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 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. 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. 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, 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) 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 of 1977, as amended (the "**FCPA**"), or any other applicable anti-bribery or anti-corruption laws, nor 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. 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 class A common stock, $0.00001 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) "**Class B Common Stock**" means (x) the Company's shares of class B common stock, $0.00001 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.

(C) "**Preferred Stock**" means (x) the Company's blank check preferred stock, $0.00001 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. As of the date hereof, the authorized capital stock of the Company consists of (A) 750,000,000 shares of Class A Common Stock, of which, 210,179,237 are issued and outstanding and 253,812,911 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Notes) exercisable or exchangeable for, or convertible into, shares of Common Stock, (B) 150,000,000 shares of Class B Common Stock, of which, 132,354,128 are issued and outstanding and no shares are reserved for issuance pursuant to Convertible Securities exercisable or exchangeable for, or convertible into, shares of Common Stock and (C) 15,000,000 shares of Preferred Stock, none of which are issued and outstanding. 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.

(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 Convertible Securities (as defined below) (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. Except as disclosed in the SEC Documents, to the Company's knowledge, 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).

(iv) Existing Securities; Obligations. Except as disclosed 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) 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 (except pursuant to this Agreement); (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 Convertible Securities and the material rights of the holders thereof in respect thereto.

(s) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries, (i) except as disclosed on Schedule 3(s), 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 and any guarantees of any such obligations, (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; (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; and (z) "**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.

(t) Litigation. 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 is outside of the ordinary course of business or individually or in the aggregate material to the Company or any of its Subsidiaries, except as set forth in Schedule 3(t). 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, including, without limitation, the Registration Statement. 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. 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 employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No current (or former) 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, to the knowledge of the Company, 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. 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. 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. 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.

(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) 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) 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. 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.

(bb) Internal Accounting and Disclosure Controls. Except as set forth in the Company's periodic and current reports filed with the U.S. Securities and Exchange Commission (the "**SEC**"), 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 Company's periodic and current reports filed with the SEC, 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. 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.

(cc) 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.

(dd) 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.

(ee) 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 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 Press Release (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 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.

(ff) 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.

(gg) 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.

(hh) [Intentionally Omitted].

(ii) Transfer Taxes. On such Closing Date, all stock transfer or other similar transfer taxes (not including any 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.

(jj) 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.

(kk) [Intentionally Omitted].

(ll) 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.

(mm) 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.

(nn) Management. Except as set forth in Schedule 3(nn) 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 stockholder 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.

(oo) 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.

(pp) No Disagreements with Accountants and Lawyers. 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.

(qq) 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.

(rr) Public Utility Holding Company 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 Company Act of 2005.

(ss) 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.

(tt) Ranking of Notes. No Indebtedness of the Company, at such 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 (other than Indebtedness secured by Permitted Liens (as defined in the Notes)).

(uu) 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.

(vv) 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 General Data Protection Regulation of the European Union (GDPR) (Regulation 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.

(ww) Registration Rights. No holder of securities of the Company has rights to the registration of any securities of the Company because of the filing of the Registration Statement or the issuance of the Securities hereunder that could expose the Company to material liability or any Buyer to any liability or that could impair the Company's ability to consummate the issuance and sale of the Securities in the manner, and at the times, contemplated hereby, which rights have not been waived by the holder thereof as of the date hereof.

(xx) Compliance With FINRA Rule 5110. At the time the Registration Statement was declared effective by the SEC, and as of the date hereof and as of such Closing Date, the Company has (i) a 1934 Act reporting history in excess of 36 months and (ii) a non-affiliate, public common float of at least $100 million and annual trading volume of at least three million shares.

(yy) Qualification Under Trust Indenture Act. Prior to any issuance of Notes hereunder, the Company shall qualify or cause or arrange for the Trustee to qualify the Indenture under the Trust Indenture Act of 1939, as amended (the "**TIA**") and enter into any necessary supplemental indentures in connection therewith and, so long as the Notes remain outstanding, the Indenture shall be maintained in compliance with the TIA.

(zz) 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) Amendments to the Registration Statement; Prospectus Supplements; Free Writing Prospectuses.

(i) Amendments to the Registration Statement; Prospectus Supplements; Free Writing Prospectuses. Except as provided in this Agreement and other than periodic reports required to be filed pursuant to the 1934 Act, the Company shall not file with the SEC any amendment to the Registration Statement that relates to the Buyer, this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby or file with the SEC any Prospectus Supplement that relates to the Buyer, this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby with respect to which (a) the Buyer shall not previously have been advised, (b) the Company shall not have given due consideration to any comments thereon received from the Buyer or its counsel, or (c) the Buyer shall reasonably object after being so advised, unless the Company reasonably has determined that it is necessary to amend the Registration Statement or make any supplement to the Prospectus to comply with the 1933 Act or any other applicable law or regulation, in which case the Company shall promptly (but in no event later than 24 hours) so inform the Buyer, the Buyer shall be provided with a reasonable opportunity to review and comment upon any disclosure relating to the Buyer and the Company shall expeditiously furnish to the Buyer an electronic copy thereof. In addition, for so long as, in the reasonable opinion of counsel for the Buyer, the Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the 1933 Act) is required to be delivered in connection with any acquisition or sale of Securities by the Buyer, the Company shall not file any Prospectus Supplement with respect to the Securities without delivering or making available a copy of such Prospectus Supplement, together with the Prospectus, to the Buyer promptly.

(ii) The Company has not made, and agrees that unless it obtains the prior written consent of the Buyer it will not make, an offer relating to the Securities that would constitute an "issuer free writing prospectus" as defined in Rule 433 promulgated under the 1933 Act (an "**Issuer Free Writing Prospectus**") or that would otherwise constitute a "free writing prospectus" as defined in Rule 405 promulgated under the 1933 Act (a "**Free Writing Prospectus**") required to be filed by the Company or the Buyer with the SEC or retained by the Company or the Buyer under Rule 433 under the 1933 Act. The Buyer has not made, and agrees that unless it obtains the prior written consent of the Company it will not make, an offer relating to the Securities that would constitute a Free Writing Prospectus required to be filed by the Company with the SEC or retained by the Company under Rule 433 under the 1933 Act. Any such Issuer Free Writing Prospectus or other Free Writing Prospectus consented to by the Buyer or the Company is referred to in this Agreement as a "**Permitted Free Writing Prospectus**." The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free

Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 under the 1933 Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the SEC, legending and record keeping.

(c) Prospectus Delivery. Immediately prior to execution of this Agreement, the Company shall have delivered to the Buyer, and as soon as practicable after execution of this Agreement the Company shall file, Prospectus Supplements with respect to the Securities to be issued on the applicable Closing Date, as required under, and in conformity with, the 1933 Act, including Rule 424(b) thereunder. The Company shall provide the Buyer a reasonable opportunity to comment on a draft of each Prospectus Supplement and any Issuer Free Writing Prospectus, shall give due consideration to all such comments and, subject to the provisions of Section 4(b) hereof, shall deliver or make available to the Buyer, without charge, an electronic copy of each form of Prospectus Supplement, together with the Prospectus, and any Permitted Free Writing Prospectus on such Closing Date. The Company consents to the use of the Prospectus (and of any Prospectus Supplements thereto) in accordance with the provisions of the 1933 Act and with the securities or "blue sky" laws of the jurisdictions in which the Securities may be sold by the Buyer, in connection with the offering and sale of the Securities and for such period of time thereafter as the Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the 1933 Act) is required by the 1933 Act to be delivered in connection with sales of the Securities. If during such period of time any event shall occur that in the judgment of the Company and its counsel is required to be set forth in the Registration Statement or the Prospectus or any Permitted Free Writing Prospectus or should be set forth therein in order to make the statements made therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading, or if it is necessary to amend the Registration Statement or supplement or amend the Prospectus or any Permitted Free Writing Prospectus to comply with the 1933 Act or any other applicable law or regulation, the Company shall forthwith prepare and, subject to Section 4(b) above, file with the SEC an appropriate amendment to the Registration Statement or Prospectus Supplement to the Prospectus (or supplement to the Permitted Free Writing Prospectus) and shall expeditiously furnish or make available to the Buyer an electronic copy thereof.

(d) Stop Orders. The Company shall advise the Buyer promptly (but in no event later than 24 hours) and shall confirm such advice in writing: (i) of the Company's receipt of notice of any request by the SEC for amendment of or a supplement to the Registration Statement, the Prospectus, any Permitted Free Writing Prospectus or for any additional information; (ii) of the Company's receipt of notice of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement or prohibiting or suspending the use of the Prospectus or any Prospectus Supplement, or of the suspension of qualification of the Securities for offering or sale in any jurisdiction, or the initiation or contemplated initiation of any proceeding for such purpose; (iii) of the Company becoming aware of the happening of any event, which makes any statement of a material fact made in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus untrue or which requires the making of any additions to or changes to the statements then made in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus in order to state a material fact required by the 1933 Act to be stated therein or necessary in order to make the statements then made therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading, or of the necessity to amend the Registration Statement or supplement the Prospectus or any Permitted Free Writing Prospectus to

comply with the 1933 Act or any other law or (iv) if at any time following the date hereof the Registration Statement is not effective or is not otherwise available for the issuance of the Securities or any Prospectus contained therein is not available for use for any other reason. Thereafter, the Company shall promptly notify such holders when the Registration Statement, the Prospectus, any Permitted Free Writing Prospectus and/or any amendment or supplement thereto, as applicable, is effective and available for the issuance of the Securities. If at any time the SEC shall issue any stop order suspending the effectiveness of the Registration Statement or prohibiting or suspending the use of the Prospectus or any Prospectus Supplement, the Company shall use best efforts to obtain the withdrawal of such order at the earliest possible time.

(e) Blue Sky. The Company shall, on or before the applicable 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 such 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 such 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.

(f) Reporting Status. Until the date on which the Buyers shall have sold all of the 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 or otherwise permit such termination.

(g) Use of Proceeds. The Company will use the proceeds from the sale of the Securities as described in the Prospectus Supplement, but not, directly or indirectly, for (i) except as set forth on Schedule 4(g), 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.

(h) Financial Information. The Company agrees to send the following to each holder of Notes (each, an "**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.

(i) 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 Capital Market, 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(i). "**Underlying Securities**" means (i) the Conversion Shares, and (ii) any capital stock of the Company issued or issuable with respect to the Conversion Shares, the Indenture 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.

(j) Fees. The Company shall reimburse the lead Buyer for all reasonable 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 $150,000 for the legal fees and disbursements of Kelley Drye & Warren LLP, counsel to the lead Buyer with respect to the Initial Closing, (y) a non-accountable amount of $15,000 with respect to each Additional Closing and (z) 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 the lead Buyer or Kelley Drye & Warren LLP; provided, that the Company shall promptly reimburse Kelley Drye & Warren LLP on demand for all Transaction Expenses 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, any fees and expenses of the Trustee (including, without limitation, the fees and expenses of any legal counsel to the Trustee), 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 (including, without limitation, any fees or commissions payable to the Financial Advisor, who is the Company's sole financial advisor in connection with the transactions contemplated by this Agreement). 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.

(k) 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 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.

(l) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction.

(1) Initial Closing. The Company shall, on or before 9:30 a.m., New York time, on the date of this Agreement, issue a press release (the "**Initial Press Release**") reasonably acceptable to the Buyers disclosing all the material terms of the transactions contemplated by the Transaction Documents. On or before 9:30 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 Indenture, the form of Supplemental Indentures, and the form of Notes (including all attachments), the "**Initial 8-K Filing**"). From and after the filing of the Initial 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 Initial 8-K Filing, 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.

(2) Additional Closings. The Company shall, on or before 9:30 a.m., New York time, on the first (1st) Business Day after the Company receives an Additional Closing Notice, either issue a press release (each, an "**Additional Press Release**") or file a Current Report on Form 8-K (each, an "**Additional 8-K Filing**", and together with the Initial 8-K Filing, the "**8-K Filings**"), in each case reasonably acceptable to such Buyer participating in such Additional Closing, disclosing that "an institutional investor" has elected to deliver an Additional Closing Notice to the Company or the Company has elected to effect an Additional Closing, as applicable. From and after the filing of the Additional Press Release or Additional 8-K Filing, solely to the extent such Additional Closing Notice constitutes material non-public information (as specified by the Company in such applicable Additional Mandatory Closing Notice or in its acknowledgement to such applicable Additional

Optional Closing Notice), 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 Additional 8-K Filing, 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.

(ii) Limitations on Disclosure. Except with respect to the delivery of an Additional Mandatory Closing Notice, 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(q) 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; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make the Press Release and any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filings 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.

(m) Additional Issuance of Securities. 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 two month anniversary of the Initial Closing Date (or, upon each occurrence of an Additional Closing Date after which the Buyers shall have purchased, in one or more Additional Closings, Additional Notes with an aggregate principal amount of at least $100,000,000 (each, a "**Restricted Period Trigger Date**") (but excluding any Additional Optional Notes purchased in connection with any prior Restricted Period Trigger Date), commencing on such applicable Additional Closing and ending on the date immediately following the one month anniversary of such Additional Closing Date) (the "**Restricted Period**"), neither the Company nor any of its Subsidiaries shall directly or indirectly:

(i) file a registration statement under the 1933 Act relating to securities that are not the Underlying Securities (other than a registration statement on Form S-4, Form S-8 or such supplements or amendments to registration statements that are outstanding and have been declared effective by the SEC as of the date hereof (including the Registration Statement) (solely to the extent necessary to keep such registration statements effective and available and not with respect to any Subsequent Placement));

(ii) amend or modify (whether by an amendment, waiver, exchange of securities, or otherwise) any of the Company's warrants to purchase Common Stock that are outstanding as of the date hereof; or

(iii) 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 Convertible Securities (as defined below), any debt, any preferred stock 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(m) shall not apply in respect of the issuance of (A) shares of 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 (x) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the date hereof pursuant to this clause (A) do not, in the aggregate, exceed more than 5% of the Common Stock issued and outstanding immediately prior to the date hereof and (y) 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; (B) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) 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 Convertible Security is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Convertible Security that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) above) is not lowered, none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) above) are otherwise materially changed in any manner that adversely affects any of the Buyers; (C) the Conversion Shares, (D) any shares of Common Stock, warrants or options issued or issuable in connection with any bona fide strategic or commercial alliances, acquisitions, mergers, licensing arrangements, and strategic partnerships, provided, that (x) the primary purpose of such issuance is not to raise capital as reasonably determined, and (y) the purchaser or acquirer or recipient of the securities in such issuance solely consists of either (I) the actual participants in such strategic or commercial alliance, strategic or commercial licensing arrangement or strategic or commercial partnership, (II) the actual owners of such assets or securities acquired in such acquisition or merger or (III) the stockholders, partners, employees, consultants, officers, directors or members of the foregoing Persons, in each case, which is, itself or through its subsidiaries, an operating company or an owner of an asset, in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, and (z) the number or amount of securities issued to such Persons by the Company shall not be disproportionate to each such Person's actual participation in (or fair market value of the contribution to) such strategic or commercial alliance or strategic or commercial partnership or ownership of such assets or securities to be acquired by the Company, as applicable (each of the foregoing in clauses (A) through (D), collectively the "**Excluded Securities**"). "**Approved Stock Plan**" means any employee benefit plan, including stock incentive plans, which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of 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.

(n) 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 (I) if prior to the Reserve Increase Deadline, 275 million shares of Common Stock for conversion of the Notes or (II) if on or after the Reserve Increase Deadline the maximum number of shares of Common Stock issuable upon conversion of all the Notes then outstanding (assuming for purposes hereof that (x) the Notes are convertible at the Floor Price then in effect, and (y) 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(n) be reduced other than proportionally in connection with any conversion, exercise 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 stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval 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.

(o) 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.

(p) Other Notes; Variable Securities. So long as any Notes remain outstanding, 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 an at-the-market offering with a bone fide broker dealer) (the "**Permitted ATM**"). "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities 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 Convertible Securities, 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 Convertible Securities 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.

(q) Participation Right. At any time on or prior to the first anniversary of the Initial Closing Date, 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(q). The Company acknowledges and agrees that the right set forth in this Section 4(q) 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 25% 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(q) 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 (5^{th}) 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 (5^{th}) 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(q)(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(q)(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(q) 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(q)(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(q)(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(q) 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(q) 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 fifth (5^{th}) Business Day following delivery of the Offer Notice. If by such fifth (5^{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(q). 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(q)(ii).

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

(r) 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.

(s) 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.

(t) 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.

(u) 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.

(v) Stock Splits. Until the Notes and all notes issued pursuant to the terms thereof are no longer outstanding, the Company shall not effect any stock combination, reverse stock split or other similar transaction (or make any public announcement or disclosure with respect to any of the foregoing) without the prior written consent of the Required Holders (as defined below).

(w) 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. 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. 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 convert the Notes.

(x) 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.

(z) Stockholder Approval. The Company 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 August 31, 2023 (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. 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 (x) the approval of the issuance of all of the Securities in compliance with the rules and regulations of the Principal Market (without regard to any limitations on conversion set forth in the Notes) and (y) the increase of the authorized shares of Class A Common Stock of the Company from 750,000,000 to 1,250,000,000 (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 November 30, 2023. 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.

(bb) 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. 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), 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 any Securities, 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. 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 Transfer Agent as follows: (i) upon each conversion of the Notes (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 Securities 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 opinion or the removal of any legends on any of the Securities shall be borne by the Company.

(c) Legends. Certificates and any other instruments evidencing the Securities shall not bear any restrictive or other legend.

(d) FAST Compliance. While any Notes remain outstanding, the Company shall maintain a transfer agent that participates in the DTC Fast Automated Securities Transfer Program.

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 Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(j)) for the Initial Note being purchased by such Buyer at the Initial Closing by wire transfer of immediately available funds in accordance with the 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 Additional Notes to each Buyer at the applicable 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 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 applicable Additional Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(j)) for the Additional Note being purchased by such Buyer at such 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 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 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 such Additional Closing Date.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

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

(i) The Company shall have duly executed and delivered to such Buyer each of the Transaction Documents and the Company shall have duly executed and delivered to such Buyer the 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) being purchased by such Buyer at the Initial Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Orrick Herrington & Sutcliffe 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 in 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 qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company 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) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Initial Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Initial Closing.

(viii) 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.

(ix) 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.

(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 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.

(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) The Company shall have obtained approval of the Principal Market to list or designate for quotation (as the case may be) the Conversion Shares issuable upon conversion of the Initial Notes.

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

(xvi) From the date hereof to the Initial Closing Date, (i) trading in the Common Stock shall not have been suspended by the SEC or the Principal Market (except for any suspension of trading of limited duration, which suspension shall be terminated prior to the Initial Closing), and, (ii) at any time prior to the Initial Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on the Principal Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial

market which, in each case, in the reasonable judgment of each Buyer, makes it impracticable or inadvisable to purchase the Securities at the Initial Closing

(xvii) The Registration Statement shall be effective and available for the issuance and sale of the Initial Notes to be issued in the Initial Closing and the Conversion Shares issuable upon conversion thereof pursuant to the terms of the Indenture and the Supplemental Indenture for the Initial Notes and the Company shall have delivered to such Buyer the Prospectus and the Prospectus Supplement with respect thereto as required hereunder and thereunder.

(xviii) The Company shall have filed a Form T-1, in form and substance satisfactory to the Trustee, with respect to the transaction contemplated hereby in accordance with TIA 305(b)(2).

(xix) The Trustee shall have duly executed and delivered to the Company and such Buyer the Indenture, the Supplemental Indenture for such Additional Notes to be issued in such Additional Closing and the custodian agreements in the form attached hereto as **Exhibit B** (each, a "**Custodian Agreement**"). The Indenture and the Supplemental Indenture for such Additional Notes shall be qualified under the TIA.

(xx) The Trustee shall have duly executed and delivered to the Company and such Buyer the Indenture, the Supplemental Indenture for the Initial Notes to be issued in the Initial Closing and the Custodian Agreements. The Indenture and the Supplemental Indenture for the Initial Notes shall be qualified under the TIA.

(xxi) The Company shall have duly executed and delivered to such Buyer the voting agreement in the form of Exhibit C hereof (the "**Voting Agreement**"), by and between the Company and the stockholders listed on Schedule 7(a)(xxi) attached hereto (the "**Stockholders**") and the Stockholders shall have duly executed and delivered to such Buyer the Voting Agreement.

(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 the applicable Additional Note at the applicable 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 shall have duly executed and delivered to such Buyer each of the Transaction Documents 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 Orrick Herrington & Sutcliffe 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 of the Company in 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 qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company 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 such Additional Closing Date.

(vii) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of such Additional Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at such Additional Closing.

(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 shares 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) The Company shall have obtained approval of the Principal Market to list or designate for quotation (as the case may be) the Conversion Shares issuable upon conversion of such Additional Notes to be sold in such Additional Closing.

(xv) Such Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company with respect to such Additional Closing (each, an "**Additional Flow of Funds Letter**").

(xvi) From the date hereof to such Additional Closing Date, (i) trading in the Common Stock shall not have been suspended by the SEC or the Principal Market (except for any suspension of trading of limited duration, which suspension shall be terminated prior to such Additional Closing), and, (ii) at any time prior to such Additional Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on the Principal Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of each Buyer, makes it impracticable or inadvisable to purchase the Securities at such Additional Closing

(xvii) The Registration Statement shall be effective and available for the issuance and sale of the Additional Notes to be issued in such Additional Closing and the Conversion Shares issuable upon conversion thereof pursuant to the terms of the Indenture and the Supplemental Indenture for such Additional Note and the Company shall have delivered to such Buyer the Prospectus and the Prospectus Supplement with respect thereto as required hereunder and thereunder.

(xviii) The Company shall have filed a Form T-1, in form and substance satisfactory to the Trustee, with respect to the transaction contemplated hereby in accordance with TIA 305(b)(2).

(xix) The Trustee shall have duly executed and delivered to the Company and such Buyer the Indenture, the Supplemental Indenture for such Additional Notes to be issued in such Additional Closing and the custodian agreements in the form attached hereto as **Exhibit B** (each, a "**Custodian Agreement**"). The Indenture and the Supplemental Indenture for such Additional Notes shall be qualified under the TIA.

(xx) The Trustee shall have duly executed and delivered to the Company and such Buyer the Indenture, the Supplemental Indenture for the Initial Notes to be issued in the Initial Closing and the Custodian Agreements. The Indenture and the Supplemental Indenture for the Initial Notes shall be qualified under the TIA.

(xxi) The Stockholder Approval shall have been obtained.

(xxii) No Equity Conditions Failure (as defined in the Initial Notes) exists as of such applicable Additional Closing Date.

(xxiii) No bona fide dispute shall exist, by and between (or among) any of the Buyers, any holder of Notes, the Trustee and/or the Company, which dispute is reasonably related to this Agreement, any of the Securities and/or the transactions contemplated hereby or thereby, as applicable.

(xxiv) 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 Closing shall not have occurred with respect to a Buyer within five (5) 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(j) 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 New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 to 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). 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 and 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 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) prior to the Initial Closing Date, each Buyer entitled to purchase Notes at the Closing and (II) on or after the Initial Closing Date, holders of a majority of the Underlying Securities as of such time (excluding any Underlying Securities held by the Company

or any of its Subsidiaries as of such time and excluding any purchasers of Underlying Securities, unless pursuant to a written assignment by such Buyer) issued or issuable hereunder or pursuant to the Notes (or the Buyers, with respect to any waiver or amendment of Section 4(o)).

(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:

Fisker Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Telephone: (833) 434-7537
Attention: Geeta Gupta-Fisker, Chief Financial Officer and Chief Operating Officer
E-Mail: legal@fiskerinc.com

With a copy (for informational purposes only) to:

Orrick, Herrington & Sutcliffe LLP
222 Berkeley Street, Suite 2000
Boston, MA 02116
Telephone: (617) 880-1800
Attention: Albert Vanderlaan
E-Mail: avanderlaan@orrick.com

If to the Transfer Agent:

Computershare Investor Services
150 Royall Street
Canton, MA 02021
Telephone: (415) 335-1968
Attention: Earon Crosby
E-Mail: Earon.Crosby@computershare.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 (but excluding any purchasers of Underlying Securities, unless pursuant to a written assignment by such Buyer). 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 (as defined in the Notes) (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; provided that (i)a Buyer shall not transfer its rights hereunder to any competitor of the Company without the prior written consent of the Company (not to be unreasonably withheld) and (ii) if a Buyer assigns its obligations pursuant to Section 1(b)(ii)(3) to any Person and such Person breaches its purchase obligations pursuant to Section 1(b)(ii)(3), such Buyer shall remain bound by such purchase obligations under Section 1(b)(ii)(3) hereof.

(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 referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the 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(l), 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 be 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 U.S. 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 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 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:

FISKER INC.

By: Geeta Gupta-Fisker

Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

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:

CVI INVESTMENTS, INC.

By: _____
Name: Martin Kobinger
Title: President

SCHEDULE OF BUYERS

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Buyer	**Mailing Address and E-mail Address**	**Original Principal Amount of Initial Notes**	**Aggregate Maximum Original Principal Amount of Additional Notes for Additional Optional Closings**	**Aggregate Original Principal Amount of Additional Notes for Additional Mandatory Closing**	**Initial Purchase Price**	**Legal Representative's Mailing Address and E-mail Address**
CVI Investments, Inc.	c/o Heights Capital Management 101 California Street Suite 3250 San Francisco, CA 94111 Attention: Martin Kobinger, President E-Mail: heightsnotice@sig.com	$340,000,000	$226,666,667	$113,33,334	$300,000,000	Kelley Drye & Warren LLP 3 World Trade Center 175 Greenwich Street New York, NY 10007 Telephone: (212) 808-7540 Attention: Michael A. Adelstein, Esq.

DISCLOSURE SCHEDULES TO
SECURITIES PURCHASE AGREEMENT

These Disclosure Schedules (the "**Disclosure Schedules**") are the Disclosure Schedules referred to in that certain Securities Purchase Agreement, dated as of July 10, 2023, by and among Fisker Inc, and the investors listed on the Schedule of Buyers attached thereto (the "**Agreement**"). Unless otherwise indicated, all capitalized terms contained herein shall have the same meaning ascribed to such terms in the Agreement.

Except as expressly provided herein or in the Agreement, information and disclosures contained in the Disclosure Schedules are made as of the date of the Agreement and the Closing Date, and the accuracy of such information and disclosures is confirmed only as of the date of the Agreement and the Closing Date and not any time thereafter.

Disclosures made in any section of the Disclosure Schedules shall be deemed to be disclosed for purposes of, and shall qualify, the corresponding section or subsection of this Agreement.

The information disclosed in the Disclosure Schedules is disclosed in furtherance of, and should not be used for any purpose except in furtherance of, the transactions contemplated in the Agreement and each party's enforcement of their respective rights granted under the Agreement.

SCHEDULE 3(a)

COMPANY SUBSIDIARIES

1. Fisker Group Inc.
2. Fisker Belgium SRL
3. Fisker Canada Ltd.
4. Fisker (Shanghai) Motors Ltd.
5. Fisker Denmark ApS
6. Fisker France SAS
7. Fisker GmbH
8. Fisker GmbH
9. Fisker Vigyan India Private Limited
10. Fisker Ireland Limited
11. Ocean E.V.
12. Fisker Netherlands B.V.
13. Fisker Netherlands Sales B.V.
14. Fisker Norway AS
15. Fisker Spain, SL
16. Fisker Sweden AB
17. Fisker Switzerland GmbH
18. Fisker Switzerland Sales GmbH
19. Fisker (GB) Limited
20. Platinum IPR LLC.
21. Terra Energy Inc.

SCHEDULE 3(g)

FEES AND EXPENSES TO FINANCIAL ADVISORS

1. $3,000,000 to Cowen and Co.

SCHEDULE 3(r)(iii)

AVAILABLE SHARES; AFFILIATES

A. Reserved for issuance pursuant to Convertible Securities (other than the Notes): 121,458,783 shares.

B. As of the date hereof, owned by Persons who are "affiliates":[1]

1. 81,867,237 shares owned by Henrik Fisker

2. 81,867,237 shares owned by Dr. Geeta Gupta-Fisker

[1] Shares owned consists of (i) 66,177,064 shares of Class B common stock, (ii) 629,218 shares of Class A common stock held by the Mayfair Trust, (iii) 229,000 shares of Class A common stock held by the Fisker Foundation, and (iv) 14,831,955 shares of Class A common stock issuable upon the exercise of stock options held by the Mayfair Trust that are exercisable within 60 days of the date hereof. Mr. Fisker and Dr. Gupta-Fisker share voting and dispositive power with respect to the shares held by the Mayfair Trust and the Fisker Foundation and may be deemed to beneficially own the shares of Class A common stock held by the Mayfair Trust and the Fisker Foundation.

SCHEDULE 3(s)

INDEBTEDNESS

(A)	Borrowed money:	2026 Convertible Notes	$667,500,000
(B)	Deferred purchase price of property, including leases:	** ROU for leased properties & Magna owned assets	$85,390,000
(C)	Reimbursement or payment obligations - LOCs, surety bonds and other similar instruments:	LOC - CATL and other	$50,000,000
(D)	Obligations evidenced by notes, bonds, debentures or similar instruments:		$ -
(E)	Indebtedness under any conditional sale or other title retention agreement:		$ -
(F)	Monetary obligations under any leasing or similar arrangement classified as a capital lease:		$ -
(G)	Indebtedness referred to in (A) through (F) above, secured by any Lien:		$ -
(H)	Contingent Obligations:	Refer to fn.2 below[2]	$ -
(I)	Other:		$100,000,000
Indebtedness			**$902,890,000**

[2] Contingent Obligation as defined in the SPA does not align with US GAAP and is not defined in the FASB Accounting Standards Codification. For accounting purposes, we evaluated (H) based on the guidance found in ASC 460, Guarantees.

SCHEDULE 3(t)

LITIGATION

None.

SCHEDULE 3(x)(i)

PATENTS

1. US11,260729
2. US11,220,182
3. US11,465,502
4. USD809972
5. USD840874
6. USD869710
7. USD832742
8. USD944119
9. USD760930
10. USD970412

SCHEDULE 3(x)(ii)

EXPIRED, TERMINATED, ABANDONED IP

1. US16/347,956
2. US16/549,593
3. US16/549,687
4. US16/969,815
5. US29/564,949
6. US29/582,714
7. US29/619,730
8. US29/683,474
9. US29/695,101
10. US29/746,663
11. MX2019005336
12. IN201917018773
13. JP2019545894
14. CN201780077541.6
15. CN201980023442.9
16. CA3043171
17. EP17801254A
18. EP19755026A
19. KR1020197015282

SCHEDULE 3(nn)

MANAGEMENT

1. In 2013, Fisker Automotive, Inc. voluntarily filed for Chapter 11 bankruptcy with the United States Bankruptcy Court for the District of Delaware (Case Numbers: 1:13bk13086 and 1:13bk13087). These proceedings concluded on August 25, 2021 and September 27, 2021, respectively.

SCHEDULE 4(g)

USE OF PROCEEDS

1. Payments due on the $667.5 million principal amount of 2.50% convertible senior notes due in September 2026.

SCHEDULE 7(a)(xxi)

STOCKHOLDERS

1. Henrik Fisker

2. Dr. Geeta Gupta-Fisker

EXHIBIT A-1

[FORM OF SERIES [A][B][C][-][1][2][3][4] SENIOR CONVERTIBLE NOTE]

THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), [ ], A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). THE COMPANY'S CHIEF FINANCIAL OFFICER MAY BE REACHED AT TELEPHONE NUMBER (833) 434-7537.

FISKER INC.

Series [A][B][C][-][1][2][3][4] SENIOR UNSECURED CONVERTIBLE NOTE

Issuance Date: [●] 20__ Original Principal Amount: U.S. $[●]

FOR VALUE RECEIVED, Fisker Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of [BUYER] or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date (each as defined below), or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and upon the occurrence and continuance of an Event of Default (as defined below) to pay interest ("**Interest**") on any outstanding Principal at the applicable Default Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date, or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Series [A][B][C][-][1][2][3][4] Senior Unsecured Convertible Note (including all Senior Unsecured Convertible Notes issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Unsecured Convertible Notes (collectively, the "**Notes**", and such other Senior Unsecured Convertible Notes, the "**Other Notes**") issued pursuant to (i) Section 1 of that certain Securities Purchase Agreement, dated as of July 10, 2023 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (the "**Securities Purchase Agreement**"), (ii) the Indenture, (iii) a Supplemental Indenture, and (iv) the Company's Registration Statement on Form S-3 (File number 333-261875) (the "**Registration Statement**"). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On each Installment Date, the Company shall pay to the Holder an amount equal to the Installment Amount due on such Installment Date in

accordance with Section 8. On the Maturity Date, the Company shall pay to the Holder an amount in cash (excluding any amounts paid in shares of Common Stock on the Maturity Date in accordance with Section 8) representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Other than as specifically permitted or required by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any. Notwithstanding anything herein to the contrary, with respect to any conversion or redemption hereunder, as applicable, the Company shall convert or redeem, as applicable, First, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document, Second, all accrued and unpaid Interest, if any, hereunder and under any Other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any Other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any Other Notes held by such Holder, in each case, allocated pro rata among this Note and such Other Notes held by such Holder.

2. INTEREST; DEFAULT RATE. No Interest shall accrue hereunder unless and until an Event of Default (as defined below) has occurred. From and after the occurrence and during the continuance of any Event of Default, Interest shall accrue hereunder at eighteen percent (18.0%) per annum (the "**Default Rate**") and shall be computed on the basis of a 360-day year and twelve 30-day months, shall compound each calendar month and shall be payable in arrears on the first Trading Day of each such calendar month in which Interest accrues hereunder (each, an "**Interest Date**"). Accrued and unpaid Interest, if any, shall also be payable by way of inclusion of such Interest in the Conversion Amount (as defined below) on each Conversion Date (as defined below) in accordance with in accordance with Section 3(b)(i) or upon any redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below). In the event that such Event of Default is subsequently cured (and no other Event of Default then exists (including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date, unless waived in writing by the Holder)), 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 or waiver; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of Default, unless waived in writing by the Holder.

3. CONVERSION OF NOTES. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(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 (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the sum of (x) portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made and (y) all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $[ ][1], subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall deliver (whether via electronic mail or as otherwise provided in Section 23(a)), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (each, a "**Conversion Notice**") to the Company and the Trustee. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 17(b)). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment, in the form attached hereto as Exhibit II, of confirmation of receipt of such Conversion Notice and representation that such shares of Common Stock may then be freely resold by the Holder without restriction (each, an "**Acknowledgement**") to the Holder, the Trustee and the Company's transfer agent (the "**Transfer Agent**") which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

[1] Insert 130% of (x) solely with respect to the Initial Closing (as defined in the Securities Purchase Agreement), the Closing Bid Price of the Common Stock on the Subscription Date, or (y) solely with respect to an applicable Additional Closing (as defined in the Securities Purchase Agreement), the quotient of (A) the sum of the VWAP of the Common Stock of each Trading Day during the five (5) Trading Day period ended, and including, the Trading Day ended immediately prior to the time of delivery of such Additional Optional Closing Notice to the Company or Additional Mandatory Closing Notice to the Holder, as applicable, with respect to such Additional Closing (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or similar events during such period), divided by (B) five (5).

On or before the second (2nd) Trading Day following the 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 shares of Common Stock 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's ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the 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, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 17(d)) representing the outstanding Principal (and accrued and unpaid Interest thereon) not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. In the event of a partial conversion of this Note pursuant hereto, the Principal amount converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining Installment Amount(s) relating to the Installment Date(s) as set forth in the applicable Conversion Notice.

(ii) 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, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock 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 shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to one percent (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 Share Delivery Deadline and to which the Holder is entitled, multiplied by (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 applicable Conversion Date and ending on the applicable Share Delivery Deadline and (2) the 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) any portion of this Note 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 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to 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 is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below, and if on or after such Share Delivery Deadline 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 conversion that the 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 the Holder, the Company shall, within two (2) Business Days after receipt of 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 (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 issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the 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) (the "**Buy-In Payment Amount**"). 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) upon the conversion of this Note as required pursuant to the terms hereof.

(iii) Registration; Book-Entry. The Trustee shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "**Registered Notes**") as provided in Section [ ] of the Indenture. The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the

holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Trustee shall record the information contained therein in the Register and issue one or more new Registered Notes (to be executed by the Company and authenticated and delivered by the Trustee) in the same aggregate principal amount as the principal amount of the surrendered Registered Note in the name of the designated assignee or transferee pursuant to Section 16, provided that if the Company or the Trustee does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note 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). Every Registered Note presented or surrendered for registration of transfer, or for exchange or redemption shall (if so required by the Company or the Registrar for such Notes presented) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the holder thereof or his attorney duly authorized in writing. Notwithstanding anything to the contrary set forth in this Section 3 or in the Indenture or in any applicable Supplemental Indenture, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder, the Trustee and the Company shall maintain records showing the Principal, Interest and Late Charges 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 the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3(d), shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the

Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22. If a Conversion Notice delivered to the Company would result in a breach of Section **Error! Reference source not found.** below, and the 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 **Error! Reference source not found.** below (with such calculations thereunder made as of the date such Conversion Notice was initially delivered to the Company).

(d) Limitations on Conversions.

(i) Beneficial Ownership. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d)(i). For purposes of this Section 3(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the 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 the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d)(i), to exceed the Maximum Percentage, the 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 (which may be an e-mail) or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes (each, an "**Other Holder**", and collectively, the "**Other Holders**") that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) Principal Market Regulation The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note 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 Notes or otherwise pursuant to the terms of the Notes without breaching 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 Section 312.03(c) of the NYSE Listed Company Manual, the "**Exchange Cap**"), except that

such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, no Buyer shall be issued in the aggregate, upon conversion of any Notes or otherwise pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the original principal amount of Notes issued to such Buyer pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) divided by (2) the aggregate original principal amount of all Notes issued to the Buyers pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each Buyer, the "**Exchange Cap Allocation**"). In the event that any Buyer shall sell or otherwise transfer any of such Buyer's Notes, the transferee shall be allocated a pro rata portion of such Buyer's Exchange Cap Allocation with respect to such portion of such Notes 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 Notes, 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 Notes shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the shares of Common Stock underlying the Notes then held by each such holder of Notes. At any time after the three month anniversary of the Initial Closing Date (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 3(d)(i) (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such portion of this Note 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 Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 3(d)(i) and (ii) to the extent of any Buy-In related thereto, any Buy-In Payment Amount, 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**").

(e) Right of Alternate Conversion Upon a Triggering Event.

(i) General. Upon the occurrence of a Triggering Event with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Triggering Event Notice**") to the Holder and the Trustee. At any time after the earlier of the Holder's receipt of an Triggering Event Notice and the Holder becoming aware of an Triggering Event (such earlier date, the "**Triggering Event Right Commencement Date**") and ending (such ending date, the "**Triggering Event Right**

Expiration Date", and each such period, an "**Triggering Event Redemption Right Period**") on the twentieth (20th) Trading Day after the later of (x) the date such Triggering Event is cured and (y) the Holder's receipt of an Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the 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 Triggering Event Right Expiration Date, but subject to Section 3(d), (regardless of whether such Triggering Event has been cured, or if the Company has delivered a Triggering Notice to the Holder or otherwise notified the Company that a Triggering Event has occurred), the Holder may, at the Holder's option, convert (each, an "**Alternate Conversion**", and the date of each such Alternate Conversion, an "**Alternate Conversion Date**") all, or any part of, the Conversion Amount (such portion of the Conversion Amount subject to such Alternate Conversion, 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 3(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and with "Redemption Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate above with respect to such Alternate Conversion) by designating in the Conversion Notice delivered pursuant to this Section 3(e) of this Note that the Holder is electing to use the Alternate Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), 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 3(c) without regard to this Section 3(e).

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) 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;

(ii) 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 the Notes, 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 Notes into shares of Common

Stock that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3(d);

(iii) except to the extent the Company is in compliance with Section 10(b) below, at any time following the tenth (10^{th}) consecutive day that the Holder's Authorized Share Allocation (as defined in Section 10(a) below) is less than the Required Reserve Amount (without regard to any limitations on conversion set forth in Section 3(d) or otherwise);

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least three (3) Trading Days;

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

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $25,000,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(vii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Significant Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(viii) the commencement by the Company or any Significant 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 Significant 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 Significant 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 Significant 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 against the assets of the Company or any Significant Subsidiary;

(ix) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Significant 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 Significant 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 Significant 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 Significant 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 forty-five (45) consecutive days;

(x) a final judgment or judgments for the payment of money aggregating in excess of $25,000,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within forty-five (45) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within forty-five (45) 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 $25,000,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the 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 forty-five (45) days of the issuance of such judgment;

(xi) 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 $25,000,000 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 $25,000,000, which breach or violation (i) results in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constitutes a failure to pay the principal or interest of any such debt when due and payable (after giving effect to any applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(xii) other than as specifically set forth in another clause of this Section 4(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 five (5) consecutive Trading Days;

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

(xiv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13(a)-(d), (f), (g) or (h) of this Note;

(xv) any Event of Default (as defined in the Other Notes) occurs and is continuing with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder and the Trustee. The obligation of the Company to deliver an Event of Default Notice is in addition to, and may not be substituted by, the Trustee's delivery of notice of the same Event of Default to the Holder in accordance with Section 10.02 of the Indenture. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the "**Event of Default Right Commencement Date**") and ending (such ending date, the "**Event of Default Right Expiration Date**", and each such period, an "**Event of Default Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of

Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company and the Trustee, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate (calculated assuming an Alternate Conversion as of the date of the Event of Default Redemption Notice) with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Event of Default Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the 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 the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to

payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders (as defined in the Securities Purchase Agreement) and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes reasonably satisfactory to the Required Holders, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking to the Notes and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note 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 6 and 14, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes 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 the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof

via electronic mail and overnight courier to the Holder and the Trustee (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the 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, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company and the Trustee, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the greatest of (i) the product of (w) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (A) the Conversion Amount being redeemed 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 the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (A) the Conversion Amount 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 the 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 (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 5(b), the 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 the Holder. Accordingly, any Redemption Premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Sections 7 or 14 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 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 Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date as of the applicable record date) 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Purchase Right shall be granted, issued or sold to the Holder, as applicable, with a limitation on conversion and/or exercise, as applicable, in the form of 3(d)(i) herein, *mutatis mutandis*; provided, that, if such Purchase Right (and/or on any subsequent Purchase Right held similarly) has an expiration date, maturity date or other similar provision, such term also shall be extended, on a day-by-day basis, by such aggregate number of days that the exercise or conversion (as applicable) of such Purchase Right (and/or any subsequent Purchase Right held similarly) (in each case, without regard to the limitation on conversion or exercise thereto, as applicable) would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage.

(b) 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 the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) 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 the Holder would have been entitled to receive had this Note 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. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. 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 7(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 7(a)), 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 7(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.

(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 7(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 7(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) upon the issue, conversion, exercise or exchange of any Options or Convertible Securities, or the rate at which any Convertible Securities or Options 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 7(b) 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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 7(a)(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 7(a) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right and/or any other security (as applicable) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right or any other security or instrument of the Company intended to convey value to any participant in such transaction, in any form whatsoever, 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 7(a)(i) or 7(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 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 and/or any other security or instrument (as applicable), if any, in each case, as determined on a per share basis in accordance with this Section 7(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 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, the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute. 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).

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) 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.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 7 or in the Securities Purchase Agreement, 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 (any such securities, "**Variable Price Securities**") regardless of whether securities have been sold pursuant to such agreement and whether such agreement has subsequently been terminated, prior to or after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock, in each case, 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 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 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 Note by designating in the Conversion Notice delivered upon any conversion of this Note 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 Note shall not obligate the Holder to rely on a Variable Price for any future conversion of this Note. In addition, from and after the date the Company enters into such agreement or issues any such Variable Price Securities, for purposes of calculating the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of any time of determination, the "Conversion Price" as used therein shall mean the lower of (x) the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of such time of determination and (y) the Variable Price as of such time of determination.

(d) 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 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock 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 7(d) will increase the Conversion Price as otherwise determined

pursuant to this Section 7, 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.

(e) Calculations. All calculations under this Section 7 shall be made by rounding to the nearest cent or the nearest $1/100^{th}$ 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.

(f) Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time during the term of this Note, 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 Notes to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. INSTALLMENT CONVERSION OR REDEMPTION.

(a) General. On each applicable Installment Date, provided there has been no Equity Conditions Failure, the Company shall pay to the Holder of this Note the applicable Installment Amount due on such date by converting such Installment Amount in accordance with this Section 8 (a "**Installment Conversion**"); provided, however, that the Company may, at its option following notice to the Holder (with a copy to the Trustee) as set forth below, pay the Installment Amount by redeeming such Installment Amount in cash (a "**Installment Redemption**") or by any combination of an Installment Conversion and an Installment Redemption so long as all of the outstanding applicable Installment Amount due on any Installment Date shall be converted and/or redeemed by the Company on the applicable Installment Date, subject to the provisions of this Section 8. On the date which is the sixth (6th) Trading Day prior to each Installment Date (each, an "**Installment Notice Due Date**"), the Company shall deliver written notice (each, a "**Installment Notice**" and the date all of the holders receive such notice is referred to as to the "**Installment Notice Date**"), to each holder of Notes (with a copy to the Trustee) and such Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of such holder's Note shall be converted in whole pursuant to an Installment Conversion or (B) (1) state that the Company elects to redeem for cash, or is required to redeem for cash in accordance with the provisions of the Notes, in whole or in part, the applicable Installment Amount pursuant to an Installment Redemption and (2) specify the portion of such Installment Amount which the Company elects or is required to redeem pursuant to an Installment Redemption (such amount to be redeemed in cash, the "**Installment Redemption Amount**") and the portion of the applicable Installment Amount, if any, with respect to which the Company will, and is permitted to, effect an Installment Conversion (such amount of the applicable Installment Amount so specified to be so converted pursuant to this Section 8 is referred to herein as the "**Installment Conversion Amount**"), which amounts when added together, must at least equal the entire applicable Installment

Amount and (ii) if the applicable Installment Amount is to be paid, in whole or in part, pursuant to an Installment Conversion, certify that there is not then an Equity Conditions Failure as of the applicable Installment Notice Date. Each Installment Notice shall be irrevocable. If the Company does not timely deliver an Installment Notice in accordance with this Section 8 with respect to a particular Installment Date, then the Company shall be deemed to have delivered an irrevocable Installment Notice confirming an Installment Conversion of the entire Installment Amount payable on such Installment Date and shall be deemed to have certified that there is not then an Equity Conditions Failure in connection with such Installment Conversion. Except as expressly provided in this Section 8(a), the Company shall convert and/or redeem the applicable Installment Amount of this Note pursuant to this Section 8 and the corresponding Installment Amounts of the Other Notes pursuant to the corresponding provisions of the Other Notes in the same ratio of the applicable Installment Amount being converted and/or redeemed hereunder. The applicable Installment Conversion Amount (whether set forth in the applicable Installment Notice or by operation of this Section 8) shall be converted in accordance with Section 8(b) and the applicable Installment Redemption Amount shall be redeemed in accordance with Section 8(c).

(b) Mechanics of Installment Conversion. Subject to Section 3(d), if the Company delivers an Installment Notice or is deemed to have delivered an Installment Notice certifying that such Installment Amount is being paid, in whole or in part, in an Installment Conversion in accordance with Section 8(a), then the remainder of this Section 8(b) shall apply. The applicable Installment Conversion Amount, if any, shall be converted on the applicable Installment Date at the applicable Installment Conversion Price and the Company shall, on such Installment Date, (A) deliver to the Holder's account with DTC such shares of Common Stock issued upon such conversion (subject to the reduction contemplated by the immediately following sentence and, if applicable, the penultimate sentence of this Section 8(b)), and (B) in the event of the Conversion Floor Price Condition, the Company shall deliver to the Holder the applicable Conversion Installment Floor Amount, provided that the Equity Conditions are then satisfied (or waived in writing by the Holder) on such Installment Date and an Installment Conversion is not otherwise prohibited under any other provision of this Note. If the Company confirmed (or is deemed to have confirmed by operation of Section 8(a)) the conversion of the applicable Installment Conversion Amount, in whole or in part, and there was no Equity Conditions Failure as of the applicable Installment Notice Date (or is deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied by operation of Section 8(a)) but an Equity Conditions Failure occurred between the applicable Installment Notice Date and any time through the applicable Installment Date (the "**Interim Installment Period**"), the Company shall provide the Holder a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Interim Installment Period or an Installment Conversion is not otherwise permitted under any other provision of this Note, then, at the option of the Holder designated in writing to the Company, the Holder may require the Company to do any one or more of the following: (i) the Company shall redeem all or any part designated by the Holder of the unconverted Installment Conversion Amount (such designated amount is referred to as the "**Designated Redemption Amount**") and the Company shall pay to the Holder within five (5) Trading Days of such Installment Date, by wire transfer of

immediately available funds, an amount in cash equal to 125% of such Designated Redemption Amount, and/or (ii) the Installment Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Installment Conversion Amount and the Holder shall be entitled to all the rights of a holder of this Note with respect to such designated part of the Installment Conversion Amount; provided, however, the Conversion Price for such designated part of such unconverted Installment Conversion Amount shall thereafter be adjusted to equal the lesser of (A) the Installment Conversion Price as in effect on the date on which the Holder voided the Installment Conversion and (B) the Installment Conversion Price that would be in effect on the date on which the Holder delivers a Conversion Notice relating thereto as if such date was an Installment Date. If the Company fails to redeem any Designated Redemption Amount by the second (2nd) day following the applicable Installment Date by payment of such amount by such date, then the Holder shall have the rights set forth in Section 11(a) as if the Company failed to pay the applicable Installment Redemption Price (as defined below) and all other rights under this Note (including, without limitation, such failure constituting an Event of Default described in Section 4(a)(iv)). Notwithstanding anything to the contrary in this Section 8(b), but subject to 3(d), until the Company delivers Common Stock representing the Installment Conversion Amount to the Holder, the Installment Conversion Amount may be converted by the Holder into Common Stock pursuant to Section 3. In the event that the Holder elects to convert the Installment Conversion Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Conversion Amount so converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of any shares of Common Stock in any Installment Conversion hereunder.

(c) Mechanics of Installment Redemption. If the Company elects or is required to effect an Installment Redemption, in whole or in part, in accordance with Section 8(a), then the Installment Redemption Amount, if any, shall be redeemed by the Company in cash on the applicable Installment Date by wire transfer to the Holder of immediately available funds in an amount equal to 103% of the applicable Installment Redemption Amount (the "**Installment Redemption Price**"). If the Company fails to redeem such Installment Redemption Amount on such Installment Date by payment of the Installment Redemption Price, then, at the option of the Holder designated in writing to the Company (any such designation shall be a "**Conversion Notice**" for purposes of this Note), the Holder may require the Company to convert all or any part of the Installment Redemption Amount at the Installment Conversion Price (determined as of the date of such designation as if such date were an Installment Date). Conversions required by this Section 8(c) shall be made in accordance with the provisions of Section 3(c). Notwithstanding anything to the contrary in this Section 8(c), but subject to Section 3(d), until the Installment Redemption Price (together with any Late Charges thereon) is paid in full, the Installment Redemption Amount (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event the Holder elects to convert all or any portion of the Installment Redemption Amount prior to the applicable Installment Date as set forth in the immediately preceding

sentence, the Installment Redemption Amount so converted shall be deducted from the Principal amount outstanding hereunder, including for purposes of determining the Installment Amounts relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. Redemptions required by this Section 8(c) shall be made in accordance with the provisions of Section 11.

(d) Deferred Installment Amount. Notwithstanding any provision of this Section 8(d) to the contrary, the Holder may, at its option and in its sole discretion, deliver a written notice to the Company no later than the Trading Day immediately prior to the applicable Installment Date electing to have the payment of all or any portion of an Installment Amount payable on such Installment Date deferred (such amount deferred, the "**Deferral Amount**", and such deferral, each a "**Deferral**") until any subsequent Installment Date selected by the Holder, in its sole discretion, in which case, the Deferral Amount shall be added to, and become part of, such subsequent Installment Amount and such Deferral Amount shall continue to accrue Interest hereunder. Any notice delivered by the Holder pursuant to this Section 8(d) shall set forth (i) the Deferral Amount and (ii) the date that such Deferral Amount shall now be payable.

(e) Acceleration of Installment Amounts. Notwithstanding any provision of this Section 8 to the contrary, but subject to Section 3(d), during the period commencing on an Installment Date (a "**Current Installment Date**") and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Installment Period**"), at the option of the Holder, at one or more times, the Holder may convert other Installment Amounts (each, an "**Acceleration**", and each such amount, an "**Acceleration Amount**", and the Conversion Date of any such Acceleration, each an "**Acceleration Date**"), in whole or in part, at the Acceleration Conversion Price of such Current Installment Date in accordance with the conversion procedures set forth in Section 3 hereunder (with "Acceleration Conversion Price" replacing "Conversion Price" for all purposes therein), *mutatis mutandis;* provided, that if a Conversion Floor Price Condition exists with respect to such Acceleration Date, with each Acceleration the Company shall also deliver to the Holder the Acceleration Floor Amount on the applicable Share Delivery Deadline. Notwithstanding anything to the contrary in this Section 8(e), with respect to each period commencing on an Installment Date and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Acceleration Measuring Period**"), the Holder may not elect to effect an Acceleration (the "**Current Acceleration**", and such date of determination, the "**Current Acceleration Determination Date**") during such Acceleration Measuring Period if the Holder shall have converted pursuant to this Section 8 either on such Current Installment Date and/or on any Acceleration Date during such Acceleration Measuring Period, as applicable, such portion of the Conversion Amount of this Note equal to the sum of (x) the Installment Amount for such Installment Date (whether on the Current Installment Date or, if subject to a Deferral, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date) and (y) an additional 200% of the Installment Amount for such Current Installment Date, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date (or such greater amount as the Company and the Holder shall mutually agree).

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, and (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 nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(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 permit such conversion into shares of Common Stock.

10. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as any Notes remain outstanding, the Company shall at all times reserve (I) if prior to Reserve Increase Deadline (as defined in the Securities Purchase Agreement), 275,000,000 shares of Common Stock for conversion (including without limitation, Installment Conversions, Alternate Conversions and Accelerations) of all of the Notes then outstanding (without regard to any limitations on conversions) or (ii) if on or after the Reserve Increase Deadline, at least 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion, including without limitation, Installment Conversions, Alternate Conversions and Accelerations, of all of the Notes then outstanding (without regard to any limitations on conversions and assuming such Notes remain outstanding until the Maturity Date) at the Floor Price then in effect (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 of the Notes based on the original principal amount of the Notes held by each holder on the Initial Closing 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 Notes, 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 Notes shall be allocated to the remaining holders of Notes, pro rata based on the principal amount of the Notes then held by such holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 10(a), and not in limitation thereof, at any time while any of the Notes 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 Notes 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 Notes then outstanding. 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 sixty (60) 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. 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 pursuant to the terms of this Note 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 the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount 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 the 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 10(a); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in Section 10(a) or this Section 10(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

11. REDEMPTIONS.

(a) Mechanics. The Company, or at the Company's written direction and at the Company's expense, the Trustee, shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company, or at the Company's direction, the Trustee, shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise. The Company shall deliver the applicable Installment Redemption Price to the Holder in cash on the applicable Installment Date. Notwithstanding anything herein to the

contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the 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. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of this Note or such new Notes (as the case may be) shall be automatically adjusted with respect to each conversion effected thereafter by the Holder to the lowest of (A) the Conversion Price as in effect on the date on which the applicable Redemption Notice is voided, (B) 75% of the Market Price of the Common Stock for the period ending on and including the date on which the applicable Redemption Notice is voided and (C) 75% of the Market Price of the Common Stock for the period ending as of the applicable Conversion Date (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by electronic mail a copy of such notice (with a copy to the Trustee). If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all

principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

13. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. The Company shall designate all payments due under this Note as senior unsecured Indebtedness, and (a) the Notes shall rank *pari passu* with all Other Notes and (b) shall be at least *pari passu* in right of payment with all other Indebtedness of the Company and its Subsidiaries (other than Permitted Indebtedness secured by Permitted Liens).

(b) 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 (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) 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; provided, however, that the Company shall be deemed to be in breach of this Section 13(c) only if such breach remains uncured for a period of five (5) Trading Days.

(d) 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 than the Notes) 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 an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) 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.

(f) 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 (including, without limitation, in connection with joint ventures) in the ordinary course of business consistent with its past practice and (ii) sales of inventory and product in the ordinary course of business; provided, however, that the Company shall be deemed to be in breach of this Section 13(f) if such breach was an involuntary sale, lease, license, assignment, transfer, spin-off, split-off, close, conveyance or otherwise disposal that remains uncured for a period of five (5) Trading Days.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date (except, solely from and after the Stockholder Approval Date (as defined in the Securities Purchase Agreement), up to $100 million of Permitted Indebtedness in any three month period).

(h) 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 Subscription 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 other than for tax or other general corporate purposes that are not meant to (and do not) change the nature of the business of the Company currently conducted as of the Issuance Date.

(i) 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.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its 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 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.

(k) 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 (as defined in the Securities Purchase Agreement) 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.

(l) 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 (including, without limitation, and for the avoidance of doubt, at least $5,000,000 in director's and officer's insurance).

(m) 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.

(n) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Financial Covenants; Announcement of Operating Results.

(i) The Company shall maintain, as of the end of each Fiscal Quarter (and/or Fiscal Year, as applicable) a balance of Available Cash in an aggregate amount equal to or greater than $340,000,000 (the "**Financial Test**").

(ii) Operating Results Announcement. Commencing on the Fiscal Quarter ending September 30, 2023, the Company shall publicly disclose and disseminate (such date, the "**Announcement Date**"), if the Financial Test has not been satisfied for such Fiscal Quarter or Fiscal Year, as applicable, a statement to that effect no later than (x) if prior to March 31, 2024, the fifteenth (15th) Trading Day or (y) if on or after March 31, 2024, the tenth (10^{th}) Trading Day, in either case, after the end of such Fiscal Quarter or Fiscal Year, as applicable, and such announcement shall include a statement to the effect that the Company is (or is not, as applicable) in breach of the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable. Notwithstanding the foregoing, in the event no

Financial Covenant Failure (as defined below) has occurred and the Company reasonably determines, with the advice of legal counsel, that the disclosure referred to in the immediately preceding sentence does not constitute material non-public information, the Company shall make a statement to that effect in the applicable certification required below and no disclosure with the SEC shall be required to be made by the Company. On the Announcement Date, the Company shall also provide to the Holder a certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Company satisfied the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable, if that is the case. If the Company has failed to meet the Financial Test for a Fiscal Quarter or Fiscal Year, as applicable, (each a "**Financial Covenant Failure**"), the Company shall provide to the Holder a written certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Financial Test has not been met for such Fiscal Quarter or Fiscal Year, as applicable (a "**Financial Covenant Failure Notice**"). Concurrently with the delivery of each Financial Covenant Failure Notice to the Holder, the Company shall also make publicly available (as part of a Quarterly Report on Form 10-Q, Annual Report on Form 10-K or on a Current Report on Form 8-K, or otherwise) the Financial Covenant Failure Notice and the fact that an Event of Default has occurred under the Notes.

(p) PCAOB Registered Auditor. At all times any Notes 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.

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

(r) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to 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.

(s) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note 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 (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

14. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Sections 6 or 7, 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 the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date 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 the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the 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 the extent of any such excess)) and in lieu of delivering to the Holder such portion of such Distribution in excess of the Maximum Percentage, the Holder shall receive

a right to receive such portion of such Distribution, exercisable into such Distribution at any time, in whole or in part, at the option of the Holder (or any successor thereto), without the payment of any additional consideration, but subject to a limitation on exercise in the form of 3(d)(i) herein, *mutatis mutandis*.

15. AMENDING THE TERMS OF THIS NOTE. Except for Section 3(d), which may not be amended, modified or waived by the parties hereto, the prior written consent of the Company and the Holder shall be required for any change, waiver or amendment to this Note; provided, however, no change, waiver or amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent.

16. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company; provided, that the Holder shall not transfer this Note to any competitor of the Company without the prior written consent of the Company (not to be unreasonably withheld).

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note. Upon compliance with Section 2.02 of the Indenture, the Company shall execute and, following authentication of such new Note, deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new

Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16(a) or Section 16(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, (v) shall be duly authenticated in accordance with the Indenture and (vi) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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 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 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 Note (including, without limitation, compliance with Section 7).

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note and/or any other Transaction Document or to enforce the provisions of this Note and/or any other Transaction Document or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such

bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note and/or any other Transaction Document, as applicable, shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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. Notwithstanding the foregoing, nothing contained in this Section 21 shall permit any waiver of any provision of Section 3(d).

22. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Installment Conversion Price, an Acceleration Conversion Price, an Alternate Conversion Price, a Black Scholes Consideration Value, 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 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 learning of the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder at any time after the Holder learned of the circumstances giving rise to such dispute. If the 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 Installment Conversion Price, such Acceleration Conversion Price, such Alternate Conversion Price, such Black Scholes Consideration Value, 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 fifth (5th) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The 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 22 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 the 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 the 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 the Holder or otherwise requested by such investment bank, neither the Company nor the 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).

(iii) The Company and the Holder shall use reasonable best efforts to cause such investment bank to determine the resolution of such dispute and notify the Company and the 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 solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 22 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 22, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 7(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the

terms of this Note 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 Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 22 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 22 and (v) nothing in this Section 22 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 22).

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement, or, with respect to the Trustee, in accordance with Section 10.02 of the Indenture. The Company shall provide the Holder and the Trustee with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder and the Trustee (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, (B) with respect to any grant, issuances, or sales of any Common Stock, Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock (including, without limitation, whether a Dilutive Issuance has occurred hereunder) or (C) 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 the Holder.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note 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 Note, 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).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such

payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note or any other Transaction Documents have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **THE COMPANY 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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

27. JUDGMENT CURRENCY.

(a) 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 Note, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) 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

(ii) 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**").

(b) 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.

(c) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

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

(c) "**Acceleration Conversion Price**" means, with respect to any given Acceleration Date, the lower of (i) the Installment Conversion Price for such Current Installment Date related to such Acceleration Date and (ii) the greater of (x) the Floor Price and (y) 93% of the Acceleration Market Price.

(d) "**Acceleration Market Price**" means, with respect to any given Acceleration Date, the lesser of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such Acceleration Date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock for each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such Acceleration Date, divided by (y) five (5). All such determinations to be appropriately adjusted for any share split, share dividend, share combination or other similar transaction during any such measuring period.

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

(f) "**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 7) of shares of Common Stock (other than rights of the type described in Section 6(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).

(g) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(h) "**Alternate Conversion Price**" means, with respect to any Alternate Conversion that price which shall be the lower of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) 80% of the Market Price as of the Trading Day of 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.

(i) "**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 Subscription Date pursuant to which shares of 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.

(j) "**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 Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the 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 the 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 the Holder and all other Attribution Parties to the Maximum Percentage.

(k) "**Available Cash**" means, with respect to any date of determination, an amount equal to the aggregate amount of the Cash of the Company and its Subsidiaries (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of its Subsidiaries for any reason) and Reclaimable Cash as of such date of determination held in bank accounts of financial banking institutions in the United States of America or in bank accounts of reputable financial banking institutions in such other country or countries as the Company has a bona fide business purpose to hold such Cash (other than with a purpose to circumvent or otherwise misrepresent the aggregate amount of Available Cash required pursuant to the terms and conditions of this Note).

(l) "**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 30 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).

(m) "**Bloomberg**" means Bloomberg, L.P.

(n) "**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.

(o) "**Cash**" of the Company and its Subsidiaries on any date shall be determined from such Persons' books maintained in accordance with GAAP, and means, without duplication, the cash, cash equivalents and Eligible Marketable Securities accrued by the Company and its wholly owned Subsidiaries on a consolidated basis on such date.

(p) "**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.

(q) "**Change of Control Redemption Premium**" means 125%.

(r) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(s) "**Common Stock**" means (i) the Company's shares of Class A common stock, $0.00001 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.

(t) "**Conversion Floor Price Condition**" means that the relevant Acceleration Conversion Price (including any Installment Conversion Price referred to therein) or Installment Conversion Price, as applicable, is being determined based on sub-clause (x) of such definitions.

(u) "**Conversion Installment Floor Amount**" means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) the higher of (I) the highest price that the shares of Common Stock trades at on the Trading Day immediately preceding the relevant Installment Date and (II) the applicable Installment Conversion Price and (B) the difference obtained by subtracting (I) the number of shares of Common Stock delivered (or to be delivered) to the Holder on the applicable Installment Date with respect to such Installment Conversion from (II) the quotient obtained by dividing (x) the applicable Installment Amount subject to such Installment Conversion, by (y) the applicable Installment Conversion Price without giving effect to clause (x) of such definition.

(v) "**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.

(w) "**Current Public Information Failure**" means the Company's failure 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 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).

(x) "**Eligible Market**" means the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the Principal Market.

(y) "**Eligible Marketable Securities**" as of any date means marketable securities which would be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared as of such date in accordance with GAAP, and which are permitted under the Company's investment policies as in effect on the Issuance Date or approved thereafter by the Company's Board of Directors.

(z) "**Equity Conditions**" means, with respect to any given date of determination: (i) 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 Underlying Securities (as defined in the Securities Purchase Agreement)) 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); (ii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of this Note on a timely basis as set forth in Section 3 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; (iii) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3(d) hereof; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) 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); (v) 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; (vi) no Current Public Information Failure then exists or is continuing; (vii) the Holder shall not be in (and no Other Holder 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; (viii) 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, in each case, which has not been waived; (ix) 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; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Alternate Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) (each, a "**Required Minimum Securities Amount**") are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default (as defined in the Notes) or an event that with the passage of time or giving of notice would constitute an Event of Default (regardless of whether the Holder has submitted an Event of Default Redemption Notice), in each case, which has not been waived; (xii) no bona fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document and (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.

(aa) "**Equity Conditions Failure**" means that on any day during the period commencing twenty (20) Trading Days prior to the applicable Installment Notice Date through the later of the applicable Installment Date and the date on which the applicable shares of Common Stock are actually delivered to the Holder, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(bb) "**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 Subscription Date 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 Subscription 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 of Notes; (ii) shares of Common Stock issued upon the conversion or exercise 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 Subscription Date, provided that the conversion price of any such Convertible Securities (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 of Notes; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; provided, that the terms of the Notes are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date); and (iv) shares of Common Stock issued and sold, in one or more transactions, pursuant to a Permitted ATM (as defined in the Securities Purchase Agreement), provided that the aggregate purchase price for such shares of Common Stock in such transaction or transactions shall not exceed $10,000,000. For the avoidance of doubt, any sales of shares of Common Stock pursuant to a Permitted ATM in excess of $10,000,000 shall not be included in this definition of "Excluded Securities".

(cc) "**Floor Price**" means $[ ][2], subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events; provided, that the Company may reduce the Floor Price to any amount set forth in a written notice to the Holder with at least five (5) Trading Day prior written notice (or such other time as the Company and the Holder shall mutually agree); provided, further, that any such reduction shall be irrevocable and shall not be subject to increase thereafter.

(dd) "**Fiscal Quarter**" means each of the fiscal quarters adopted by the Company for financial reporting purposes that correspond to the Company's fiscal year as of the date hereof that ends on December 31.

(ee) "**Fiscal Year**" means the fiscal year adopted by the Company for financial reporting purposes as of the date hereof that ends on December 31.

[2] Insert 20% of the Minimum Price (as defined in the NYSE Listed Company Manual) of the Common Stock on the Subscription Date.

(ff) "**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 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 Note 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.

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

(hh) "**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.

(ii) "**Holder Pro Rata Amount**" means a fraction (i) the numerator of which is the original Principal amount of this Note issued to the Holder on the Initial Closing Date and (ii) the denominator of which is the aggregate original principal amount of all Notes issued to the initial purchasers pursuant to the Securities Purchase Agreement on the Initial Closing Date.

(jj) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(kk) "**Initial Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(ll) "**Installment Amount**" means the sum of (A) (i) with respect to any Installment Date other than the Maturity Date, the lesser of (x) the Holder Pro Rata Amount of $[ ][3] and (y) the Principal amount then outstanding under this Note as of such Installment Date, and (ii) with respect to the Installment Date that is the Maturity Date, the Principal amount then outstanding under this Note as of such Installment Date (in each case, as any such Installment Amount may be reduced pursuant to the terms of this Note, whether upon conversion, redemption or Deferral), (B) any Deferral Amount deferred pursuant to Section 8(d) and included in such Installment Amount in accordance therewith, (C) any Acceleration Amount accelerated pursuant to Section 8(e) and included in such Installment Amount in accordance therewith and (D) in each case of clauses (A) through (C) above, the sum of any accrued and unpaid Interest as of such Installment Date under this Note, if any, and accrued and unpaid Late Charges, if any, under this Note as of such Installment Date. In the event the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of each unpaid Installment Amount hereunder.

(mm) "**Installment Conversion Price**" means, with respect to a particular date of determination, the lower of (i) the Conversion Price then in effect, and (ii) the greater of (x) the Floor Price and (y) 93% of the Market Price of the applicable Installment Date. All

[3] Insert the quotient of (x) the applicable initial Principal of this Note, divided by (y) nine (9)

such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

(nn) "**Installment Date**" means (i)[ ][4], (ii) then, each three month anniversary thereafter until the Maturity Date, and (iii) the Maturity Date; provided that if any such date is not a Business Day, the next Business Day.

(oo) "**Indenture**" means that certain Indenture for Debt Securities dated as of the Initial Closing Date, by and between the Company and the Trustee, as may be amended, modified or supplemented from time to time, including, without limitation, by any Supplemental Indenture (as defined below).

(pp) "**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.

(qq) "**Market Price**" shall mean, as of any given date, the lower of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock on each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such date, divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period).

(rr) "**Maturity Date**" shall mean [ ][5]; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

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

(tt) "**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

[4] Insert the Issuance Date

[5] Insert the second anniversary of the applicable Issuance Date

Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(uu) "**Permitted Convertible Securities**" means (a) any Convertible Securities of the Company issued after [ ][6] in exchange for Indebtedness of the Company outstanding as of the Subscription Date; provided, that (i) such Convertible Securities are *pari passu* or subordinate to the terms of the Notes, (ii) the terms of such Convertible Securities are not more favorable to such holders of Convertible Securities than the terms of the Notes, (iii) the amounts outstanding under such Convertible Securities do not increase as a result of such exchange and (iv) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes; and (b) any Convertible Securities issued after the 12-month anniversary of the Initial Closing Date; provided, that (i) such Convertible Securities are pari passu or subordinate to the terms of the Notes, and (ii) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(vv) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date, (iv) Permitted Convertible Securities, (v) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens, (vi) non-convertible Indebtedness to trade creditors incurred in the ordinary course of business (not otherwise excluded from the definition of Indebtedness), including non-convertible Indebtedness incurred in the ordinary course of business with corporate credit cards, (vii) non-convertible Indebtedness arising from letters of credit (or similar instruments) in the ordinary course of business, (viii) non-convertible Indebtedness arising from operating and financing leases in the ordinary course of business, (ix) non-convertible Indebtedness incurred under working capital facilities entered into in the ordinary course of business, provided such facilities do not exceed $200,000,000 in the aggregate (the "**Permitted WC Facility**"), (x) non-convertible intercompany Indebtedness owed between the Company and/or any Subsidiary (or between any Subsidiaries), as applicable, (xi) non-convertible Indebtedness consisting of subsidized loans made, or guaranteed, by a governmental entity, (xii) to the extent constituting non-convertible Indebtedness, obligations owed to an insurance company incurred in the ordinary course of business with respect to premiums payable for property, casualty, or other insurance, so long as such indebtedness shall not be in excess of the

[6] Insert Initial Closing Date

amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such indebtedness is incurred and such indebtedness shall be outstanding only during such year, (xiii) non-convertible Indebtedness in respect of surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantees and similar obligations incurred in the ordinary course of business, and (xiv) other non-convertible Indebtedness not to exceed $25,000,000; provided, that (A) all Permitted Indebtedness must be pari passu or subordinate to the terms of the Notes (other than Permitted Indebtedness secured by Permitted Liens), and (B) no Permitted Indebtedness shall prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(ww) "**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 $200,000,000, (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, (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, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 4(a)(x) and (viii) Liens with respect to any accounts receivables or inventory of the Company and its Subsidiaries securing the Permitted WC Facility.

(xx) "**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.

(yy) **"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 $[ ][7] (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription 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.

(zz) "**Principal Market**" means the New York Stock Exchange.

(aaa) "**Reclaimable Cash**" means, as of any given date of determination, (i) unavailable Cash as of such date of determination that is eligible to be returned to the Company or any of its Subsidiaries, as applicable, at the conclusion of any agreement where such Cash would otherwise not be considered cash and cash equivalents for purposes of GAAP, but which is reasonably expected to be released as unrestricted Cash of the Company or any of its Subsidiaries within 90 days of such date of determination (including, for the avoidance of doubt, any Cash amounts so restricted due to a letter of credit supporting supplier contractual obligations) and (ii) order deposits made through credit card transactions whereby Cash payments are held by financial institutions until the vehicle being purchased by any such applicable customer is delivered to such applicable customer (but solely with respect to such Cash payments that are reasonably expected to be released to the Company or any of its Subsidiaries, as applicable, within 90 days of such date of determination upon delivery of such applicable vehicle(s) to such applicable customer(s) and/or non-refundable payments that with the passage of time will become an asset of the Company (or such applicable Subsidiary) under GAAP)(regardless of whether the vehicle(s) is delivered)) at which time the Cash is deposited into the Company's (or such applicable Subsidiary's) bank account and available for the Company's (or such applicable Subsidiary's) unrestricted use.

(bbb) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices, the Installment Notices with respect to any Installment Redemption, and the Change of Control Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(ccc) "**Redemption Premium**" means 125%.

(ddd) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices, the Change of Control Redemption Prices, and the Installment Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

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

(fff) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended

[7] Insert Floor Price.

from time to time.

(ggg) "**Significant Subsidiaries**" or "**Significant Subsidiary**" means, as of any time of determination, any of the "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) of the Company as of such time of determination.

(hhh) "**Subscription Date**" means July 10, 2023.

(iii) "**Subsidiaries**" shall have the meaning as set forth in the Securities Purchase Agreement.

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

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

(lll) "**Supplemental Indenture**" shall have the meaning ascribed to such term in the Securities Purchase Agreement, as each such supplemental indenture may be amended, modified or supplemented from time to time.

(mmm)"**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 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.

(nnn) "**Triggering Event**" means the occurrence of any Event of Default (assuming for such purpose that "$10,000,000" replaces "$25,000,000", where applicable, in each clause of the definition of Event of Default).

(ooo) "**Trustee**" means Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Indenture, or any successor or any additional trustee appointed with respect to the Notes pursuant to the Indenture.

(ppp) "**Volume Failure**" means, with respect to a particular date of determination, if either (x) the aggregate daily dollar trading volume (as reported on Bloomberg) of the

Common Stock on the Principal Market on more than five (5) Trading Days during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination, or (y) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the five (5) Trading Day period ending on the Trading Day immediately preceding such date of determination, as applicable, is less than $25,000,000.

(qqq) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

31. DISCLOSURE. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries (it being understood that a Dilutive Issuance, which results in an adjustment of the Conversion Price, shall always be deemed material for the purpose of this Section 31), 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 Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in

this Section 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(l) of the Securities Purchase Agreement.

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

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture and the applicable Supplemental Indenture.

Dated: _____, 20__

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: _____
Name:
Title:

EXHIBIT I

FISKER INC.
CONVERSION NOTICE

Reference is made to the Series [A][B][C][-][1][2][3][4] Senior Convertible Note (the "**Note**") issued to the undersigned by Fisker Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Class A Common Stock, $0.00001 par value per share (the "**Common Stock**"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges 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: _____

Installment Amount(s) to be reduced (and corresponding Installment Date(s)) and amount of reduction: _____

☐ 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:_____

☐ If this Conversion Notice is being delivered with respect to an Acceleration, check here if Holder is electing to use _____ as the Installment Conversion Price (as

applicable) related to the following Installment Date:_____

Please issue the Common Stock into which the Note 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: _____

DTC Participant Phone Number: _____

Account Number: _____

The source for these shares of Common Stock is reserve account **[●]**, with an effective date of [●], 20[●].

Date: _____ __, _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____

E-mail Address:

Mailing Address:

Exhibit II

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock are eligible to be resold by the Holder without restriction and 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 _____.

FISKER INC.

By: _____
Name:
Title:

EXHIBIT A-2

FISKER INC.

as the Company

and

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Trustee

Senior Indenture

Dated as of July [__], 2023

TABLE OF CONTENTS

Page

Page

Page

SENIOR INDENTURE, dated as of [•], 2023, between Fisker Inc., a Delaware corporation, as the Company, and Wilmington Savings Fund Society, FSB, as Trustee.

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the issue from time to time of its senior debentures, notes or other evidences of indebtedness to be issued in one or more series (the "**Securities**") up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture and to provide, among other things, for the authentication, delivery and administration thereof, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid indenture and agreement according to its terms have been done;

NOW, THEREFORE:

In consideration of the premises and the purchases of the Securities by the holders thereof, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective holders from time to time of the Securities or of any and all series thereof and of the coupons, if any, appertaining thereto as follows:

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions.*

"**Affiliate**" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with") when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agent**" means any Registrar, Paying Agent, transfer agent or Authenticating Agent.

"**Board Resolution**" means one or more resolutions of the board of directors of the Company or any authorized committee thereof, certified by the secretary or an assistant secretary to have been duly adopted and to be in full force and effect on the date of certification, and delivered to the Trustee.

"**Business Day**" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close in The City of New York, with respect to any Security the interest on which is based on the offered quotations in the interbank Eurodollar market for dollar deposits in London, or with respect to Securities denominated in a specified currency other than United States dollars, in the principal financial center of the country of the specified currency.

"**Capital Lease**" means, with respect to any Person, any lease of any property which, in conformity with GAAP, is required to be capitalized on the balance sheet of such Person.

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Company**" means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to Article 5 of this Indenture and thereafter means the successor.

"**Corporate Trust Office**" means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be administered, which office is, at the date of this Indenture, located at 500 Delaware Avenue, Wilmington, DE 19801, Attention: Corporate Trust – Fisker Inc.

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

"**Depositary**" means, with respect to the Securities of any series issuable or issued in the form of one or more Registered Global Securities, the Person designated as Depositary by the Company pursuant to Section 2.03 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Depositary**" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "**Depositary**" as used with respect to the Securities of any such series shall mean the Depositary with respect to the Registered Global Securities of that series.

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

"**GAAP**" means generally accepted accounting principles in the United States as in effect as of the date hereof applied on a basis consistent with the principles, methods, procedures and practices employed in the preparation of the Company's audited financial statements, including, without limitation, those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as is approved by a significant segment of the accounting profession.

"**Holder**" or "**Securityholder**" means the registered holder of any Security with respect to Registered Securities and the bearer of any Unregistered Security or any coupon appertaining thereto, as the case may be.

"**Indenture**" means this Indenture as originally executed and delivered or as it may be amended or supplemented from time to time by one or more indentures supplemental to this Indenture entered into pursuant to the applicable provisions of this Indenture and shall include the forms and terms of the Securities of each series established as contemplated pursuant to Sections 2.01 and 2.03.

"**Officer**" means, with respect to the Company, the chairman of the board of directors, the president or chief executive officer, any executive vice president, any senior vice president, any vice president, the chief financial officer, the general counsel, the treasurer or any assistant treasurer, or the secretary or any assistant secretary.

"**Officer's Certificate**" means a certificate signed in the name of the Company by the chairman of the board of directors, the president or chief executive officer, an executive vice president, a senior vice president or a vice president, the chief financial officer, the treasurer or any assistant treasurer, or the secretary or any assistant secretary, and delivered to the Trustee. Each such certificate shall comply with Section 314 of the Trust Indenture Act, if applicable, and include (except as otherwise expressly provided in this Indenture) the statements provided in Section 10.04, if applicable.

"**Opinion of Counsel**" means a written opinion signed by legal counsel, who may be an employee of or counsel to the Company. Each such opinion shall comply with Section 314 of the Trust Indenture Act, if applicable, and include the statements provided in Section 10.04, if and to the extent required thereby.

"**Original Issue Date**" of any Security (or portion thereof) means the earlier of (a) the date of authentication of such Security or (b) the date of any Security (or portion thereof) for which such Security was issued (directly or indirectly) on registration of transfer, exchange or substitution.

"**Original Issue Discount Security**" means any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 6.02.

"**Periodic Offering**" means an offering of Securities of a series from time to time, the specific terms of which Securities, including, without limitation, the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Securities.

"**Person**" means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"**Principal**" of a Security means the principal amount of, and, unless the context indicates otherwise, includes any premium payable on, the Security.

"**Registered Global Security**" means a Security evidencing all or a part of a series of Registered Securities, issued to the Depositary for such series in accordance with Section 2.02, and bearing the legend prescribed in Section 2.02.

"**Registered Security**" means any Security registered on the Security Register (as defined in Section 2.05).

"**Responsible Officer**" when used with respect to the Trustee, shall mean an officer of the Trustee in the Corporate Trust Office (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

"**Securities**" means any of the securities, as defined in the first paragraph of the recitals hereof, that are authenticated and delivered under this Indenture and, unless the context indicates otherwise, shall include any coupon appertaining thereto.

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

"**Subsidiary**" means, with respect to any Person, any corporation, association or other business entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"**Trustee**" means the party named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of Article 7 and thereafter shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbbb), as it may be amended from time to time.

"**Unregistered Security**" means any Security other than a Registered Security.

"**U.S. Government Obligations**" means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

"**Yield to Maturity**" means, as the context may require, the yield to maturity (i) on a series of Securities or (ii) if the Securities of a series are issuable from time to time, on a Security of such series, calculated at the time of issuance of such series in the case of clause (i) or at the time of issuance of such Security of such series in the case of clause (ii), or, if applicable, at the most recent redetermination of interest on such series or on such Security, and calculated in accordance with the constant interest method or such other accepted financial practice as is specified in the terms of such Security.

Section 1.02. *Other Definitions*. Each of the following terms is defined in the section set forth opposite such term:

Term	Section
Authenticating Agent	2.02
Cash Transaction	7.03
Dollars	4.02
Event of Default	6.01
Judgment Currency	10.15(a)
mandatory sinking fund payment	3.05
optional sinking fund payment	3.05
Paying Agent	2.05
record date	2.04
Registrar	2.05
Required Currency	10.15(a)
Security Register	2.05
self-liquidating paper	7.03
sinking fund payment date	3.05
tranche	2.14

Section 1.03. *Incorporation by Reference of Trust Indenture Act*. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. The following terms used in this Indenture that are defined by the Trust Indenture Act have the following meanings:

"**indenture securities**" means the Securities;

"**indenture security holder**" means a Holder or a Securityholder;

"**indenture to be qualified**" means this Indenture;

"**indenture trustee**" or "**institutional trustee**" means the Trustee; and

"**obligor**" on the indenture securities means the Company or any other obligor on the Securities.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by reference in the Trust Indenture Act to another statute or defined by a rule of the Commission and not otherwise defined herein have the meanings assigned to them therein.

Section 1.04. *Rules of Construction*. Unless the context otherwise requires:

(a) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(b) words in the singular include the plural, and words in the plural include the singular;

(c) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(d) all references to Sections or Articles refer to Sections or Articles of this Indenture unless otherwise indicated; and

(e) use of masculine, feminine or neuter pronouns should not be deemed a limitation, and the use of any such pronouns should be construed to include, where appropriate, the other pronouns.

ARTICLE 2

THE SECURITIES

Section 2.01. *Form and Dating*. The Securities of each series shall be substantially in such form or forms (not inconsistent with this Indenture) as shall be established by or pursuant to one or more Board Resolutions or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law, or with any rules of any securities exchange or usage, all as may be determined by the Officers executing such Securities as evidenced by their execution of the Securities. Unless otherwise so established, Unregistered Securities shall have coupons attached.

Section 2.02. *Execution and Authentication*. Two Officers shall execute the Securities and one Officer shall execute the coupons appertaining thereto for the Company by facsimile or manual signature in the name and on behalf of the Company. If an Officer whose signature is on a Security or coupon appertaining thereto no longer holds that office at the time the Security is authenticated, the Security and such coupon shall nevertheless be valid.

The Trustee, at the expense of the Company, may appoint an authenticating agent (the "**Authenticating Agent**") to authenticate Securities. The Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Authenticating Agent.

A Security and the coupons appertaining thereto shall not be valid until the Trustee or Authenticating Agent manually signs the certificate of authentication on the Security or on the Security to which such coupon appertains by an authorized officer. The signature shall be conclusive evidence that the Security or the Security to which the coupon appertains has been authenticated under this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series having attached thereto appropriate coupons, if any, executed by the Company to the Trustee for authentication together with the applicable documents referred to below in this Section, and the Trustee shall thereupon authenticate and deliver such Securities to or upon the written order of the Company. In authenticating any Securities of a series, the Trustee shall be entitled to receive prior to the authentication of any Securities of such series, and (subject to Article 7) shall be fully protected in relying upon, unless and until such documents have been superseded or revoked:

(a) any Board Resolution and/or executed supplemental indenture referred to in Sections 2.01 and 2.03 by or pursuant to which the forms and terms of the Securities of that series were established;

(b) an Officer's Certificate setting forth the form or forms and terms of the Securities, stating that the form or forms and terms of the Securities of such series have been, or, in the case of a Periodic Offering, will be when established in accordance with such procedures as shall be referred to therein, established in compliance with this Indenture; and

(c) an Opinion of Counsel substantially to the effect that the form or forms and terms of the Securities of such series have been, or, in the case of a Periodic Offering, will be when established in accordance with such procedures as shall be referred to therein, established in compliance with this Indenture and that the supplemental indenture, to the extent applicable, and Securities have been duly authorized and, if executed and authenticated in accordance with the provisions of the Indenture and delivered to and duly paid for by the purchasers thereof on the date of such opinion, would be entitled to the benefits of the Indenture and would be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting creditors' rights generally, general principles of equity, and covering such other matters as shall be specified therein and as shall be reasonably requested by the Trustee.

The Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Sections 2.01 and 2.02, if, in connection with a Periodic Offering, all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Board Resolution otherwise required pursuant to Section 2.01 or the written order, Officer's Certificate and Opinion of Counsel otherwise required pursuant to Section 2.02 at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the forms and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Sections 2.01 and 2.02, as applicable, in connection with the first authentication of Securities of such series.

If the Company shall establish pursuant to Section 2.03 that the Securities of a series or a portion thereof are to be issued in the form of one or more Registered Global Securities, then the Company shall execute and the Trustee shall authenticate and deliver one or more Registered Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of all of the Securities of such series issued in such form and not yet cancelled, (ii) shall be registered in the name of the Depositary for such Registered Global Security or Securities or the nominee of such Depositary, (iii) shall be delivered by the Trustee to such Depositary or its custodian or pursuant to such Depositary's instructions and (iv) shall bear a legend substantially to the following effect: "Unless and until it is exchanged in whole or in part for Securities in definitive registered form, this Security may not be transferred except as a whole by the Depositary to the nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary."

Section 2.03. *Form of Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

"This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

WILMINGTON SAVINGS FUND SOCIETY, FSB
AS TRUSTEE

By _____
AUTHORIZED SIGNATORY"

Section 2.04. *Amount Unlimited; Issuable in Series.* The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to Board Resolution or one or more indentures supplemental hereto, prior to the initial issuance of Securities of any series, subject to the last sentence of this Section 2.03:

(a) the designation of the Securities of the series, which shall distinguish the Securities of the series from the Securities of all other series;

(b) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture and any limitation on the ability of the Company to increase such aggregate principal amount after the initial issuance of the Securities of that series (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, or upon redemption of, other Securities of the series pursuant hereto);

(c) the date or dates on which the principal of the Securities of the series is payable (which date or dates may be fixed or extendible);

(d) the rate or rates (which may be fixed or variable) per annum at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable and

(in the case of Registered Securities) on which a record shall be taken for the determination of Holders to whom interest is payable and/or the method by which such rate or rates or date or dates shall be determined;

(e) if other than as provided in Section 4.02, the place or places where the principal of and any interest on Securities of the series shall be payable, any Registered Securities of the series may be surrendered for exchange, notices, demands to or upon the Company in respect of the Securities of the series and this Indenture may be served and notice to Holders may be published;

(f) the right, if any, of the Company to redeem Securities of the series, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which Securities of the series may be so redeemed, pursuant to any sinking fund or otherwise;

(g) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any mandatory redemption, sinking fund or analogous provisions or at the option of a Holder thereof and the price or prices at which and the period or periods within which and any of the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(h) if other than minimum denominations of $1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(i) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof;

(j) if other than the coin or currency in which the Securities of the series are denominated, the coin or currency in which payment of the principal of or interest on the Securities of the series shall be payable or if the amount of payments of principal of and/or interest on the Securities of the series may be determined with reference to an index based on a coin or currency other than that in which the Securities of the series are denominated, the manner in which such amounts shall be determined;

(k) if other than the currency of the United States of America, the currency or currencies, including composite currencies, in which payment of the Principal of and interest on the Securities of the series shall be payable, and the manner in which any such currencies shall be valued against other currencies in which any other Securities shall be payable;

(l) whether the Securities of the series or any portion thereof will be issuable as Registered Securities (and if so, whether such Securities will be issuable as Registered Global Securities) or Unregistered Securities (with or without coupons) (and if so, whether such Securities will be issued in temporary or permanent global form), or any combination of the foregoing, any restrictions applicable to the offer, sale or delivery of Unregistered Securities or the payment of interest thereon and, if other than as provided herein, the terms upon which Unregistered Securities of any series may be exchanged for Registered Securities of such series and vice versa;

(m) whether the Securities of the series may be exchangeable for and/or convertible into the common stock of the Company or any other security;

(n) whether and under what circumstances the Company will pay additional amounts on the Securities of the series held by a person who is not a U.S. person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem such Securities rather than pay such additional amounts;

(o) if the Securities of the series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(p) any trustees, depositaries, authenticating or paying agents, transfer agents or the registrar or any other agents with respect to the Securities of the series;

(q) provisions, if any, for the defeasance of the Securities of the series (including provisions permitting defeasance of less than all Securities of the series), which provisions may be in addition to, in substitution for, or in modification of (or any combination of the foregoing) the provisions of Article 8;

(r) if the Securities of the series are issuable in whole or in part as one or more Registered Global Securities or Unregistered Securities in global form, the identity of the Depositary or common Depositary for such Registered Global Security or Securities or Unregistered Securities in global form;

(s) any other Events of Default or covenants with respect to the Securities of the series; and

(t) any other terms of the Securities of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and coupons, if any, appertaining thereto shall be substantially identical, except in the case of Registered Securities as to date and denomination, except in the case of any Periodic Offering and except as may otherwise be provided by or pursuant to the Board Resolution referred to above or as set forth in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to such Board Resolution or in any such indenture supplemental hereto and any forms and terms of Securities to be issued from time to time may be completed and established from time to time prior to the issuance thereof by procedures described in such Board Resolution or supplemental indenture.

Unless otherwise expressly provided with respect to a series of Securities, the aggregate principal amount of a series of Securities may be increased and additional Securities of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased.

Section 2.05. *Denomination and Date of Securities; Payments of Interest*. The Securities of each series shall be issuable as Registered Securities or Unregistered Securities in denominations established as contemplated by Section 2.03 or, if not so established with respect to Securities of any series, in denominations of $1,000 and any integral multiple thereof. The Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the Officers of the Company executing the same may determine, as evidenced by their execution thereof.

Unless otherwise specified with respect to a series of Securities, each Security shall be dated the date of its authentication. The Securities of each series shall bear interest, if any, from the date, and such interest and shall be payable on the dates, established as contemplated by Section 2.03.

The person in whose name any Registered Security of any series is registered at the close of business on any record date applicable to a particular series with respect to any interest payment date for such series shall be entitled to receive the interest, if any, payable on such interest payment date notwithstanding any transfer or exchange of such Registered Security subsequent to the record date and prior to such interest payment date, except if and to the extent the Company shall default in the payment of the interest due on such interest payment date for such series, in which case the provisions of Section 2.13 shall apply. The term "**record date**" as used with respect to any interest payment date (except a date for payment of defaulted interest) for the Securities of any series shall mean the date specified as such in the terms of the Registered Securities of such series established as contemplated by Section 2.03, or, if no such date is so established, the fifteenth day next preceding such interest payment date, whether or not such record date is a Business Day.

Section 2.06. *Registrar and Paying Agent; Agents Generally*. The Company shall maintain an office or agency where Securities may be presented for registration, registration of transfer or for exchange (the "**Registrar**") and an office or agency where Securities may be presented for payment (the "**Paying Agent**"), which shall be in the Borough of Manhattan, The City of New York. The Company shall cause the Registrar to keep a register of the Registered Securities and of their registration, transfer and exchange (the "**Security Register**"). The Company may have one or more additional Paying Agents or transfer agents with respect to any series.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture and the Trust Indenture Act that relate to such Agent. The Company shall give prompt written notice to the Trustee of the name and address of any Agent and any change in the name or address of an Agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such. The Company may remove any Agent upon written notice to such Agent and the Trustee; *provided* that no such removal shall become effective until (i) the acceptance of an appointment by a successor Agent to such Agent as evidenced by an appropriate agency agreement entered into by the Company and such successor Agent and delivered to the Trustee or (ii) written notification to the Trustee that the Trustee shall serve as such Agent until the appointment of a successor Agent in accordance with clause (i) of this proviso. The Company or any affiliate of the

Company may act as Paying Agent or Registrar; *provided* that neither the Company nor an affiliate of the Company shall act as Paying Agent in connection with the defeasance of the Securities or the discharge of this Indenture under Article 8.

The Company initially appoints the Trustee as Registrar, Paying Agent and Authenticating Agent. If, at any time, the Trustee is not the Registrar, the Registrar shall make available to the Trustee ten days prior to each interest payment date and at such other times as the Trustee may reasonably request the names and addresses of the Holders as they appear in the Security Register.

Section 2.07. *Paying Agent to Hold Money in Trust*. Not later than 10:00 a.m. New York City time on each due date or, in the case of Unregistered Securities, 10:00 a.m. New York City time on the Business Day prior to the due date, of any Principal or interest on any Securities, the Company shall deposit with the Paying Agent money in immediately available funds sufficient to pay such Principal or interest. The Company shall require each Paying Agent other than the Trustee to agree in writing that such Paying Agent shall hold in trust for the benefit of the Holders of such Securities or the Trustee all money held by the Paying Agent for the payment of Principal of and interest on such Securities and shall promptly notify the Trustee in writing of any default by the Company in making any such payment. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds disbursed, and the Trustee may at any time during the continuance of any payment default, upon written request to a Paying Agent, require such Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon doing so, the Paying Agent shall have no further liability for the money so paid over to the Trustee. If the Company or any affiliate of the Company acts as Paying Agent, it will, on or before each due date of any Principal of or interest on any Securities, segregate and hold in a separate trust fund for the benefit of the Holders thereof a sum of money sufficient to pay such Principal or interest so becoming due until such sum of money shall be paid to such Holders or otherwise disposed of as provided in this Indenture, and will promptly notify the Trustee in writing of its action or failure to act as required by this Section.

Section 2.08. *Transfer and Exchange*. Unregistered Securities (except for any temporary global Unregistered Securities) and coupons (except for coupons attached to any temporary global Unregistered Securities) shall be transferable by delivery.

At the option of the Holder thereof, Registered Securities of any series (other than a Registered Global Security, except as set forth below) may be exchanged for a Registered Security or Registered Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Registered Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with and upon payment, if the Company shall so require, of the charges hereinafter provided. If the Securities of any series are issued in both registered and unregistered form, except as otherwise established pursuant to Section 2.03, at the option of the Holder thereof, Unregistered Securities of any series may be exchanged for Registered Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Unregistered Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 4.02, with, in the case of Unregistered Securities that have coupons attached, all unmatured coupons and all matured coupons in default thereto appertaining, and upon payment, if the Company shall so require, of the charges hereinafter provided. At the option of the Holder thereof, if Unregistered Securities of any series, maturity date, interest rate and original issue date are issued in more than one authorized denomination, except as otherwise established pursuant to Section 2.03, such Unregistered Securities may be exchanged for Unregistered Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Unregistered Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 4.02, with, in the case of Unregistered Securities that have coupons attached, all unmatured coupons and all matured coupons in default thereto appertaining, and upon payment, if the Company shall so require, of the charges hereinafter provided. Registered Securities of any series may not be exchanged for Unregistered Securities of such series. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Upon surrender for registration of transfer of any Registered Security of a series at the agency of the Company that shall be maintained for that purpose in accordance with Section 2.05 and upon payment, if the Company shall so require, of the charges hereinafter provided, the Company shall execute, and the Trustee shall authenticate and

deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount.

All Registered Securities presented for registration of transfer, exchange, redemption or payment shall be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder or his attorney duly authorized in writing.

The Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any exchange or registration of transfer of Securities. No service charge shall be made for any such transaction.

Notwithstanding any other provision of this Section 2.07, unless and until it is exchanged in whole or in part for Securities in definitive registered form, a Registered Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

If at any time the Depositary for any Registered Global Securities of any series notifies the Company that it is unwilling or unable to continue as Depositary for such Registered Global Securities or if at any time the Depositary for such Registered Global Securities shall no longer be eligible under applicable law, the Company shall appoint a successor Depositary eligible under applicable law with respect to such Registered Global Securities. If a successor Depositary eligible under applicable law for such Registered Global Securities is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of the Company's order for the authentication and delivery of definitive Registered Securities of such series and tenor, will authenticate and deliver Registered Securities of such series and tenor, in any authorized denominations, in an aggregate principal amount equal to the principal amount of such Registered Global Securities, in exchange for such Registered Global Securities.

The Company may at any time and in its sole discretion and subject to the procedures of the Depositary determine that any Registered Global Securities of any series shall no longer be maintained in global form. In such event the Company will execute, and the Trustee, upon receipt of the Company's order for the authentication and delivery of definitive Registered Securities of such series and tenor, will authenticate and deliver, Registered Securities of such series and tenor in any authorized denominations, in an aggregate principal amount equal to the principal amount of such Registered Global Securities, in exchange for such Registered Global Securities.

Any time the Registered Securities of any series are not in the form of Registered Global Securities pursuant to the preceding two paragraphs, the Company agrees to supply the Trustee with a reasonable supply of certificated Registered Securities without the legend required by Section 2.02 and the Trustee agrees to hold such Registered Securities in safekeeping until authenticated and delivered pursuant to the terms of this Indenture.

If established by the Company pursuant to Section 2.03 with respect to any Registered Global Security, the Depositary for such Registered Global Security may surrender such Registered Global Security in exchange in whole or in part for Registered Securities of the same series and tenor in definitive registered form on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge:

(a) to the Person specified by such Depositary new Registered Securities of the same series and tenor, of any authorized denominations as requested by such Person, in an aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Registered Global Security; and

(b) to such Depositary a new Registered Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Registered Global Security and the aggregate principal amount of Registered Securities authenticated and delivered pursuant to clause (a) above.

Registered Securities issued in exchange for a Registered Global Security pursuant to this Section 2.07 shall be registered in such names and in such authorized denominations as the Depositary for such Registered Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or an agent of the Company or the Trustee. The Trustee or such agent shall deliver such Securities to or as directed by the Persons in whose names such Securities are so registered.

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

Notwithstanding anything herein or in the forms or terms of any Securities to the contrary, none of the Company, the Trustee or any agent of the Company or the Trustee shall be required to exchange any Unregistered Security for a Registered Security if such exchange would result in adverse U.S. federal income tax consequences to the Company (such as, for example, the inability of the Company to deduct from its income, as computed for U.S. federal income tax purposes, the interest payable on the Unregistered Securities) under then applicable U.S. federal income tax laws. The Trustee and any such agent shall be entitled to rely on an Officer's Certificate or an Opinion of Counsel in determining such result.

The Registrar shall not be required (i) to issue, authenticate, register the transfer of or exchange Securities of any series for a period of 15 days before a selection of such Securities to be redeemed or (ii) to register the transfer of or exchange any Security selected for redemption in whole or in part.

Section 2.09. *Replacement Securities*. If any mutilated Security or a Security with a mutilated coupon appertaining to it is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver, in exchange for such mutilated Security or in exchange for the Security to which a mutilated coupon appertains, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such mutilated Security or to the Security to which such mutilated coupon appertains.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or coupon and (ii) such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or coupon has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen), a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains.

In case any such mutilated, destroyed, lost or stolen Security or coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or coupon (without surrender thereof except in the case of a mutilated Security or coupon) if the applicant for such payment shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, and in the case of destruction, loss or theft, evidence satisfactory to the Company and the Trustee and any agent of them of the destruction, loss or theft of such Security and the ownership thereof; *provided, however*, that the Principal of and any interest on Unregistered Securities shall, except as otherwise provided in Section 4.02 be payable only at an office or agency located outside the United States of America.

Upon the issuance of any new Security under this Section, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series, with its coupons, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security or in exchange for any mutilated Security, or in exchange for a Security to which a mutilated,

destroyed, lost or stolen coupon appertains, shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security and its coupons, if any, or the mutilated, destroyed, lost or stolen coupon shall be at any time enforceable by anyone, and any such new Security and coupons, if any, shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series and their coupons, if any, duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) any other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons.

Section 2.10. *Outstanding Securities*. Securities outstanding at any time are all Securities that have been authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those described in this Section as not outstanding and those that have been defeased pursuant to Section 8.05.

If a Security is replaced pursuant to Section 2.08, it ceases to be outstanding unless and until the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a holder in due course.

If the Paying Agent (other than the Company or an affiliate of the Company) holds on the maturity date or any redemption date or date for repurchase of the Securities money sufficient to pay Securities payable or to be redeemed or repurchased on that date, then on and after that date such Securities cease to be outstanding and interest on them shall cease to accrue.

A Security does not cease to be outstanding because the Company or one of its affiliates holds such Security, *provided*, *however*, that, in determining whether the Holders of the requisite principal amount of the outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any affiliate of the Company shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities as to which a Responsible Officer of the Trustee has received written notice to be so owned shall be so disregarded. Any Securities so owned which are pledged by the Company, or by any affiliate of the Company, as security for loans or other obligations, otherwise than to another such affiliate of the Company, shall be deemed to be outstanding, if the pledgee is entitled pursuant to the terms of its pledge agreement and is free to exercise in its or his discretion the right to vote such securities, uncontrolled by the Company or by any such affiliate.

Section 2.11. *Temporary Securities*. Until definitive Securities of any series are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities of such series. Temporary Securities of any series shall be substantially in the form of definitive Securities of such series but may have insertions, substitutions, omissions and other variations determined to be appropriate by the Officers executing the temporary Securities, as evidenced by their execution of such temporary Securities. If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of any series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series and tenor upon surrender of such temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 4.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series and tenor and authorized denominations. Until so exchanged, the temporary Securities of any series shall be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 2.12. *Cancellation*. The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Registrar, any transfer agent and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee shall cancel and dispose of in accordance with its customary procedures all Securities surrendered for transfer, exchange, payment or cancellation and shall deliver a certificate of disposition to the Company. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee for cancellation.

Section 2.13. *CUSIP Numbers*. The Company in issuing the Securities may use "CUSIP" and "CINS" numbers (if then generally in use), and the Trustee shall use CUSIP numbers or CINS numbers, as the case may be, in notices of redemption or exchange as a convenience to Holders and no representation shall be made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or exchange. The Company shall promptly notify the Trustee in writing of any change in any CUSIP number and/or ISIN.

Section 2.14. *Defaulted Interest*. If the Company defaults in a payment of interest on the Registered Securities, it shall pay, or shall deposit with the Paying Agent money in immediately available funds sufficient to pay, the defaulted interest plus (to the extent lawful) any interest payable on the defaulted interest (as may be specified in the terms thereof, established pursuant to Section 2.03) to the Persons who are Holders on a subsequent special record date, which shall mean the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, whether or not such day is a Business Day. At least 15 days before such special record date, the Company shall mail to each Holder of such Registered Securities and to the Trustee a notice that states the special record date, the payment date and the amount of defaulted interest to be paid. The Trustee will have no duty whatsoever to determine whether any defaulted interest is payable or the amount thereof.

Section 2.15. *Series May Include Tranches*. A series of Securities may include one or more tranches (each a "**tranche**") of Securities, including Securities issued in a Periodic Offering. The Securities of different tranches may have one or more different terms, including authentication dates and public offering prices, but all the Securities within each such tranche shall have identical terms, including authentication date and public offering price. Notwithstanding any other provision of this Indenture, with respect to Sections 2.02 (other than the fourth, sixth and seventh paragraphs thereof) through 2.04, 2.07, 2.08, 2.10, 3.01 through 3.05, 4.02, 6.01 through 6.14, 8.01 through 8.07, 9.02 and Section 10.07, if any series of Securities includes more than one tranche, all provisions of such sections applicable to any series of Securities shall be deemed equally applicable to each tranche of any series of Securities in the same manner as though originally designated a series unless otherwise provided with respect to such series or tranche pursuant to Section 2.03. In particular, and without limiting the scope of the next preceding sentence, any of the provisions of such sections which provide for or permit action to be taken with respect to a series of Securities shall also be deemed to provide for and permit such action to be taken instead only with respect to Securities of one or more tranches within that series (and such provisions shall be deemed satisfied thereby), even if no comparable action is taken with respect to Securities in the remaining tranches of that series.

ARTICLE 3

REDEMPTION

Section 3.01. *Applicability of Article*. The provisions of this Article shall be applicable to the Securities of any series which are redeemable before their maturity or to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 2.03 for Securities of such series.

Section 3.02. *Notice of Redemption; Partial Redemptions*. Notice of redemption to the Holders of Registered Securities of any series to be redeemed as a whole or in part at the option of the Company shall be given by mailing by first class mail, postage prepaid (or delivering by electronic transmission in accordance with the applicable procedures of the Depositary) notice of such redemption, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Registered Securities of such series at their last addresses as they shall appear upon the registry books. Notice of redemption to the Holders of Unregistered Securities of any series to be redeemed as a whole or in part who have filed their names and addresses with the Trustee pursuant to Section 313(c)(2) of the Trust Indenture Act, shall be given by mailing by first class mail, postage prepaid (or delivering by electronic transmission in accordance with the applicable procedures of the Depositary) notice of such redemption, at least 30 days and not more than 60 days prior to the date fixed for redemption, to such Holders at such addresses as were so furnished to the Trustee (and, in the case of any such notice given by the Company, the Trustee shall make such information available to the Company for such purpose).

60 days prior to the date fixed for redemption. Any notice which is mailed, delivered or published in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the

notice. Failure to give notice by mail or by electronic transmission, or any defect in the notice to the Holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security of such series.

The notice of redemption to each such Holder shall (i) identify the Securities to be redeemed (including the CUSIP numbers), (ii) specify the principal amount of each Security of such series held by such Holder to be redeemed, , (iii) the date fixed for redemption, (iv) the redemption price, or if not then ascertainable, the manner of calculation thereof, (v) the place or places of payment, (vi) the name and address of the Paying Agent, (vii) that payment will be made upon presentation and surrender of such Securities to the Paying Agent and, in the case of Securities with coupons attached thereto, of all coupons appertaining thereto maturing after the date fixed for redemption, (viii) that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, (ix) that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue, (x) that, unless the Company defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Securities of any series called for redemption ceases to accrue on and after the redemption date, (xi) the paragraph or subparagraph of the Securities or the Section of this Indenture pursuant to which the Securities called for redemption are being redeemed, and (xii) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN Number, if any, listed in such notice or printed on the Securities. In case any Security of a series is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such series and tenor in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company; *provided* that the Company shall have delivered to the Trustee, at least two Business Days before notice of redemption is required to be sent or caused to be sent to Holders pursuant to this Section 3.02 (unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in this Section 3.02.

On or before 10:00 a.m. New York City time on the redemption date or, in the case of Unregistered Securities, on or before 10:00 a.m. New York City time on the Business Day prior to the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 2.06) an amount of money sufficient to redeem on the redemption date all the Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. If all of the outstanding Securities of a series are to be redeemed, the Company will deliver to the Trustee at least 10 days prior to the last date on which notice of redemption may be given to Holders pursuant to the first paragraph of this Section 3.02 (or such shorter period as shall be acceptable to the Trustee) an Officer's Certificate stating that all such Securities are to be redeemed. If less than all the outstanding Securities of a series are to be redeemed, the Company will deliver to the Trustee at least 15 days prior to the last date on which notice of redemption may be given to Holders pursuant to the first paragraph of this Section 3.02 (or such shorter period as shall be acceptable to the Trustee) an Officer's Certificate stating the aggregate principal amount of such Securities to be redeemed. In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall deliver to the Trustee, prior to the giving of any notice of redemption to Holders pursuant to this Section, an Officer's Certificate evidencing compliance with such restriction or condition.

If less than all the Securities of a series are to be redeemed, the particular Securities to be redeemed shall be selected by the Trustee, from the outstanding Securities of such series not previously called for redemption, (a) if the Securities are listed on an exchange, in compliance with the requirements of such exchange or (b) on a pro rata basis (or in the case of global Securities, by such method as required by the Depository). Securities may be redeemed in part in principal amounts equal to authorized denominations for Securities of such series. The Trustee shall promptly notify the Company in writing of the Securities of such series selected for redemption and, in the case of any Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all

purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

Section 3.03. *Payment of Securities Called for Redemption*. If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after such date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to such date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue, and the unmatured coupons, if any, appertaining thereto shall be void and, except as provided in Sections 7.12 and 8.02, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a place of payment specified in said notice, together with all coupons, if any, appertaining thereto maturing after the date fixed for redemption, said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; *provided* that payment of interest becoming due on or prior to the date fixed for redemption shall be payable in the case of Securities with coupons attached thereto, to the Holders of the coupons for such interest upon surrender thereof, and in the case of Registered Securities, to the Holders of such Registered Securities registered as such on the relevant record date subject to the terms and provisions of Sections 2.04 and 2.13 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount Security) borne by such Security.

If any Security with coupons attached thereto is surrendered for redemption and is not accompanied by all appurtenant coupons maturing after the date fixed for redemption, the surrender of such missing coupon or coupons may be waived by the Company and the Trustee, if there be furnished to each of them such security or indemnity as they may require to save each of them harmless.

Upon presentation of any Security of any series redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of such series and tenor (with any unmatured coupons attached), of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

Section 3.04. *Exclusion of Certain Securities From Eligibility for Selection for Redemption*. Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by an authorized officer of the Company and delivered to the Trustee at least 40 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

Section 3.05. *Mandatory and Optional Sinking Funds*. The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "**mandatory sinking fund payment**", and any payment in excess of such minimum amount provided for by the terms of the Securities of any series is herein referred to as an "**optional sinking fund payment**". The date on which a sinking fund payment is to be made is herein referred to as the "**sinking fund payment date**".

In lieu of making all or any part of any mandatory sinking fund payment with respect to any series of Securities in cash, the Company may at its option (a) deliver to the Trustee Securities of such series theretofore purchased or otherwise acquired (except through a mandatory sinking fund payment) by the Company or receive credit for Securities of such series (not previously so credited) theretofore purchased or otherwise acquired (except as aforesaid) by the Company and delivered to the Trustee for cancellation pursuant to Section 2.11, (b) receive credit for optional sinking fund payments (not previously so credited) made pursuant to this Section, or (c) receive credit

for Securities of such series (not previously so credited) redeemed by the Company at the option of the Company pursuant to the terms of such Securities or through any optional sinking fund payment. Securities so delivered or credited shall be received or credited by the Trustee at the sinking fund redemption price specified in such Securities.

On or before the sixtieth day next preceding each sinking fund payment date for any series, or such shorter period as shall be acceptable to the Trustee, the Company will deliver to the Trustee an Officer's Certificate (a) specifying the portion of the mandatory sinking fund payment to be satisfied by payment of cash and the portion to be satisfied by credit of specified Securities of such series and the basis for such credit, (b) stating that none of the specified Securities of such series has theretofore been so credited, (c) stating that no defaults in the payment of interest or Events of Default with respect to such series have occurred (which have not been waived or cured) and are continuing and (d) stating whether or not the Company intends to exercise its right to make an optional sinking fund payment with respect to such series and, if so, specifying the amount of such optional sinking fund payment which the Company intends to pay on or before the next succeeding sinking fund payment date. Any Securities of such series to be credited and required to be delivered to the Trustee in order for the Company to be entitled to credit therefor as aforesaid which have not theretofore been delivered to the Trustee shall be delivered for cancellation pursuant to Section 2.11 to the Trustee with such Officer's Certificate (or reasonably promptly thereafter if acceptable to the Trustee). Such Officer's Certificate shall be irrevocable and upon its receipt by the Trustee the Company shall become unconditionally obligated to make all the cash payments or delivery of Securities therein referred to, if any, on or before the next succeeding sinking fund payment date. Failure of the Company, on or before any such sixtieth day, to deliver such Officer's Certificate and Securities specified in this paragraph, if any, shall not constitute a default but shall constitute, on and as of such date, the irrevocable election of the Company (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (ii) that the Company will make no optional sinking fund payment with respect to such series as provided in this Section.

If the sinking fund payment or payments (mandatory or optional or both) to be made in cash on the next succeeding sinking fund payment date plus any unused balance of any preceding sinking fund payments made in cash shall exceed $50,000 (or a lesser sum if the Company shall so request with respect to the Securities of any series), such cash shall be applied on the next succeeding sinking fund payment date to the redemption of Securities of such series at the sinking fund redemption price thereof together with accrued interest thereon to the date fixed for redemption. If such amount shall be $50,000 (or such lesser sum) or less and the Company makes no such request then it shall be carried over until a sum in excess of $50,000 (or such lesser sum) is available. The Trustee shall select, in the manner provided in Section 3.02, for redemption on such sinking fund payment date a sufficient principal amount of Securities of such series to absorb said cash, as nearly as may be, and shall (if requested in writing by the Company) inform the Company of the serial numbers of the Securities of such series (or portions thereof) so selected. Securities shall be excluded from eligibility for redemption under this Section if they are identified by registration and certificate number in an Officer's Certificate delivered to the Trustee at least 60 days prior to the sinking fund payment date as being owned of record and beneficially by, and not pledged or hypothecated by either (a) the Company or (b) an entity specifically identified in such Officer's Certificate as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. The Trustee, in the name and at the expense of the Company (or the Company, if it shall so request the Trustee in writing) shall cause notice of redemption of the Securities of such series to be given in substantially the manner provided in Section 3.02 (and with the effect provided in Section 3.03) for the redemption of Securities of such series in part at the option of the Company. The amount of any sinking fund payments not so applied or allocated to the redemption of Securities of such series shall be added to the next cash sinking fund payment for such series and, together with such payment, shall be applied in accordance with the provisions of this Section. Any and all sinking fund moneys held on the stated maturity date of the Securities of any particular series (or earlier, if such maturity is accelerated), which are not held for the payment or redemption of particular Securities of such series shall be applied, together with other moneys, if necessary, sufficient for the purpose, to the payment of the Principal of, and interest on, the Securities of such series at maturity.

On or before 10:00 a.m. New York City time on each sinking fund payment date or, in the case of Unregistered Securities, 10:00 a.m. New York City time on the Business Day prior to the sinking fund payment date, the Company shall pay to the Trustee in cash or shall otherwise provide for the payment of all interest accrued to the date fixed for redemption on Securities to be redeemed on the next following sinking fund payment date.

The Trustee shall not redeem or cause to be redeemed any Securities of a series with sinking fund moneys or mail any notice of redemption of Securities of such series by operation of the sinking fund during the continuance of a Default in payment of interest on such Securities or of any Event of Default except that, where the mailing of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem or cause to be redeemed such Securities, *provided* that it shall have received from the Company a sum sufficient for such redemption. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such Default or Event of Default shall occur, and any moneys thereafter paid into the sinking fund, shall, during the continuance of such Default or Event of Default, be deemed to have been collected under Article 6 and held for the payment of all such Securities. In case such Event of Default shall have been waived as provided in Section 6.04 or the Default cured on or before the sixtieth day preceding the sinking fund payment date in any year, such moneys shall thereafter be applied on the next succeeding sinking fund payment date in accordance with this Section to the redemption of such Securities.

ARTICLE 4

COVENANTS

Section 4.01. *Payment of Securities*. The Company shall pay the Principal of and interest on the Securities on the dates and in the manner provided in the Securities and this Indenture. The interest on Securities with coupons attached (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature. The interest on any temporary Unregistered Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be paid, as to the installments of interest evidenced by coupons attached thereto, if any, only upon presentation and surrender thereof, and, as to the other installments of interest, if any, only upon presentation of such Unregistered Securities for notation thereon of the payment of such interest. The interest on Registered Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only to the Holders thereof (subject to Section 2.04) and at the option of the Company may be paid by mailing checks for such interest payable to or upon the written order of such Holders at their last addresses as they appear on the Security Register of the Company.

Notwithstanding any provisions of this Indenture and the Securities of any series to the contrary, if the Company and a Holder of any Registered Security so agree, payments of interest on, and any portion of the Principal of, such Holder's Registered Security (other than interest payable at maturity or on any redemption or repayment date or the final payment of Principal on such Security) shall be made by the Paying Agent, upon receipt from the Company of immediately available funds by 11:00 a.m., New York City time (or such other time as may be agreed to between the Company and the Paying Agent), directly to the Holder of such Security (by wire transfer through the Fedwire Funds Service or otherwise) if the Holder has delivered written instructions to the Trustee 15 days prior to such payment date requesting that such payment will be so made and designating the bank account to which such payments shall be so made and in the case of payments of Principal, surrenders the same to the Trustee in exchange for a Security or Securities aggregating the same principal amount as the unredeemed principal amount of the Securities surrendered. The Trustee shall be entitled to rely on the last instruction delivered by the Holder pursuant to this Section 4.01 unless a new instruction is delivered 15 days prior to a payment date. The Company will indemnify and hold each of the Trustee and any Paying Agent harmless against any loss, liability or expense (including attorneys' fees) resulting from any act or omission to act on the part of the Company or any such Holder in connection with any such agreement or from making any payment in accordance with any such agreement.

The Company shall pay interest on overdue Principal, and interest on overdue installments of interest, to the extent lawful, at the rate per annum specified in the Securities.

Section 4.02. *Maintenance of Office or Agency*. The Company will maintain in the United States of America an office or agency where Securities may be surrendered for registration of transfer or exchange or for presentation for payment and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company hereby initially designates Wilmington Savings Fund Society, FSB, located at 500 Delaware Avenue, Wilmington, DE 19801, as such office or agency of the Company. The Company will give

prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 10.02.

The Company will maintain one or more agencies in a city or cities located outside the United States of America (including any city in which such an agency is required to be maintained under the rules of any stock exchange on which the Securities of any series are listed) where the Unregistered Securities, if any, of each series and coupons, if any, appertaining thereto may be presented for payment. No payment on any Unregistered Security or coupon will be made upon presentation of such Unregistered Security or coupon at an agency of the Company within the United States of America nor will any payment be made by transfer to an account in, or by mail to an address in, the United States of America unless, pursuant to applicable United States laws and regulations then in effect, such payment can be made without adverse tax consequences to the Company. Notwithstanding the foregoing, if full payment in United States Dollars ("**Dollars**") at each agency maintained by the Company outside the United States of America for payment on such Unregistered Securities or coupons appertaining thereto is illegal or effectively precluded by exchange controls or other similar restrictions, payments in Dollars of Unregistered Securities of any series and coupons appertaining thereto which are payable in Dollars may be made at an agency of the Company maintained in the United States of America.

The Company may also from time to time designate one or more other offices or agencies where the Securities of any series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 4.03. *Securityholders' Lists*. The Company will furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the holders of the Securities pursuant to Section 312 of the Trust Indenture Act of 1939 (a) semi-annually not more than 15 days after each record date for the payment of semi-annual interest on the Securities, as hereinabove specified, as of such record date, and (b) at such other times as the Trustee may request in writing, within thirty days after receipt by the Company of any such request as of a date not more than 15 days prior to the time such information is furnished.

Section 4.04. *Certificate to Trustee*. The Company will furnish to the Trustee annually, on or before a date not more than four months after the end of its fiscal year (which, on the date hereof, is a calendar year), a brief certificate (which need not contain the statements required by Section 10.04) from its principal executive, financial or accounting officer as to his or her knowledge of the compliance of the Company with all conditions and covenants under this Indenture (such compliance to be determined without regard to any period of grace or requirement of notice provided under this Indenture) which certificate shall comply with the requirements of the Trust Indenture Act. Such certificate need not include a reference to any non-compliance that has been fully cured prior to the date as of which such certificate speaks.

Section 4.05. *Reports by the Company.* So long as any Securities are outstanding, the Company shall file with the Trustee, within 15 days after the Company files the same with the Commission, copies of the annual reports and of the information, documents, and other reports which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. The Company shall be deemed to have complied with the previous sentence to the extent that such information, documents and reports are filed with the Commission via its "EDGAR" system (or any successor electronic delivery procedure) or posted on its website.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no duty to monitor or confirm, on a continuing basis or otherwise, the Company's or any other Person's compliance with any of the covenants under this Indenture, to determine whether the Company posts

reports, information or documents on the Commission's website or otherwise, to collect any such information from the Commission's website, the Company's website or otherwise, or to review or analyze reports delivered to it to ensure compliance with the provisions of this Indenture, to ascertain the correctness or otherwise of the information or statements contained therein or to participate in any conference calls.

Section 4.06. *Additional Amounts*. If the Securities of a series provide for the payment of additional amounts, at least 10 days prior to the first interest payment date with respect to that series of Securities and at least 10 days prior to each date of payment of Principal of or interest on the Securities of that series if there has been a change with respect to the matters set forth in the below-mentioned Officer's Certificate, the Company shall furnish to the Trustee and the principal paying agent, if other than the Trustee, an Officer's Certificate instructing the Trustee and such paying agent whether such payment of Principal of or interest on the Securities of that series shall be made to Holders of the Securities of that series without withholding or deduction for or on account of any tax, assessment or other governmental charge described in the Securities of that series. If any such withholding or deduction shall be required, then such Officer's Certificate shall specify by country the amount, if any, required to be withheld or deducted on such payments to such Holders and shall certify the fact that additional amounts will be payable and the amounts so payable to each Holder, and the Company shall pay to the Trustee or such paying agent the additional amounts required to be paid by this Section.

Whenever in this Indenture there is mentioned, in any context, the payment of the Principal of or interest or any other amounts on, or in respect of, any Security of any series, such mention shall be deemed to include mention of the payment of additional amounts provided by the terms of such series established hereby or pursuant hereto to the extent that, in such context, additional amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of additional amounts (if applicable) in any provision hereof shall not be construed as excluding the payment of additional amounts in those provisions hereof where such express mention is not made.

ARTICLE 5

SUCCESSOR CORPORATION

Section 5.01. *When Company May Merge, Etc*. The Company shall not consolidate with, merge with or into, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets (in one transaction or a series of related transactions) to, any Person unless either (x) the Company shall be the continuing Person or (y) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or to which properties and assets of the Company shall be sold, conveyed, transferred or leased shall be a Person organized and validly existing under the laws of the United States of America or any jurisdiction thereof and shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, all of the obligations of the Company on all of the Securities and under this Indenture and the Company in the case of clauses (x) and (y) shall have delivered to the Trustee (A) an Opinion of Counsel stating that such consolidation, merger or sale, conveyance, transfer or lease and such supplemental indenture (if any) complies with this provision and that all conditions precedent provided for herein relating to such transaction have been complied with and that such supplemental indenture (if any) constitutes the legal, valid and binding obligation of the Company and such successor enforceable against such entity in accordance with its terms, subject to customary exceptions and (B) an Officer's Certificate to the effect that immediately after giving effect to such transaction, no Default shall have occurred and be continuing.

Section 5.02. *Successor Substituted*. Upon any consolidation or merger, or any sale, conveyance, transfer, lease or other disposition of all or substantially all of the property and assets of the Company in accordance with Section 5.01 of this Indenture, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, conveyance, transfer, lease or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein and thereafter the predecessor Person, except in the case of a lease, shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 6

DEFAULT AND REMEDIES

Section 6.01. *Events of Default*. An "**Event of Default**" shall occur with respect to the Securities of any series if:

(a) the Company defaults in the payment of the Principal of any Security of such series when the same becomes due and payable at maturity, upon acceleration, redemption or mandatory repurchase, including as a sinking fund installment, or otherwise;

(b) the Company defaults in the payment of interest on any Security of such series when the same becomes due and payable, and such default continues for a period of 30 days;

(c) the Company defaults in the performance of or breaches any other covenant or agreement of the Company in this Indenture with respect to any Security of such series or in the Securities of such series and such default or breach continues for a period of 30 consecutive days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of 25% or more in aggregate principal amount of the Securities of all series affected thereby specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(e) the Company (i) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (ii) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for all or substantially all of the property and assets of the Company or (iii) effects any general assignment for the benefit of creditors; or

(f) any other Event of Default established pursuant to Section 2.03 with respect to the Securities of such series occurs.

Section 6.02. *Acceleration*. (a) If an Event of Default other than as described in clauses (d) or (e) of with respect to the Securities of any series then outstanding occurs and is continuing, then, and in each and every such case, except for any series of Securities the principal of which shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of any such series then outstanding hereunder (all such series voting together as a single class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (or, if the Securities of any such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series established pursuant to Section 2.03) of all Securities of such series, and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable.

(a) If an Event of Default described in clause (d) or (e) of Section 6.01 occurs and is continuing, then the principal amount (or, if any Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof established pursuant to Section 2.03) of all the Securities then outstanding and interest accrued thereon, if any, shall be and become immediately due and payable, without any notice or other action by any Holder or the Trustee, to the full extent permitted by applicable law.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal (or, if the Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof established pursuant to Section 2.03) of the Securities of any series (or of all the Securities, as the case may be) shall have been so declared or become due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of each such series (or of all the Securities, as the case may be) and the principal of any and all Securities of each such series (or of all the Securities, as the case may be) which shall have become due otherwise than by acceleration (with interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue

installments of interest, at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of each such series to the date of such payment or deposit) and such amount as shall be sufficient to cover all amounts owing the Trustee under Section 7.07, and if any and all Events of Default under the Indenture, other than the non-payment of the principal of Securities which shall have become due by acceleration, shall have been cured, waived or otherwise remedied as provided herein, then and in every such case the Holders of a majority in aggregate principal amount of all the then outstanding Securities of all such series that have been accelerated (voting as a single class), by written notice to the Company and to the Trustee, may waive all defaults with respect to all such series (or with respect to all the Securities, as the case may be) and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

For all purposes under this Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared or become due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

Section 6.03. *Other Remedies*. If a payment default or an Event of Default with respect to the Securities of any series occurs and is continuing, the Trustee may pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of Principal of and interest on the Securities of such series or to enforce the performance of any provision of the Securities of such series or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding.

Section 6.04. *Waiver of Past Defaults.* Subject to Sections 6.02, 6.07 and 9.02, the Holders of at least a majority in principal amount (or, if the Securities are Original Issue Discount Securities, such portion of the principal as is then accelerable under Section 6.02) of the outstanding Securities of all series affected (voting as a single class), by notice to the Trustee, may waive an existing Default or Event of Default with respect to the Securities of such series and its consequences, except a Default in the payment of Principal of or interest on any Security as specified in clauses (a) or (b) of Section 6.01 or in respect of a covenant or provision of this Indenture which cannot be modified or amended without the consent of the Holder of each outstanding Security affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default with respect to the Securities of such series arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto.

Section 6.05. *Control by Majority*. Subject to Sections 7.01 and 7.02(e), the Holders of at least a majority in aggregate principal amount (or, if any Securities are Original Issue Discount Securities, such portion of the principal as is then accelerable under Section 6.02) of the outstanding Securities of all series affected (voting as a single class) may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series by this Indenture; *provided*, that the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that may involve the Trustee in personal liability or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such direction is unduly prejudicial to the rights of any such other Holders); and *provided further*, that the Trustee may take any other action it deems proper that is not inconsistent with any directions received from Holders of Securities pursuant to this Section 6.05.

Section 6.06. *Limitation on Suits*. No Holder of any Security of any series may institute any proceeding, judicial or otherwise, with respect to this Indenture or the Securities of such series, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Securities of such series;

(b) the Holders of at least 25% in aggregate principal amount of outstanding Securities of all such series affected shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity satisfactory to the Trustee against any costs, liabilities or expenses to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Securities of all such affected series have not given the Trustee a written direction that is inconsistent with such written request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over such other Holder.

Section 6.07. *Rights of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of Principal of or interest, if any, on such Holder's Security on or after the respective due dates expressed on such Security, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee.* If an Event of Default with respect to the Securities of any series in payment of Principal or interest specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount (or such portion thereof as specified in the terms established pursuant to Section 2.03 of Original Issue Discount Securities) of Principal of, and accrued interest remaining unpaid on, together with interest on overdue Principal of, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest on, the Securities of such series, in each case at the rate or Yield to Maturity (in the case of Original Issue Discount Securities) specified in such Securities, and such further amount as shall be sufficient to cover all amounts owing the Trustee under Section 7.07.

Section 6.09. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for amounts due the Trustee under Section 7.07) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any moneys, securities or other property payable or deliverable upon conversion or exchange of the Securities or upon any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it under Section 7.07. Nothing herein contained shall be deemed to empower the Trustee to authorize or consent to, or accept or adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10. *Application of Proceeds.* Any moneys collected by the Trustee pursuant to this Article in respect of the Securities of any series shall be applied in the following order at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of Principal or interest, upon presentation of the several Securities and coupons appertaining to such Securities in respect of which moneys have been collected and noting thereon the payment, or issuing Securities of such series and tenor in reduced principal amounts in exchange for the presented Securities of such series and tenor if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and its agents and counsel under Section 7.07 applicable to the Securities of such series in respect of which moneys have been collected;

SECOND: In case the principal of the Securities of such series in respect of which moneys have been collected shall not have become and be then due and payable, to the payment of interest on the Securities of such series in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in such Securities, such payments to be made ratably to the persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Securities of such series in respect of which moneys have been collected shall have become and shall be then due and payable, to the payment of the whole amount then owing and unpaid upon all the Securities of such series for Principal and interest, with interest upon the overdue Principal, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities of such series, then to the payment of such Principal and interest or Yield to Maturity, without preference or priority of Principal over interest or Yield to Maturity, or of interest or Yield to Maturity over Principal, or of any installment of interest over any other installment of interest, or of any Security of such series over any other Security of such series, ratably to the aggregate of such Principal and accrued and unpaid interest or Yield to Maturity; and

FOURTH: To the payment of the remainder, if any, to the Company or any other person lawfully entitled thereto.

Section 6.11. *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then, and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored to their former positions hereunder and thereafter all rights and remedies of the Company, Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.12. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, in either case in respect to the Securities of any series, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys' fees, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by a Holder pursuant to Section 6.07, a suit instituted by the Trustee or a suit by Holders of more than 10% in principal amount of the outstanding Securities of such series.

Section 6.13. *Rights and Remedies Cumulative*. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities in Section 2.08, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.14. *Delay or Omission not Waiver*. No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

ARTICLE 7

TRUSTEE

Section 7.01. *General*. The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act and as set forth herein. Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, unless it receives indemnity satisfactory to it against any loss, liability or expense. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article 7.

Section 7.02. *Certain Rights of Trustee*. Subject to Trust Indenture Act Sections 315(a) through (d):

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, Officer's Certificate, Opinion of Counsel (or both), statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person or persons. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(b) before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel, which shall conform to Section 10.04 and shall cover such other matters as the Trustee may reasonably request. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion. Subject to Sections 7.01 and 7.02, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or bad faith on the part of the Trustee (as determined by a court of competent jurisdiction in a final, non-appealable judgment), be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such certificate, in the absence of gross negligence or bad faith on the part of the Trustee (as determined by a court of competent jurisdiction in a final, non-appealable judgment), shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof;

(c) the Trustee may act through its attorneys and agents not regularly in its employ and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care;

(d) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, unless such Holders shall have offered to the Trustee security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers conferred upon it by this Indenture or for any action it takes or omits to take in accordance with the direction of the Holders in accordance with Section 6.05 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(g) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon; and

(h) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all Events of Default, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, Officer's Certificate, Opinion of Counsel, Board Resolution, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Securities of all series affected then outstanding; *provided* that, if the payment within a reasonable time to the

Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity against such expenses or liabilities as a condition to proceeding; and

(i) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

(k) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 7.03. *Individual Rights of Trustee*. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311. For purposes of Trust Indenture Act Section 311(b)(4) and (6), the following terms shall mean:

(a) "**cash transaction**" means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; and

(b) "**self-liquidating paper**" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

Section 7.04. *Trustee's Disclaimer*. The recitals contained herein and in the Securities (except the Trustee's certificate of authentication) shall be taken as statements of the Company and not of the Trustee and the Trustee assumes no responsibility for the correctness of the same. Neither the Trustee nor any of its agents (a) makes any representation as to the validity or adequacy of this Indenture, the Securities or in any document issued in connection with the sale of the Securities and (b) shall be accountable for the Company's use or application of the proceeds from the Securities.

Section 7.05. *Notice of Default*. If any Default with respect to the Securities of any series occurs and is continuing and if such Default is known to the actual knowledge of a Responsible Officer with the Corporate Trust Department of the Trustee, the Trustee shall give to each Holder of Securities of such series notice of such Default within 90 days after it occurs to all Holders of Securities of such series in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, unless such Default shall have been cured or waived before the transmittal of such notice; provided, however, that, except in the case of a Default in the payment of the Principal of or interest on any Security, the Trustee shall be protected in withholding such notice if the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 7.06. *Reports by Trustee to Holders*. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each May 15 following the date of this Indenture, deliver to Holders a brief report, dated as of such May 15, which complies with the provisions of such Section 313(a).

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when any Securities are listed on any stock exchange.

Section 7.07. *Compensation and Indemnity*. The Company shall pay to the Trustee (in each of its capacities hereunder) such compensation as shall be agreed upon in writing from time to time for its services. The compensation of the Trustee shall not be limited by any law on compensation of a Trustee of an express trust. The Company shall reimburse the Trustee and any predecessor Trustee upon request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Trustee or such predecessor Trustee. Such expenses shall include the reasonable compensation and expenses of the Trustee's or such predecessor Trustee's agents, counsel and other persons not regularly in their employ.

The Company shall indemnify, defend and protect each of the Trustee (in its individual capacity and Trustee capacities), any predecessor Trustee and their officers, directors, agents and employees for, and hold them harmless against, any and all loss, claim, liability, damage, cost or expense(including taxes other than taxes based on the income of the Trustee) incurred by them arising out of or in connection with the acceptance or administration of this Indenture and the Securities or the issuance of the Securities or of series thereof or the trusts hereunder and the performance of duties under this Indenture and the Securities, including the costs and expenses of enforcing this Indenture against the Company (whether asserted by the Company or any Holder or any other person) and defending themselves against or investigating any claim or liability and of complying with any process served upon them or any of their officers in connection with the exercise or performance of any of their powers or duties under this Indenture and the Securities, except that the Company shall not be obligated to reimburse any expense or indemnify against any loss or liability incurred by the Trustee as determined to have been caused by the Trustee's own negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel.

To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay Principal of, and interest on particular Securities.

The obligations of the Company under this Section to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture or the rejection or termination of this Indenture under bankruptcy law or the earlier resignation or removal of the Trustee. Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities or coupons, and the Securities are hereby subordinated to such senior claim. Without prejudice to any other rights available to the Trustee under applicable law, if the Trustee renders services and incurs expenses following an Event of Default under Section 6.01(d) or Section 6.01(e) hereof, the parties hereto and the holders by their acceptance of the Securities hereby agree that such expenses are intended to constitute expenses of administration under any bankruptcy law.

Section 7.08. *Replacement of Trustee*. A resignation or removal of the Trustee as Trustee with respect to the Securities of any series and appointment of a successor Trustee as Trustee with respect to the Securities of any series shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign as Trustee with respect to the Securities of any series at any time by so notifying the Company in writing. The Holders of a majority in principal amount of the outstanding Securities of any series may remove the Trustee as Trustee with respect to the Securities of such series by so notifying the Trustee in writing not less than 30 days prior to the effective date of such removal and may appoint a successor Trustee with respect thereto with the consent of the Company. The Company may remove the Trustee as Trustee with respect to the Securities of any series if: (i) the Trustee is no longer eligible under Section 7.11 of this Indenture; (ii) the Trustee is

adjudged a bankrupt or insolvent; (iii) a receiver or other public officer takes charge of the Trustee or its property; or (iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed as Trustee with respect to the Securities of any series, or if a vacancy exists in the office of Trustee with respect to the Securities of any series for any reason, the Company shall promptly appoint a successor Trustee with respect thereto. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the outstanding Securities of such series may appoint a successor Trustee in respect of such Securities to replace the successor Trustee appointed by the Company. If the successor Trustee with respect to the Securities of any series does not deliver its written acceptance required by Section 7.09 within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of a majority in principal amount of the outstanding Securities of such series may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect thereto.

The Company shall give notice of any resignation and any removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee in respect of the Securities of such series to all Holders of Securities of such series. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Notwithstanding replacement of the Trustee with respect to the Securities of any series pursuant to this Section 7.08 and Section 7.09, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

Section 7.09. *Acceptance of Appointment by Successor*. In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges and subject to the lien provided for in Section 7.07, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject to the lien provided for in Section 7.07.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, subject to the lien provided for in Section 7.07.

Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article and qualified under Section 310(b) of the Trust Indenture Act.

Section 7.10. *Successor Trustee by Merger, Etc*. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or national banking association, the resulting, surviving or transferee corporation or national banking association without any further act shall be the successor Trustee with the same effect as if the successor Trustee had been named as the Trustee herein.

Section 7.11. *Eligibility*. This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Section 310(a). The Trustee shall have a combined capital and surplus of at least $25,000,000 as set forth in its most recent published annual report of condition.

Section 7.12. *Money Held in Trust*. The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law and except for money held in trust under Article 8 of this Indenture.

ARTICLE 8

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 8.01. *Satisfaction and Discharge of Indenture*. If at any time (a) the Company shall have paid or caused to be paid the Principal of and interest on all the Securities of any series outstanding hereunder (other than Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08) as and when the same shall have become due and payable, or (b) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated (other than any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.08) or (c) (i) all the securities of such series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (ii) the Company shall have irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds the entire amount in cash (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 8.04) or U.S. Government Obligations, maturing as to principal and interest in such amounts and at such times as will insure (without consideration of the reinvestment of such interest) the availability of cash, or a combination thereof, sufficient, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (in the case of U.S. Government Obligations), to pay at maturity or upon redemption all Securities of such series (other than any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.08) not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due on or prior to such date of maturity or redemption as the case may be, and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to Securities of such series, then this Indenture shall cease to be of further effect with respect to Securities of such series (except as to (i) rights of registration of transfer and exchange of securities of such series, and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Securities, (iii) rights of holders to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration) and remaining rights of the holders to receive mandatory sinking fund payments, if any, (iv) the rights, obligations and immunities of the Trustee hereunder and (v) the rights of the Securityholders of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and the Trustee, on demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction of and discharging this Indenture with respect to such series; *provided*,

that the rights of Holders of the Securities to receive amounts in respect of Principal of and interest on the Securities held by them shall not be delayed longer than required by then-applicable mandatory rules or policies of any securities exchange upon which the Securities are listed. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Securities of such series.

Section 8.02. *Application by Trustee of Funds Deposited for Payment of Securities.* Subject to Section 8.04, all moneys (including U.S. Government Obligations and the proceeds thereof) deposited with the Trustee pursuant to Section 8.01, Section 8.05 or Section 8.06 shall be held in trust and applied by it to the payment, either directly or through any paying agent to the Holders of the particular Securities of such series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for Principal and interest; but such money need not be segregated from other funds except to the extent required by law.

Section 8.03. *Repayment of Moneys Held by Paying Agent.* In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series, all moneys then held by any paying agent under the provisions of this Indenture with respect to such series of Securities shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

Section 8.04. *Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years*. Any moneys deposited with or paid to the Trustee or any paying agent for the payment of the Principal of or interest on any Security of any series and not applied but remaining unclaimed for two years after the date upon which such Principal or interest shall have become due and payable, shall, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee for such series or such paying agent, and the Holder of the Security of such series shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Company for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

Section 8.05. *Defeasance and Discharge of Indenture*. The Company shall be deemed to have paid and shall be discharged from any and all obligations in respect of the Securities of any series, on the 123rd day after the deposit referred to in clause (i) hereof has been made, and the provisions of this Indenture shall no longer be in effect with respect to the Securities of such series (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except as to: (a) rights of registration of transfer and exchange, and the Company's right of optional redemption, (b) substitution of apparently mutilated, defaced, destroyed, lost or stolen Securities, (c) rights of holders to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration), (d) the rights, obligations and immunities of the Trustee hereunder and (e) the rights of the Securityholders of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them; *provided* that the following conditions shall have been satisfied:

(i) with reference to this provision the Company has deposited or caused to be irrevocably deposited with the Trustee (or another qualifying trustee satisfying the requirements of Section 7.11) as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of such series, (A) money in an amount, or (B) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due date of any payment referred to in subclause (x) or (y) of this clause (i) money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (in the case of U.S. Government Obligations), to pay and discharge without consideration of the reinvestment of such interest and after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee (x) the principal of, premium, if any, and each installment of interest on the outstanding Securities of such series on the due dates thereof and (y) any mandatory sinking fund payments or analogous payments applicable to the Securities of such series on the day on which such payments are due and payable in accordance with the terms of Securities of such series and the Indenture with respect to the Securities of such series;

(ii) the Company has delivered to the Trustee (A) either (x) an Opinion of Counsel to the effect that Holders of Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of the Company's exercise of its option under this Section 8.05 and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred, which Opinion of Counsel must be based upon a ruling of the Internal Revenue Service to the same effect or a change in applicable federal income tax law or related treasury regulations after the date of this Indenture or (y) a ruling directed to the Trustee received from the Internal Revenue Service to the same effect as the aforementioned Opinion of Counsel and (B) an Opinion of Counsel to the effect that the creation of the defeasance trust does not violate the Investment Company Act of 1940 and after the passage of 123 days following the deposit, the trust fund will not be subject to the effect of Section 547 of the U.S. Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law;

(iii) immediately after giving effect to such deposit on a pro forma basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing on the date of such deposit or during the period ending on the 123rd day after the date of such deposit, and such deposit shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which the Company is bound;

(iv) if at such time the Securities of such series are listed on a national securities exchange, the Company has delivered to the Trustee an Opinion of Counsel to the effect that the Securities of such series will not be delisted as a result of such deposit, defeasance and discharge;

(v) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge under this Section have been complied with; and

(vi) if the Securities of such series are to be redeemed prior to the final maturity thereof (other than from mandatory sinking fund payments or analogous payments), notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made.

Section 8.06. *Defeasance of Certain Obligations*. The Company may omit to comply with any term, provision or condition set forth in, and this Indenture will no longer be in effect with respect to, any covenant established pursuant to Section 2.03(r) and clause (c) (with respect to any covenants established pursuant to Section 2.03(r)) and clause (f) of Section 6.01 shall be deemed not to be an Event of Default with respect to Securities of any series, if:

(a) with reference to this Section 8.06, the Company has deposited or caused to be irrevocably deposited with the Trustee (or another qualifying trustee satisfying the requirements of Section 7.11) as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of such series and the Indenture with respect to the Securities of such series, (i) money in an amount or (ii) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due dates thereof or earlier redemption (irrevocably provided for under agreements satisfactory to the Trustee), as the case may be, of any payment referred to in subclause (x) or (y) of this clause (a) money in an amount, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (in the case of U.S. Government Obligations), to pay and discharge without consideration of the reinvestment of such interest and after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee (x) the principal of, premium, if any, and each installment of interest on the outstanding Securities of such series on the due date thereof or earlier redemption (irrevocably provided for under arrangements satisfactory to the Trustee), as the case may be, and (y) any mandatory sinking fund payments or analogous payments applicable to the Securities of such series and the Indenture with respect to the Securities of such series on the day on which such payments are due and payable in accordance with the terms of the Indenture and of Securities of such series and the Indenture with respect to the Securities of such series;

(b) the Company has delivered to the Trustee (i) an Opinion of Counsel to the effect that Holders of Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of the Company's exercise of its option under this Section 8.06 and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred and (ii) an Opinion of Counsel to the effect that the creation of the defeasance trust does not violate the Investment Company Act of 1940 and after the passage of 123 days following the deposit, the trust fund will not be subject to the effect of Section 547 of the U.S. Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law;

(c) immediately after giving effect to such deposit on a pro forma basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing on the date of such deposit or during the period ending on the 123rd day after the date of such deposit, and such deposit shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which the Company is bound;

(d) if at such time the Securities of such series are listed on a national securities exchange, the Company has delivered to the Trustee an Opinion of Counsel to the effect that the Securities of such series will not be delisted as a result of such deposit, defeasance and discharge; and

(e) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under this Section have been complied with.

Section 8.07. *Reinstatement*. If the Trustee or paying agent is unable to apply any monies or U.S. Government Obligations in accordance with Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article until such time as the Trustee or paying agent is permitted to apply all such monies or U.S. Government Obligations in accordance with Article 8; *provided, however*, that if the Company has made any payment of Principal of or interest on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the monies or U.S. Government Obligations held by the Trustee or paying agent.

Section 8.08. *Indemnity*. The Company shall pay and indemnify the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.08 and Section 8.02, the "**Trustee**") against any tax, fee or other charge, imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 8.01, 8.05 or 8.06 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Securities and any coupons appertaining thereto.

Section 8.09. *Excess Funds*. Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon request of the Company, any money or U.S. Government Obligations (or other property and any proceeds therefrom) held by it as provided in Section 8.01, 8.05 or 8.06 which, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a discharge or defeasance, as applicable, in accordance with this Article 8.

Section 8.10. *Qualifying Trustee*. Any trustee appointed pursuant to Section 8.05 or 8.06 for the purpose of holding money or U.S. Government Obligations deposited pursuant to such Sections shall be appointed under an agreement in form acceptable to the Trustee and shall provide to the Trustee a certificate, upon which certificate the Trustee shall be entitled to conclusively rely, that all conditions precedent provided for herein to the related defeasance have been complied with. In no event shall the Trustee be liable for any acts or omissions of said trustee.

ARTICLE 9

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 9.01. *Without Consent of Holders*. The Company and the Trustee may amend or supplement this Indenture or the Securities of any series without notice to or the consent of any Holder:

(a) to cure any ambiguity, defect or inconsistency in this Indenture; *provided* that such amendments or supplements shall not materially and adversely affect the interests of the Holders;

(b) to comply with Article 5;

(c) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act;

(d) to evidence and provide for the acceptance of appointment hereunder with respect to the Securities of any or all series by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 7.09;

(e) to establish the form or forms or terms of Securities of any series or of the coupons appertaining to such Securities as permitted by Section 2.03;

(f) to provide for uncertificated or Unregistered Securities and to make all appropriate changes for such purpose; and

(g) to make any change that does not materially and adversely affect the rights of any Holder.

Section 9.02. *With Consent of Holders*. Subject to Sections 6.04 and 6.07, without prior notice to any Holders, the Company and the Trustee may amend this Indenture and the Securities of any series with the written consent of the Holders of a majority in principal amount of the outstanding Securities of all series affected by such amendment (each such series voting as a separate class), and the Holders of a majority in principal amount of the outstanding Securities of all series affected thereby (each such series voting as a separate class) by written notice to the Trustee may waive future compliance by the Company with any provision of this Indenture or the Securities of such series. Notwithstanding the provisions of this Section 9.02, without the consent of each Holder affected thereby, an amendment or waiver, including a waiver pursuant to Section 6.04, may not:

(a) change the stated maturity of the Principal of, or any sinking fund obligation or any installment of interest on, such Holder's Security;

(b) reduce the Principal amount thereof or the rate of interest thereon (including any amount in respect of original issue discount);

(c) reduce the above stated percentage of outstanding Securities the consent of whose holders is necessary to modify or amend the Indenture with respect to the Securities of the relevant series; and

(d) reduce the percentage in principal amount of outstanding Securities of the relevant series the consent of whose Holders is required for any supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain Defaults and their consequences provided for in this Indenture.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of Holders of Securities of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series or of the coupons appertaining to such Securities.

It shall not be necessary for the consent of any Holder under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall give to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. The Company will mail supplemental indentures to Holders upon request. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

Section 9.03. *Revocation and Effect of Consent.* Until an amendment or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the Security of the consenting Holder, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of its Security. Such revocation shall be effective only if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver shall become effective with respect to any Securities affected thereby on receipt by the Trustee of written consents from the requisite Holders of outstanding Securities affected thereby.

The Company may, but shall not be obligated to, fix a record date (which may be not less than five nor more than 60 days prior to the solicitation of consents) for the purpose of determining the Holders of the Securities of any series affected entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then, notwithstanding the immediately preceding paragraph, those Persons who were such Holders at such record date (or their duly designated proxies) and only those Persons shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such Persons continue to be such Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

After an amendment, supplement or waiver becomes effective with respect to the Securities of any series affected thereby, it shall bind every Holder of such Securities unless it is of the type described in any of clauses (a) through (d) of Section 9.02. In case of an amendment or waiver of the type described in clauses (a) through (d) of Section 9.02, the amendment or waiver shall bind each such Holder who has consented to it and every subsequent Holder of a Security that evidences the same indebtedness as the Security of the consenting Holder.

Section 9.04. *Notation on or Exchange of Securities*. If an amendment, supplement or waiver changes the terms of any Security, the Trustee may require the Holder thereof to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder and the Trustee may place an appropriate notation on any Security of such series thereafter authenticated. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security of the same series and tenor that reflects the changed terms.

Section 9.05. *Trustee to Sign Amendments, Etc*. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel, each stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article 9 is authorized or permitted by this Indenture, stating that all requisite consents have been obtained or that no consents are required and stating that such supplemental indenture constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to customary exceptions. The Trustee may, but shall not be obligated to, execute any such amendment, supplement or waiver that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.06. *Conformity With Trust Indenture Act*. Every supplemental indenture executed pursuant to this Article 9 shall conform to the requirements of the Trust Indenture Act as then in effect.

ARTICLE 10

MISCELLANEOUS

Section 10.01. *Trust Indenture Act of 1939*. This Indenture shall incorporate and be governed by the provisions of the Trust Indenture Act that are required to be part of and to govern indentures qualified under the Trust Indenture Act.

Section 10.02. *Notices*. Any notice or communication shall be sufficiently given if written and (a) if delivered in person when received or (b) if mailed by first class mail 5 days after mailing, or (c) as between the Company and the Trustee if sent by facsimile or electronic transmission, when transmission is confirmed, in each case addressed as follows:
if to the Company:

Fisker Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Attention: Dr. Geeta Gupta-Fisker
Email: legal@fiskerinc.com

if to the Trustee:

Wilmington Savings Fund Society, FSB
500 Delaware Avenue
Wilmington, DE 19801
Attention: Corporate Trust – Fisker Inc.

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication shall be sufficiently given to Holders of the Securities by mailing to such Holders at their addresses as they shall appear on the Security Register. Notice mailed shall be sufficiently given if so mailed within the time prescribed. Copies of any such communication or notice to a Holder shall also be mailed to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event to a Holder of a Registered Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Security (or its designee) pursuant to the applicable procedures of such Depositary, if any, prescribed for the giving of such notice.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. Except as otherwise provided in this Indenture, if a notice or communication is mailed in the manner provided in this Section 10.02, it is duly given, whether or not the addressee receives it.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case it shall be impracticable to give notice as herein contemplated, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 10.03. *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officer's Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 10.04. *Statements Required in Certificate or Opinion*. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate required by Section 4.04) shall include:

(a) a statement that the person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based;

(c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; *provided*, *however*, that, with respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 10.05. *Evidence of Ownership*. The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Holder of any Unregistered Security and the Holder of any coupon as the absolute owner of such Unregistered Security or coupon (whether or not such Unregistered Security or coupon shall be overdue) for the purpose of receiving payment thereof or on account thereof and for all other purposes, and neither the Company, the Trustee, nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. The fact of the holding by any Holder of an Unregistered Security, and the identifying number of such Security and the date of his holding the same, may be proved by the production of such Security or by a certificate executed by any trust company, bank, banker or recognized securities dealer wherever situated satisfactory to the Trustee, if such certificate shall be deemed by the Trustee to be satisfactory. Each such certificate shall be dated and shall state that on the date thereof a Security bearing a specified identifying number was deposited with or exhibited to such trust company, bank, banker or recognized securities dealer by the person named in such certificate. Any such certificate may be issued in respect of one or more Unregistered Securities specified therein. The holding by the person named in any such certificate of any Unregistered Securities specified therein shall be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (1) another certificate bearing a later date issued in respect of the same Securities shall be produced or (2) the Security specified in such certificate shall be produced by some other Person, or (3) the Security specified in such certificate shall have ceased to be outstanding. Subject to Article 7, the fact and date of the execution of any such instrument and the amount and numbers of Securities held by the Person so executing such instrument may also be proven in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in any other manner which the Trustee may deem sufficient.

The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the person in whose name any Registered Security shall be registered upon the Security Register for such series as the absolute owner of such Registered Security (whether or not such Registered Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the Principal of and, subject to the provisions of this Indenture, interest on such Registered Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary.

Section 10.06. *Rules by Trustee, Paying Agent or Registrar*. The Trustee may make reasonable rules for action by or at a meeting of Holders. The Paying Agent or Registrar may make reasonable rules for its functions.

Section 10.07. *Payment Date Other Than a Business Day*. Except as otherwise provided with respect to a series of Securities, if any date for payment of Principal or interest on any Security shall not be a Business Day at any place of payment, then payment of Principal of or interest on such Security, as the case may be, need not be made on such date, but may be made on the next succeeding Business Day at any place of payment with the same force and effect as if made on such date and no interest shall accrue in respect of such payment for the period from and after such date.

Section 10.08. *Governing Law*. The laws of the State of New York shall govern this Indenture and the Securities.

Section 10.09. *No Adverse Interpretation of Other Agreements*. This Indenture may not be used to interpret another indenture or loan or debt agreement of the Company or any Subsidiary of the Company. Any such indenture or agreement may not be used to interpret this Indenture.

Section 10.10. *Successors*. All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 10.11. *Duplicate Originals*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of this Indenture by facsimile or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Indenture. Any party delivering an executed counterpart of this Indenture by facsimile or electronic transmission also shall deliver an original executed counterpart of this Indenture, but failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Indenture.

Section 10.12. *Separability*. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.13. *Table of Contents, Headings, Etc*. The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms and provisions hereof.

Section 10.14. *Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability*. No recourse under or upon any obligation, covenant or agreement contained in this Indenture or any indenture supplemental hereto, or in any Security or any coupons appertaining thereto, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such or against any past, present or future stockholder, officer, director or employee, as such, of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities and the coupons appertaining thereto by the holders thereof and as part of the consideration for the issue of the Securities and the coupons appertaining thereto.

Section 10.15. *Judgment Currency*. The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the Principal of or interest on the Securities of any series (the "**Required Currency**") into a currency in which a judgment will be rendered (the "**Judgment Currency**"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a Business Day, then, to the extent permitted by applicable law, the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the Business Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture.

Section 10.16. *Governing Law*. THIS INDENTURE AND THE SECURITIES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE SECURITIES.

Section 10.17 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE 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 INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.18 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, (i) any act or provision of any present or future law or regulation or governmental authority, (ii) any act of God, (iii) natural disaster, (iv) war, (v) terrorism, (vi) civil unrest, (vii) accidents, (viii) labor dispute, (ix) disease, (x) epidemic or pandemic, (xi) quarantine, (xii) national emergency, (xiii) loss or malfunction of utility or computer software or hardware, (xiv) communications system failure, (xv) malware or ransomware or (xvi) unavailability of the Federal Reserve Bank wire or telex system or other wire or other funds transfer systems, or (xvii) unavailability of securities clearing system; it being understood that the Trustee shall use

reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 10.19 *USA PATRIOT ACT*. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The Issuer agrees that it will provide the Trustee with information about the Issuer as the Trustee may reasonably request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

[*Signatures on following page*]

SIGNATURES

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

FISKER INC.
as the Company

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as the
Trustee

By: _____
Name:
Title:

EXHIBIT A-3

FISKER INC.

TO

[FIRST][SECOND][THIRD] SUPPLEMENTAL INDENTURE TO INDENTURE DATED [INSERT DATE]

Dated as of [INSERT DATE]

WILMINGTON SAVINGS FUND SOCIETY, FSB,

as Trustee

Series [A][B][C][-][1][2][3][4] Senior Convertible Note Due [2025][2026]

FISKER INC.

[FIRST][SECOND][THIRD] SUPPLEMENTAL INDENTURE TO INDENTURE DATED [INSERT DATE]

Series [A][B][C][-][1][2][3][4] Senior Convertible Note Due [2025][2026]

[FIRST][SECOND][THIRD] SUPPLEMENTAL INDENTURE, dated as of [INSERT DATE] (this "**[First][Second][Third] Supplemental Indenture**"), between **FISKER INC.**, a Delaware corporation (the "**Company**"), and **WILMINGTON SAVINGS FUND SOCIETY, FSB**, as Trustee (the "**Trustee**").

RECITALS

A. The Company filed a registration statement on Form S-3 on December 23, 2021 (File Number 333-261875) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**SEC**") pursuant to Rule 415 under the Securities Act of 1933, as amended (the "**Securities Act**") and the Registration Statement has been declared effective by the SEC on January 4, 2022.

B. The Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July __, 2023, substantially in the form filed as an exhibit to the Registration Statement (the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company.

C. The Indenture has been qualified under the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**").

D. Section 2 of the Indenture provides for various matters with respect to any series of Securities issued under the Indenture to be established in an indenture supplemental to the Indenture.

E. Section 9.01 of the Indenture provides that, without the consent of the Holders, for the Company and the Trustee may enter into an indenture supplemental to the Indenture to establish the form or terms of Securities of any series as provided by Section 2 of the Indenture.

F. In accordance with that certain Securities Purchase Agreement, dated July 10, 2023 (the "**Securities Purchase Agreement**"), by and among the Company and the investors party thereto (the "**Investors**"), at the applicable Closing (as defined in the Securities Purchase Agreement) related to this [First][Second][Third] Supplemental Indenture, the Company has agreed to sell to the Investors, and the Investors have agreed to purchase from the Company, up to $[ ] in aggregate principal amount of Notes (in one or more tranches, in accordance with the terms of the Securities Purchase Agreement), subject to the satisfaction of certain terms and conditions set forth in the Securities Purchase Agreement, in each case, pursuant to (i) the Indenture, (ii) this [First][Second][Third] Supplemental Indenture, (iii) the Securities Purchase Agreement and (iv) the Registration Statement.

G. The Company hereby desires to supplement the Indenture pursuant to this [First][Second][Third] Supplemental Indenture to set forth the terms and conditions of the Notes to be issued in accordance herewith.

NOW, THEREFORE, THIS [FIRST][SECOND][THIRD] SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the issuance of the series of Securities provided for herein, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of such series, as follows:

ARTICLE I

RELATION TO INDENTURE; DEFINITIONS

Section 1.1. RELATION TO INDENTURE. This [First][Second][Third] Supplemental Indenture constitutes an integral part of the Indenture.

Section 1.2. DEFINITIONS. For all purposes of this [First][Second][Third] Supplemental Indenture:

(a) Capitalized terms used herein without definition shall have the meanings specified in the Indenture or in the Notes, as applicable;

(b) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this [First][Second][Third] Supplemental Indenture; and

(c) The terms "herein," "hereof," "hereunder" and other words of similar import refer to this [First][Second][Third] Supplemental Indenture.

ARTICLE II

THE SERIES OF SECURITIES

Section 2.1. TITLE. There shall be a series of Securities designated the "Series [A][B][C][-][1][2][3][4] Senior Convertible Notes Due [2025][2026]" (the "**Notes**").

Section 2.2. LIMITATION ON AGGREGATE PRINCIPAL AMOUNT. The aggregate principal amount of the Notes to be sold pursuant to the Securities Purchase Agreement and to be issued pursuant to this [First][Second][Third] Supplemental Indenture on the date hereof shall be $[ ].

Section 2.3. PRINCIPAL PAYMENT DATE. The principal amount of the Notes outstanding (together with any accrued and unpaid interest and other amounts) shall be payable in accordance with the terms and conditions set forth in the Notes on each Conversion Date, Alternate Conversion Date, redemption date and on the Maturity Date, in each case as defined in the Notes.

Section 2.4. INTEREST AND INTEREST RATES. Interest shall accrue and shall be payable at such times and in the manner set forth in the Notes.

Section 2.5. PLACE OF PAYMENT. Except as otherwise provided by the Notes, the place of payment where the Notes may be presented or surrendered for payment, where the Notes may be surrendered for registration of transfer or exchange (to the extent required or permitted, as applicable, by the terms of the Notes) and where notices and demand to or upon the Trustee in respect of the Notes and the Indenture may be served shall be: 500 Delaware Avenue, Wilmington, DE 19801, Attn.: Corporate Trust - Fisker Inc.; Telephone: (302) 573-3269; Facsimile: (302) 421-9137; Email: JMcNichol@wsfsbank.com.

Section 2.6. REDEMPTION. The Company may redeem the Notes, in whole or in part, at such times and in the manner set forth in the Notes.

Section 2.7. DENOMINATION. The Notes shall be issuable only in registered form without coupons and in minimum denominations of $1,000 and integral multiples thereof.

Section 2.8. CURRENCY. Principal and interest and any other amounts payable, from time to time, on the Notes shall be payable in such coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts in accordance with Section 23(b) of the Notes.

Section 2.9. FORM OF SECURITIES. The Notes shall be issued in the form attached hereto as **Exhibit A**. **Exhibit A** also includes the form of Trustee's certificate of authentication for the Notes. The Company has elected to issue only definitive Securities and shall not issue any global Securities hereunder.

Section 2.10. CONVERTIBLE SECURITIES. The Notes are convertible into shares of Common Stock (as defined in the Notes) of the Company upon the terms and conditions set forth in the Notes and all references to "Common Stock" in the Indenture shall be deemed to be references to Common Stock for all purposes thereunder. In connection with any conversion of any given Note into Common Stock, the Trustee may rely conclusively, without any independent investigation, on any Conversion Notice (as defined in the Notes) executed by the applicable Holder of such Note and an Acknowledgement (as defined in the Notes) signed by the Company (in each case, in the forms attached as Exhibits I and II to the Note), in lieu of the Company's obligations to deliver an Officer's Certificate, Board Resolutions or an Opinion of Counsel pursuant to Article Two, Article Three or Section 7.02 of the Indenture in connection with any conversion of any Note. The applicable Conversion Notice and/or Acknowledgement (unless subsequently revoked or withdrawn) shall be deemed to be a joint instruction by the Company and such Holder to the Trustee to record on the register of the Notes such conversion and decrease in the principal amount of such Note by such aggregate principal amount of the Note converted, in each case, as set forth in such applicable Conversion Notice and/or Acknowledgement.

Section 2.11. REGISTRAR. The Trustee shall only serve initially as the Security Registrar and not as a paying agent and, in such capacity, shall maintain a register (the "**Security Register**") in which the Trustee shall register the Notes and transfers of the Notes. The entries in the Security Register shall be conclusive and binding for all purposes absent manifest error. The

initial Security Register shall be created by the Trustee in connection with the authentication of the initial Notes in the names and amounts detailed in the related Company Order. No Note may be transferred or exchanged except in compliance with the authentication procedures of the Trustee in accordance with this [First][Second][Third] Supplemental Indenture. The Trustee shall not register a transfer, exchange, redemption, conversion, cancellation or any other action with respect to a Note unless instructed to do so in an Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable. Each Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable, given to the Trustee in accordance with this Section 2.11 shall constitute a representation and warranty to the Trustee that the Trustee shall be fully indemnified in connection with any liability arising out of or related to any action taken by the Trustee in good faith reliance on such Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable.

Section 2.12. SINKING FUND OBLIGATIONS. The Company has no obligation to redeem or purchase any Notes pursuant to any sinking fund or analogous requirement or upon the happening of a specified event or at the option of a Holder thereof.

Section 2.13. NO PAYING AGENT. Notwithstanding anything in Section 2.06 of the Indenture to the contrary, the Company shall not be required to appoint and has not appointed any Paying Agent in respect of the Notes pursuant to the Indenture or any Supplemental Indenture and all amounts payable, from time to time, pursuant to the Notes shall, for so long as so long as no Paying Agent has been appointed, be paid directly by the Company to the applicable Holder.

Section 2.14. EVENTS OF DEFAULT. The Company has elected that the provisions of Section 4 of the Notes shall govern all Events of Default in lieu of Section 6 of the Indenture.

Section 2.15. EXCLUDED DEFINITIONS. The Company has elected that none of the following definitions in the Indenture shall be applicable to the Notes and any analogous definitions set forth in the Notes shall govern in lieu thereof:

- Definition of "Affiliate" in Section 1.01;
- Definition of "Business Day" in Section 1.01;
- Definition of "Event of Default" in Section 6.01;
- Definition of "Person" in Section 1.01; and
- Definition of "Subsidiary" in Section 1.01.

Section 2.16. EXCLUDED PROVISIONS. The Company has elected that none of the following provisions of the Indenture shall be applicable to the Notes and any analogous provisions (including definitions related thereto) of this [First][Second][Third] Supplemental Indenture and/or the Notes shall govern in lieu thereof:

- Section 2.03 (Form of Certificate of Authentication)

- Section 2.07 (Paying Agent to Hold Money in Trust)
- Section 2.08 (Transfer and Exchange)
- Section 2.09 (Replacement Securities)
- Section 2.10 (Outstanding Securities)
- Section 2.14 (Defaulted Interest)
- Article 3 (Redemption)
- Section 4.1 (Payment of Securities)
- Section 4.06 (Additional Amounts)
- Article 5 (Successor Corporation)
- Article 6 (Default and Remedies)
- Article 8 (Satisfaction, and Discharge of Indenture; Unclaimed Funds)
- Section 9.01 (Without Consent of Holders)
- Section 10.14 (Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability)
- Section 10.15 (Judgement Currency)

Section 2.17. COVENANTS. In addition to any covenants set forth in Article 4 of the Indenture, the Company shall comply with the additional covenants set forth in Section 13 of the Notes.

Section 2.18. IMMEDIATELY AVAILABLE FUNDS. All cash payments of principal and interest shall be made in U.S. dollars and immediately available funds.

Section 2.19. TRUSTEE MATTERS.

(a) Duties of Trustee. Notwithstanding anything in the Indenture to the contrary:

(i) the sole duty of the Trustee is to act as the Registrar unless otherwise agreed to by the Required Holders (as defined in the Notes), the Trustee and the Company in an additional supplemental Indenture (other than this [First][Second][Third] Supplemental Indenture) or as separately agreed to in a writing by the Trustee and the Required Holders;

(ii) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including as Registrar), and to each agent, custodian, and any other such Persons employed to act hereunder;

(iii) the Trustee has no duty to make any calculations called for under the Notes, and shall be protected in conclusively relying without liability upon an Officer's Certificate with respect thereto without independent verification;

(iv) for the protection and enforcement of the provisions of the Indenture, this [First][Second][Third] Supplemental Indenture and the Notes, the Trustee shall be entitled to such relief as can be given at either law or equity;

(v) in the event that the Holders of the Notes have waived any Event of Default with respect to this [First][Second][Third] Supplemental Indenture or the Notes, the default covered thereby shall be deemed to be cured for all purposes hereunder and the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other default to impair any right consequent thereon;

(vi) the Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of the Notes, and the Trustee shall not be responsible for the failure by the Company to comply with any provisions of the Notes;

(vii) the Trustee will not at any time be under any duty or responsibility to any Holder to determine the Conversion Price (or any adjustment thereto) or whether any facts exist that may require any adjustment to the Conversion Price, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in the Indenture, this [First][Second][Third] Supplemental Indenture, in any supplemental indenture or the Notes provided to be employed, in making the same;

(viii) the Trustee will not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, cash or other property that may at any time be issued or delivered upon the conversion of any Note; and the Trustee makes any representations with respect thereto; and

(ix) the Trustee will not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities, cash or other property upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company with respect thereto.

(b) Additional Indemnification. In addition to any indemnification rights set forth in the Indenture, the Company agrees the Trustee may retain one separate counsel on behalf of itself and the Holders (and in the case of an actual or perceived conflict of interest, one additional separate counsel on behalf of the Holders) and, if deemed advisable by such counsel, local counsel,

and the Company shall pay the reasonable fees and expenses of such separate counsel and local counsel.

(c) Successor Trustee Petition Right. If an instrument of acceptance by a successor Trustee required by Section 7.08 or 7.09 of the Indenture has not been delivered to the Trustee within 30 days after the giving of a notice of removal, the Trustee being removed, at the expense of the Company, may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(d) Trustee as Creditor. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

(e) Reports by the Company. The parties hereto acknowledge and agree that delivery of such reports, information, and documents to the Trustee pursuant to the provisions of Section 4.05 of the Indenture is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no duty to monitor or confirm, on a continuing basis or otherwise, the Company's or any other Person's compliance with any of the covenants under the Indenture and this [First][Second][Third] Supplemental Indenture, to determine whether such reports, information or documents are available on the SEC's website (including the EDGAR system or any successor system,) the Company's website or otherwise, to examine such reports, information, documents and other reports to ensure compliance with the provisions of this Indenture, or to ascertain the correctness or otherwise of the information or the statements contained therein.

(f) Statements by Officers as to Default. In addition to the Company's obligations pursuant to the Indenture, the Company agrees as follows:

(i) Annually, within 120 days after the close of each fiscal year beginning with the first fiscal year during which the Notes remain outstanding, the Company will deliver to the Trustee an Officer's Certificate (one of which Officers signatory thereto shall be the Chief Executive Officer, Chief Financial Officer or Chief Corporate and Strategy Officer of the Company) as to the knowledge of such Officers of the Company's compliance (without regard to any period of grace or requirement of notice provided herein) with all conditions and covenants under the Indenture, this First Supplemental Indenture and the Notes and, if any Event of Default has occurred and is continuing, specifying all such Events of Defaults and the nature and status thereof of which such Officers have knowledge.

(ii) The Company shall, so long as any of the Notes remain outstanding, deliver to the Trustee, as soon as practicable and in any event within 30 days after the Company becomes aware of any Event of Default, an Officer's Certificate specifying such

Events of Default, its status and the actions that the Company is taking or proposes to take in respect thereof.

(g) Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and perform such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the Indenture and this [First][Second][Third] Supplemental Indenture.

(h) Expense. Notwithstanding anything in the Indenture to the contrary, any actions taken by the Trustee in any capacity shall be at the Company's reasonable expense.

Section 2.20. SATISFACTION; DISCHARGE. The Indenture and this [First][Second][Third] Supplemental Indenture will be discharged and will cease to be of further effect with respect to the Notes (except as to any surviving rights expressly provided for herein and in the Transaction Documents (as defined in the Securities Purchase Agreement)), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of the Indenture and this [First][Second][Third] Supplemental Indenture with respect to the Notes, when all outstanding amounts under the Notes shall have been paid in full (and/or converted into shares of Common Stock or other securities in accordance therewith) and no other obligations remain outstanding pursuant to the terms of the Notes, this [First][Second][Third] Supplemental Indenture, the Indenture and/or the other Transaction Documents, as applicable, which have not been paid in full by the Company, and when the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of the Indenture and this [First][Second][Third] Supplemental Indenture with respect to the Notes have been complied with. Notwithstanding the satisfaction and discharge of the Indenture and this [First][Second][Third] Supplemental Indenture, the obligations of the Company to the Trustee under Section 7.07 of the Indenture shall survive.

Section 2.21. CONTROL BY SECURITYHOLDERS. The Required Holders (as defined in the Securities Purchase Agreement) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to the Notes; provided, however, that such direction shall not be in conflict with any rule of law. Subject to the provisions of Section 7.01 of the Indenture and this [First][Second][Third] Supplemental Indenture, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceeding so directed would involve the Trustee in personal liability. The Notes may be amended, modified or waived, as applicable, in accordance with Section 15 of the Notes. Upon any waiver of any term of the Notes, the default covered thereby shall be deemed to be cured for all purposes of the Indenture, this [First][Second][Third] Supplemental Indenture, the Notes and the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE III

EXPENSES

Section 3.1. PAYMENT OF EXPENSES. In connection with the offering, sale and issuance of the Notes, the Company, in its capacity as issuer of the Notes, shall pay all reasonable, documented out-of-pocket costs and expenses relating to the offering, sale and issuance of the Notes and compensation and expenses of the Trustee under the Indenture in accordance with the provisions of Section 7.07 of the Indenture.

Section 3.2. PAYMENT UPON RESIGNATION OR REMOVAL. Upon termination of this [First][Second][Third] Supplemental Indenture or the Indenture or the removal or resignation of the Trustee, unless otherwise stated, the Company shall pay to the Trustee all reasonable, documented out-of-pocket amounts, fees and expenses (including reasonable attorney's fees and expenses) accrued to the date of such termination, removal or resignation.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1. TRUSTEE NOT RESPONSIBLE FOR RECITALS. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this [First][Second][Third] Supplemental Indenture.

Section 4.2. ADOPTION, RATIFICATION AND CONFIRMATION. The Indenture, as supplemented and amended by this [First][Second][Third] Supplemental Indenture, is in all respects hereby adopted, ratified and confirmed.

Section 4.3. CONFLICT WITH INDENTURE; TRUST INDENTURE ACT. Notwithstanding anything to the contrary in the Indenture, if any conflict arises between the terms and conditions of this [First][Second][Third] Supplemental Indenture (including, without limitation, the terms and conditions of the Notes) and the Indenture, the terms and conditions of this [First][Second][Third] Supplemental Indenture (including the Notes) shall control; provided, however, that if any provision of this [First][Second][Third] Supplemental Indenture or the Notes limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required thereunder to be a part of and govern this [First][Second][Third] Supplemental Indenture, the latter provisions shall control. If any provision of this [First][Second][Third] Supplemental Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provisions shall be deemed to apply to the Indenture as so modified or excluded, as the case may be.

Section 4.4. AMENDMENTS; WAIVER. This [First][Second][Third] Supplemental Indenture may be amended by the written consent of the Company and the Required Holders (as defined in the Notes); provided however, no amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent. Notwithstanding anything in any other Transaction Document to the contrary, no amendment to

any Transaction Document that adversely impact the rights, duties, immunities or liabilities of the Trustee hereunder, pursuant to the Indenture and/or the Notes, as applicable, shall be effective without the Trustee's prior written consent. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

Section 4.5. SUCCESSORS. This [First][Second][Third] Supplemental Indenture shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes.

Section 4.6. SEVERABILITY; ENTIRE AGREEMENT. If any provision of this [First][Second][Third] Supplemental Indenture shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this [First][Second][Third] Supplemental Indenture in that jurisdiction or the validity or enforceability of any provision of this [First][Second][Third] Supplemental Indenture in any other jurisdiction.

Section 4.7. The Indenture, this [First][Second][Third] Supplemental Indenture, the Transaction Documents and the exhibits hereto and thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 4.8. COUNTERPARTS. This [First][Second][Third] Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 4.9. GOVERNING LAW. This [First][Second][Third] Supplemental Indenture and the Indenture shall each be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 of the Notes, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The Borough of Manhattan, New York, 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 22 of the Notes. **THE COMPANY 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 [FIRST][SECOND][THIRD] SUPPLEMENTAL INDENTURE OR ANY TRANSACTION CONTEMPLATED HEREBY.

Section 4.10. U.S.A. PATRIOT ACT. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Supplemental Indenture agree that they shall provide the Trustee with such information as it may reasonably request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this [First][Second][Third] Supplemental Indenture to be duly executed on the date or dates indicated in the acknowledgments and as of the day and year first above written.

FISKER INC.

By:_____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By:_____
Name:
Title:

EXHIBIT A

(FORM OF NOTE)

EXHIBIT B

CUSTODIAN AGREEMENT

Between

Wilmington Savings Fund Society, FSB,

As Custodian,

AND

CVI Investments, Inc.

As Purchaser

Dated as of July [_], 2023

CUSTODIAN AGREEMENT

CUSTODIAN AGREEMENT (this "Agreement"), dated as of July [_], 2023 among Wilmington Savings Fund Society, FSB, a federal savings bank, as custodian (in such capacity, the "Custodian"), CVI Investments, Inc., as purchaser (the "Purchaser") of certain Notes (as defined below) to be issued pursuant to the Indenture (as defined below) in accordance with that certain Securities Purchase Agreement, dated as of July 10, 2023, by and between Fisker Inc., a Delaware corporation with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "Issuer") and the Purchaser (the "Securities Purchase Agreement"), and solely for purposes of Sections 2.2, 3.2, 3.5, 5.5 and 5.7 of this Agreement, the Issuer.

WITNESSETH:

WHEREAS, reference is made to the Indenture (the "Base Indenture") dated as of July [_], 2023, between the Issuer and Wilmington Savings Fund Society, FSB, in its capacity as trustee (in such capacity, the "Trustee");

WHEREAS, reference is made to the First Supplemental Indenture (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), dated as of July [_], 2023, between the Issuer and the Trustee, and the Securities Purchase Agreement, pursuant to which certain Series A Senior Convertible Notes due 2025 will be issued to the Purchaser (such convertible notes to be initially issued to the Purchaser (subject to delivery of such Series A Senior Convertible Notes due 2025 to the Custodian), collectively, the "Notes");

WHEREAS, in order to facilitate redemptions, conversions and transfers of the Notes in accordance with the terms thereof, the Purchaser wishes to engage the services of the Custodian to receive, hold and transmit, solely in accordance with the terms of this Agreement, such Notes on behalf of the Purchaser named and in the aggregate principal amount listed on Schedule 1 hereto (subject to adjustment by the Custodian upon any conversion, redemption or additional deposit of the Notes in accordance with the written instructions of the Purchaser);

WHEREAS, the Custodian is willing to assume such duties and provide such services, on the terms and conditions set forth in this Agreement; and

WHEREAS, the Notes shall remain subject to the exclusive interest and control by the Purchaser, and Notes shall be transferred by the Custodian solely in accordance with the instructions by, or on behalf of Purchaser, as set forth in this Agreement.

NOW, THEREFORE, the parties, intending to be bound, agree as follows:

ARTICLE I

INTERPRETATION

Section 1.1 Interpretation.

(a) When a reference is made in this Agreement to Articles, Sections, Exhibits or Schedules, such reference shall be to Articles or Sections of, or Exhibits or Schedules to, this Agreement unless otherwise indicated.

(b) The headings contained in this Agreement are for reference purposes only and are not part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions of this Agreement.

(c) Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".

(d) Any reference to any statute, regulation or agreement shall be a reference to such statute, regulation or agreement as supplemented or amended from time to time.

(e) Capitalized terms used herein without definition shall have the meanings specified in the Indenture or in the Notes, as applicable.

ARTICLE II

APPOINTMENT OF CUSTODIAN

Section 2.1 Appointment of Custodian; Acceptance of Appointment. The Purchaser hereby appoints the Custodian, and the Custodian hereby accepts such appointment, as custodian of the Notes deposited by the Purchaser on the date hereof, to be held by the Custodian, solely for the benefit of the Purchaser, and held solely in accordance with the terms of this Agreement.

Section 2.2 Custody and Transfer of Notes. On the date hereof, the Purchaser has deposited with the Custodian the Notes identified on Schedule 1 hereto. The Custodian will deliver the Notes pursuant to any written instruction (which, for the avoidance of doubt, may be in the form of a conversion notice in the form attached to the applicable Note) received from Purchaser. Notwithstanding anything herein to the contrary, the Custodian will have no obligation to deliver the Notes to the Company in connection with any conversion until such time as the Note has been converted or redeemed in full (in which case the Custodian shall return the expired Note to the Company for cancellation upon the written instruction of the Purchaser). All Notes held by the Custodian hereunder shall be registered in the name of the Purchaser. The Custodian shall have no duty to make any evaluation or to advise anyone of the suitability or propriety of such instructions, or the suitability of the investment of the Notes. Purchaser acknowledges that Wilmington Savings Fund Society, FSB ("WSFS") is also acting as Trustee for the Notes, and that the Custodian shall have no knowledge of any request or instructions delivered by the Issuer (regardless of whether such instruction has been delivered to the Trustee), unless such instruction

is delivered by the Purchaser to the Custodian pursuant to the instructions set forth in Section 5. The Purchaser and the Issuer expressly waive any defenses, claims or assertions arising out of WSFS acting in such multiple capacities.

Section 2.3 Exclusive Control. The Custodian shall have no power or authority to assign, hypothecate, pledge or otherwise dispose of the Notes held by it, except in accordance with the terms of Section 2.2 of this Agreement. The Notes held by the Custodian hereunder shall be subject to no lien or charge of any kind in favor of the Custodian for itself, or for any other person claiming through the Custodian.

Section 2.4 Rights of Set-Off; Banker's Lien. The Custodian hereby waives all rights of set-off or banker's lien it may have with respect to the Notes held by it as Custodian hereunder.

Section 2.5 Books and Records. The Custodian shall maintain books and records regarding redemptions, conversions, disbursements or transfers of Purchaser's Notes to the extent made available to it as Custodian, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall provide the Purchaser with copies of any of the foregoing upon written request.

ARTICLE III

THE CUSTODIAN

Section 3.1 Duties of the Custodian. The Custodian:

(a) Will have no obligation to transmit or deliver any of the Notes unless and until it has received written instructions (which, for the avoidance of doubt, may be in the form of a conversion notice in the form attached to the applicable Note) from the Purchaser;

(b) Shall not at any time be deemed to be a fiduciary of the Purchaser and will have no implied duties or obligations, or other duties other than as specifically set forth herein or in instructions (which, for the avoidance of doubt, may be in the form of a conversion notice in the form attached to the applicable Note) received in accordance with this Agreement, or as may subsequently be agreed to by the Custodian and the Purchaser;

(c) May rely and will be protected in acting upon any instrument, opinion, notice, letter, or other document delivered to the Custodian in accordance with the terms of this Agreement and reasonably believed by the Custodian to be genuine and to have been signed by the proper party or parties;

(d) Shall forward all information that it receives with respect to the Notes concerning redemption rights that are exercisable at the Purchaser's option, tender or exchange offers, class action lawsuits or other special matters, and absent instruction from the Purchaser to the contrary, the Custodian shall take no action with respect thereto (it being understood that the Purchaser shall be the registered holder of the Notes and the

Purchaser's contact information shall be delivered to the Trustee and the Issuer for purposes of the Security Register (as defined in the Notes));

(e) Will have no obligation to receive or forward payments on the Purchaser's Notes (it being understood that the Purchaser shall be solely responsible for providing payment instructions as may be required by the Issuer or the Trustee);

(f) May consult with counsel satisfactory to the Custodian and the advice or opinion of such counsel will be full and complete authorization and protection in respect of any action taken or omitted to be taken by the Custodian hereunder in good faith and in accordance with such advice or opinion of such counsel;

(g) Shall not be liable to anyone for any action taken or omitted to be taken by it hereunder except in the case of the Custodian's gross negligence or willful misconduct in breach of the terms of this Agreement as determined by a final and non-appealable order of a court of competent jurisdiction;

(h) Shall not, in any event, be liable for indirect, incidental, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Custodian has been informed of the likelihood of such loss or damage and regardless of the form of action; and

(i) Shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 3.2 Compensation. The Custodian shall receive compensation for the services to be rendered under this Agreement payable by the Issuer pursuant to the fee letter dated as of July [_], 2023 between WSFS and the Issuer, as amended or modified from time to time.

Section 3.3 Securities Purchase Agreement and Indenture Validity. The Custodian shall not be responsible for the validity or sufficiency of the Securities Purchase Agreement and the Indenture, or the due execution thereof, or for the form, character, genuineness, sufficiency, value or validity of any of the Notes, and the Custodian shall in no event assume or incur any liability, duty or obligation to the Purchaser other than as expressly provided for in this Agreement. The Custodian shall have no duty to monitor any party's compliance with any provision of the Indenture. The Custodian shall not be responsible for determining, or confirming upon receipt of instructions from the Purchaser, whether the conditions precedent to any such instructions under the Notes have been satisfied.

Section 3.4 Litigation Obligations, Costs and Indemnity. The Custodian shall not be under any obligation to appear in, prosecute or defend any action which in its opinion may involve it in expense or liability, unless it shall be furnished with such security and indemnity satisfactory to it against such expense or liability as it may require.

Section 3.5 Indemnification. The Custodian and its directors, officers, employees, attorneys, successors and assigns shall be indemnified and held harmless by the Issuer from and against any loss, damages, cost or expense (including the costs of investigation, preparation for and defense of legal and/or administrative proceedings related to a claim against it and reasonable attorneys' fees and disbursements), liability or claim incurred by the Custodian arising out of any services to be rendered hereunder; provided that the Custodian shall not be indemnified and held harmless from and against any such loss, damages, cost, expense, liability or claim incurred by reason of its willful misconduct or gross negligence in the performance of its duties and obligations hereunder as determined by a final and non-appealable order of a court of competent jurisdiction. Such indemnity shall survive the resignation, removal or discharge of the Custodian and the termination of this Agreement.

ARTICLE IV

RESIGNATION OF CUSTODIAN

Section 4.1 Resignation. The Custodian may at any time resign by giving written notice by registered or certified mail to the Purchaser in accordance with the provisions of Section 5.2 in the event this Agreement is not earlier terminated in accordance with the terms of Section 5.1 of this Agreement. Upon such resignation, the sole responsibility of the Custodian shall be to return Purchaser's Notes in its possession to the Purchaser (at the Purchaser's cost and expense) in accordance with the delivery instructions set forth on Schedule 1 to this Agreement.

ARTICLE V

MISCELLANEOUS

Section 5.1 Term of Agreement. This Agreement shall continue in effect until the earlier of the (i) redemption in full of the Notes; (ii) conversion of all of the Notes (in the case of (i) or (ii), as confirmed in writing to the Custodian by the Purchaser); or (iii) the Custodian's resignation pursuant to Section 4.1.

Section 5.2 Notices.

(a) All notices and other communications provided for in this Agreement, unless otherwise specified, shall be in writing (including transmittals by telecopier) and given to the Purchaser at the addresses set forth in Schedule 1 hereto, or at such other addresses as may be designated by notice duly given in accordance with this Section 5.2 to the Custodian. Until written notice is provided to the Purchaser to the contrary, notices to the Custodian shall be delivered to it at Wilmington Savings Fund Society, FSB, 500 Delaware Avenue, Wilmington, DE 19801, Attention: Corporate Trust – Fisker Inc., Telephone: (302) 573-3269, Facsimile: (302) 421-9137, E-mail: JMcNichol@wsfsbank.com. For the avoidance of doubt, a conversion notice in the form attached to any of the Notes duly executed by the Purchaser and delivered to the Custodian shall constitute a valid written instruction to the Custodian to deliver such applicable Note to the Trustee for conversion in accordance with the terms of the applicable Note and such conversion notice (it being agreed between the parties that delivery of such conversion notice shall not satisfy the

Purchaser's obligation to deliver such conversion notice to the Issuer pursuant to the applicable Note).

(b) Each such notice given pursuant to Section 5.2(a) shall be effective (i) if sent by certified mail (return receipt requested), seventy two (72) hours after being deposited in the United States mail, postage prepaid; (ii) if given by telecopier or e-mail, when such telecopied or e-mailed notice is transmitted (with electronic confirmation of transmission or verbal confirmation of receipt); or (iii) if given by any other means, when delivered at the address (including email address) specified in this Section 5.2; provided, however, that notices delivered to the Custodian shall only be deemed effective upon actual receipt by the Custodian.

Section 5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws of such State.

Section 5.4 Severability. To the extent permitted by law, the unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions contained in this Agreement unenforceable or invalid.

Section 5.5 Amendments; Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Custodian and Purchaser (and by the Issuer in the case of any amendment to Section 2.2, Section 3.2, Section 3.5, Section 5.7 or this Section 5.5 adverse to the Issuer in any respect) or, in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 5.6 Non-Assignability. This Agreement and the rights and obligations of the parties hereunder may not be assigned or delegated by either party without the prior written consent of the other party, and any purported assignment without such consent shall be void.

Section 5.7 No Third Party Rights; Successors and Assigns. This Agreement is not intended and shall not be construed to create any rights in any person other than the Custodian and the Purchaser (and, in the case of Section 5.5, the Issuer) and their respective successors and assigns and no person shall assert any rights as third party beneficiary hereunder. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All the covenants and agreements contained in this Agreement by or on behalf of the Custodian and the Purchaser shall bind, and inure to the benefit of, their respective successors and assigns whether so expressed or not.

Section 5.8 Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be an original, but all of which shall constitute a single agreement, with the same effect as if the signatures thereto and hereto were

upon the same instrument. Signature by facsimile, PDF or other similar means shall constitute an original signature for the purposes hereof.

Section 5.9 Representations and Warranties of Purchaser.

(a) Purchaser represents and warrants to the Custodian that it has the right, power and authority (i) to enter into and perform this Agreement, binding itself to the terms hereof; (ii) to give and receive directions and notices hereunder; and (iii) to make all determinations that may be required or that it deems appropriate under this Agreement.

(b) Purchaser acknowledges that the Custodian shall not be deemed to be the agent or representative for the Purchaser for purposes of exercising any rights or remedies of Purchaser under the Indenture or the Notes. Purchaser represents that it will cause the Issuer, the Trustee or any other party in connection with the Indenture to deal with solely with the Purchaser for all matters arising under the Indenture.

[Remainder of page intentionally left blank]

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

THE CUSTODIAN:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Custodian

By: _____
Name: John McNichol
Title: Assistant Vice President

THE PURCHASER:

CVI INVESTMENTS, INC
By: Heights Capital Management, Inc., its authorized agent

By: _____
Name: Martin Kobinger
Title: President

Agreed and accepted solely as to
Section 2.2, Section 3.2, Section 3.5, Section 5.5 and Section 5.7 by:

ISSUER:

FISKER INC.

By: _____
Name:
Title: Chief Financial Officer

SCHEDULE 1

Purchaser	Principal Amount of Notes	Notice and Delivery Information
CVI Investments, Inc.	$340,000,000	CVI Investments, Inc. c/o Heights Capital Management 101 California Street Suite 3250 San Francisco, CA 94111 Attention: Martin Kobinger, Investment Manager E-Mail: martin.kobinger@sig.com

EXHIBIT C

VOTING AGREEMENT

VOTING AGREEMENT, dated as of July [__], 2023 (this "**Agreement**"), by and between Fisker Inc., a Delaware corporation with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**") and the holders of shares of the Company's (i) Class A common stock, par value $0.00001 per share (the "**Class A Common Stock**") and (ii) Class B common stock, $0.00001 par value per share (the "**Class B Common Stock**," and together with the Class A Common Stock, the "**Common Stock**") identified on the signature page hereto (each, a "**Stockholder**" and, together, the "**Stockholders**").

WHEREAS, the Company and CVI Investments, Inc. (the "**Investor**") have entered into a Securities Purchase Agreement, dated as of July 10, 2023 (the "**Securities Purchase Agreement**"), pursuant to which, among other things, the Company has agreed to issue and sell to the Investor and the Investor has agreed to purchase certain senior unsecured convertible notes of the Company (the "**Notes**"), which will be convertible into shares of Class A Common Stock;

WHEREAS, as of the date hereof, the Stockholders own shares of Common Stock (the "**Stockholder Shares**"), which represent (i) approximately 39% of the total issued and outstanding Common Stock of the Company, and (ii) approximately 86% of the total voting power of the Company; and

WHEREAS, as a condition to the willingness of the Investor to enter into the Securities Purchase Agreement and to consummate the transactions contemplated thereby (collectively, the "**Transaction**"), the Investor has required that the Stockholders agree, and in order to induce the Investor to enter into the Securities Purchase Agreement, the Stockholders have agreed, to enter into this Agreement with respect to all the Stockholder Shares now owned and which may hereafter be acquired by the Stockholders and any other securities of the Company (the "**Other Securities**", and together with the Stockholder Shares, the "**Stockholder Securities**"), if any, which the Stockholders are currently entitled to vote, or after the date hereof becomes entitled to vote, at any meeting of the stockholders of the Company.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

VOTING AGREEMENT OF THE STOCKHOLDER

SECTION 1.01. Voting Agreement. Subject to the last sentence of this Section 1.01, each Stockholder hereby agrees that at any meeting of the stockholders of the Company, however called, such Stockholder shall vote the Stockholder Securities, which such Stockholder is currently entitled to vote, or after the date hereof becomes entitled to vote, at any meeting of the stockholders of the Company: (a) in favor of the Stockholder Approval (as defined in the Securities Purchase Agreement) and the Stockholder Resolutions (as defined in the Securities Purchase Agreement), in each case, as described in Section 4(z) of the Securities Purchase Agreement; and (b) against any proposal or any other corporate action or agreement that would result in a breach of any covenant, representation or warranty or any other obligation or

agreement of the Company under the Transaction Documents (as defined in the Securities Purchase Agreement) or which could result in any of the conditions to the Company's obligations under the Transaction Documents not being fulfilled. Each Stockholder acknowledges receipt and review of a copy of the Securities Purchase Agreement and the other Transaction Documents. The obligations of the Stockholders under this Section 1.01 shall terminate immediately following the occurrence of the Stockholder Approval.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Each Stockholder hereby represents and warrants to the Company and the Investor as follows:

SECTION 2.01. Authority Relative to this Agreement. The Stockholder has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Stockholder and constitutes a legal, valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, except (a) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws now or hereafter in effect relating to, or affecting generally, the enforcement of creditors' and other obligees' rights and (b) where the remedy of specific performance or other forms of equitable relief may be subject to certain equitable defenses and principles and to the discretion of the court before which the proceeding may be brought.

SECTION 2.02. No Conflict. (a) The execution and delivery of this Agreement by the Stockholder does not, and the performance of this Agreement by the Stockholder shall not, (i) conflict with or violate any federal, state or local law, statute, ordinance, rule, regulation, order, judgment or decree applicable to the Stockholder or by which the Stockholder Securities owned by the Stockholder are bound or affected or (ii) result in any breach of or constitute a default (or an event that 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, or result in the creation of a lien or encumbrance on any of the Stockholder Securities owned by the Stockholder pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Stockholder is a party or by which the Stockholder or the Stockholder Securities owned by the Stockholder is bound.

(b) The execution and delivery of this Agreement by the Stockholder does not, and the performance of this Agreement by the Stockholder shall not, require any consent, approval, authorization or permit of, or filing with or notification to, any governmental entity by the Stockholder.

SECTION 2.03. Title to the Stock. As of the date hereof, (i) the Mayfair Trust dated 5/14/2017 (the "**Mayfair Trust**") is the owner of 629,218 shares of Class A Common Stock, (ii) the Fisker Foundation is the owner of 229,000 shares of Class A Common Stock, and (iii) each of Henrik Fisker and Dr. Geeta Gupta-Fisker is the owner of 66,177,064 shares of Class B

Common Stock, and each such Stockholder is entitled to vote, without restriction, on all matters brought before holders of capital stock of the Company, which shares of Common Stock represent, in the aggregate, on the date hereof (i) less than 1% of the total issued and outstanding Class A Common Stock of the Company, (ii) 100% of the total issued and outstanding shares of Class B Common Stock and (iii) approximately 86% of the voting power of the Company. Such shares of Common Stock are all the securities of the Company owned, either of record or beneficially, by each Stockholder. Such Common Stock is owned free and clear of all Encumbrances (as defined below). Each Stockholder has not appointed or granted any proxy, which appointment or grant is still effective, with respect to the Common Stock or Other Securities owned by such Stockholder.

ARTICLE III

COVENANTS

SECTION 3.01. No Disposition or Encumbrance of Stock. Each Stockholder hereby covenants and agrees that such Stockholder shall not offer or agree to sell, transfer, tender, assign, hypothecate or otherwise dispose of, grant a proxy or power of attorney with respect to, or create or permit to exist any security interest, lien, claim, pledge, option, right of first refusal, agreement, limitation on the Stockholders' voting rights, charge or other encumbrance of any nature whatsoever ("**Encumbrance"**) with respect to the Stockholder Securities, directly or indirectly, or initiate, solicit or encourage any person to take actions which could reasonably be expected to lead to the occurrence of any of the foregoing.

SECTION 3.02. Company Cooperation. The Company hereby covenants and agrees that it will not, and each Stockholder irrevocably and unconditionally acknowledges and agrees that the Company will not (and waives any rights against the Company in relation thereto), recognize any Encumbrance or agreement (other than this Agreement) on any of the Stockholder Securities subject to this Agreement.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01. Further Assurances. Each Stockholder shall execute and deliver such further documents and instruments and take all further action as may be reasonably necessary in order to consummate the transactions contemplated hereby.

SECTION 4.02. Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that any Investor (without being joined by any other Investor) shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity. Any Investor shall be entitled to its reasonable attorneys' fees in any action brought to enforce this Agreement in which it is the prevailing party.

SECTION 4.03. Entire Agreement. This Agreement constitutes the entire agreement between the Company and the Stockholders (other than the Securities Purchase Agreement and the other Transaction Documents) with respect to the subject matter hereof and

supersedes all prior agreements and understandings, both written and oral, among the Company and the Stockholders with respect to the subject matter hereof.

SECTION 4.04. Amendment. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

SECTION 4.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the terms of this Agreement remain as originally contemplated to the fullest extent possible.

SECTION 4.06. 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.

SECTION 4.07. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the Borough of Manhattan in the City of New York, New York, 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. The parties consent to the jurisdiction and venue of the foregoing courts and consent that any process or notice of motion or other application to any of said courts or a judge thereof may be served inside or outside the State of New York or the Southern District of New York by registered mail, return receipt requested, directed to the party being served at its address set forth on the signature ages to this Agreement (and service so made shall be deemed complete three (3) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of said courts. Each of the Company and each Stockholder irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding brought in such a court and any claim that suit, action, or proceeding has been brought in an inconvenient forum. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

SECTION 4.08. Termination. This Agreement shall automatically terminate immediately following the occurrence of the Stockholder Approval.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the Stockholders and the Company have duly executed this Voting Agreement as of the date first written above.

THE COMPANY:

FISKER INC.

By: _____
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

Address: 1888 Rosecrans Avenue
Manhattan Beach, California 90266

STOCKHOLDERS:

HENRIK FISKER

By: _____

Address: 1888 Rosecrans Avenue
Manhattan Beach, California 90266

DR. GEETA GUPTA-FISKER

By: _____

Address: 1888 Rosecrans Avenue
Manhattan Beach, California 90266

MAYFAIR TRUST DATED 5/14/2017

Henrik Fisker, as Trustee of the Mayfair Trust dated 5/14/2017

By: _____
Name: Henrik Fisker
Title: Trustee

Dr. Geeta Gupta-Fisker, as Trustee of the Mayfair Trust dated 5/14/2017

By: _____
Name: Dr. Geeta Gupta-Fisker
Title: Trustee

FISKER FOUNDATION

HENRIK FISKER

By: _____
Name: Henrik Fisker
Title:

DR. GEETA GUPTA-FISKER

By: _____
Name: Dr. Geeta Gupta-Fisker
Title:

EXHIBIT C-1

EXECUTION COPY

AMENDMENT NO. 1 TO SECURITIES PURCHASE AGREEMENT

This AMENDMENT NO. 1, dated as of September 29, 2023 (this "**Amendment**"), to the SECURITIES PURCHASE AGREEMENT (the "**Securities Purchase Agreement**"), dated as of July 10, 2023, is by and among Fisker Inc., a Delaware corporation with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**"), and the investors signatory thereto (including, the undersigned investor (the "**Investor**"). Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein and defined in the Securities Purchase Agreement shall be used herein as therein defined.

RECITALS

A. The Company and the Investor entered into the Securities Purchase Agreement pursuant to which the Investor agreed to purchase certain Notes of the Company, upon the terms and subject to the conditions set forth therein.

B. The Company and the Investor desire to amend the Securities Purchase Agreement as provided herein.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants and agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. AMENDMENTS. Effective as of the time the Company and the Investor shall have executed and delivered this Amendment (the "**Amendment Time**"), the Securities Purchase Agreement is hereby amended as follows:

(a) RECITAL B of the Securities Purchase Agreement is hereby amended by replacing "680,000,000" with "1,133,333,334".

(b) RECITAL D of the Securities Purchase Agreement is hereby amended by replacing "226,666,667" with "566,666,667".

(c) RECITAL E of the Securities Purchase Agreement is hereby amended by replacing "113,333,333" with "226,666,667".

(d) The first sentence of Section 1(b)(ii)(2) of the Securities Purchase Agreement is hereby amended by replacing "at any time on or after the first anniversary of the Initial Closing Date" with "at any time after (A) with respect to the initial $170,000,000 of Additional Optional Notes Amount, September 27, 2023, (B) with respect to the next $226,666,667 of Additional Optional Notes Amount, December 29, 2023 or (C) with respect to the remaining $170,000,000 of Additional Optional Notes Amount, March 29, 2024".

(e) The last sentence of Section 1(b)(ii)(2) of the Securities Purchase Agreement is hereby amended by replacing "eighteen month anniversary of the Initial Closing Date" with "March 29, 2026".

(f) Section 1 is hereby amended to add the following as Section 1(e):

> (e) Requested Additional Notes; Acceleration Temporary Ceiling. If a Buyer consummates an Additional Closing to purchase at least $170 million in aggregate principal amount of Additional Notes during the period commencing on the date hereof and ending on October 2, 2023, with respect to any Notes (including, without limitation, the Initial Notes and any Additional Notes) outstanding during such period, if such holder of a Note requests an Acceleration (as defined in such Note) prior to January 11, 2024 at a time when the Acceleration Conversion Price (as defined in the Notes) is greater than the Installment Conversion Price (as defined in the Notes) for the July 11, 2023 Installment Date (as defined in the Notes) of the Initial Notes (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events) (the "**Acceleration Temporary Ceiling**"), in accordance with Section 7(f) of such Note, the Company hereby agrees that the Conversion Price (as defined in such Note) of such portion of such Note that would otherwise have been converted in such Acceleration shall be automatically reduced to the Acceleration Temporary Ceiling and, in lieu of such Acceleration, such conversion shall be settled as a voluntary optional conversion in accordance with Section 3 of such Note.

(g) Section 3(c) is hereby amended by replacing "Stockholder Meeting Deadline" with "Additional Stockholder Approval Deadline" and "275 million shares of Common Stock" with "782 million shares of Common Stock".

(h) Section 4(n) is hereby amended by replacing "275 million shares of Common Stock" with "782 million shares of Common Stock".

(i) Section 4(q) is hereby amended to replace "the first anniversary of the Initial Closing Date" with "September 29, 2024".

(j) Section 4 is hereby amended to add the following as Section 4(cc):

> Additional Stockholder Approval. Either (x) if the Company shall have obtained the prior written consent of the requisite stockholders (the "**Stockholder Consent**") to obtain the Additional 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 an information statement with respect thereto, which shall be effective no later than January 31, 2024 (the "**Additional Stockholder Approval Deadline**") or (y) provide each

stockholder entitled to vote at a special meeting of stockholders of the Company (the "**Additional Stockholder Meeting**"), which shall be promptly called and held not later than the Additional Stockholder Approval Deadline, a proxy statement in a form reasonably acceptable to the Investor 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 shall solicit each of the Company's stockholder's affirmative vote at the Additional Stockholder Meeting for approval of resolutions ("**Additional Stockholder Resolutions**") providing for (x) the approval of the issuance of such portion of the Securities issued or issuable solely with respect to an Additional Closing in compliance with the rules and regulations of the Principal Market (without regard to any limitations on conversion set forth in the applicable Notes) and (y) the increase of the authorized shares of the Company from 1,250,000,000 to 2,000,000,000 (such affirmative approval (either by an effective Written Consent or affirmative vote at an Additional Stockholder Meeting, being referred to herein as the "**Additional Stockholder Approval**", and the date such Additional Stockholder Approval is obtained, the "**Additional 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 Additional Stockholder Approval by the Additional Stockholder Approval Deadline. If, despite the Company's reasonable best efforts the Additional Stockholder Approval is not obtained on or prior to the Additional Stockholder Approval Deadline, the Company shall cause an additional Additional Stockholder Meeting to be held on or prior to March 31, 2024. If, despite the Company's reasonable best efforts the Additional Stockholder Approval is not obtained after such subsequent stockholder meetings, the Company shall cause an additional Additional Stockholder Meeting to be held semi-annually thereafter until such Additional Stockholder Approval is obtained.

(k) Section 7(b)(xxi) shall be amended by replacing "Stockholder Approval" with "Additional Stockholder Approval".

(l) Column (4) of the Schedule of Buyers attached to the Securities Purchase Agreement is hereby amended by replacing "226,666,667" with "566,666,667".

(m) Column (5) of the Schedule of Buyers attached to the Securities Purchase Agreement is hereby amended by replacing "113,333,334" with "226,666,667".

2. MISCELLANEOUS

(a) Disclosure of Transactions and Other Material Information. The Company shall, on or before 9:30 a.m., New York time, on the first Trading Day after the date of this Amendment, file a Current Report on Form 8-K, describing all the material terms of the transactions contemplated by this Amendment in the form required by the 1934 Act, and attaching this Amendment (including all attachments, the "**8-K Filing**"). From and after the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) delivered to the Investor 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 Amendments and the Transaction Documents (including, without limitation, attaching the form of this Amendment and the Waiver Documents). In addition, effective upon the filing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Investor or any of its affiliates, on the other hand, shall terminate.

(b) Acknowledgement; Reaffirmation of Obligations; Consent. The Company hereby confirms and agrees that following the Amendment Time, except as set forth in Section 1 above, the Securities Purchase Agreement and each of the other Transaction Documents are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects.

(c) Fees. The Company shall reimburse Kelley Drye & Warren LLP, on demand, a non-accountable amount of $25,000 (the "**Legal Fee Amount**") 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), which the Company directs the Investor to pay by holding back such Legal Fee Amount from the Purchase Price of the Requested Notes.

(d) General. The provisions of Section 9 of the Securities Purchase Agreement are hereby incorporated by reference herein, *mutatis mutandis*.

[The remainder of the page is intentionally left blank]

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

COMPANY:

FISKER INC.

By: Geeta Gupta-Fisker (Sep 28, 2023 07:23 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

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

INVESTOR:

CVI INVESTMENTS, INC.

By: Heights Capital Management, Inc.,
its authorized agent

By: _____
Name: Martin Kobinger
Title: President

DISCLOSURE SCHEDULES TO
SECURITIES PURCHASE AGREEMENT

These Disclosure Schedules (the "**Disclosure Schedules**") are the Disclosure Schedules referred to in that certain Securities Purchase Agreement, dated as of July 10, 2023, as amended by that certain Amendment No. 1 to Securities Purchase Agreement, dated as of September 29, 2023, by and among Fisker Inc. and the investors listed on the Schedule of Buyers attached thereto (as amended, the "**Agreement**"). Unless otherwise indicated, all capitalized terms contained herein shall have the same meaning ascribed to such terms in the Agreement.

Except as expressly provided herein or in the Agreement, information and disclosures contained in the Disclosure Schedules are made as of the date of the Agreement and the Closing Date, and the accuracy of such information and disclosures is confirmed only as of the date of the Agreement and the Closing Date and not any time thereafter.

Disclosures made in any section of the Disclosure Schedules shall be deemed to be disclosed for purposes of, and shall qualify, the corresponding section or subsection of this Agreement.

The information disclosed in the Disclosure Schedules is disclosed in furtherance of, and should not be used for any purpose except in furtherance of, the transactions contemplated in the Agreement and each party's enforcement of their respective rights granted under the Agreement.

SCHEDULE 3(a)

COMPANY SUBSIDIARIES

1. Fisker Group Inc.
2. Fisker Belgium SRL
3. Fisker Canada Ltd.
4. Fisker (Shanghai) Motors Ltd.
5. Fisker Denmark ApS
6. Fisker France SAS
7. Fisker GmbH
8. Fisker GmbH
9. Fisker Vigyan India Private Limited
10. Fisker Ireland Limited
11. Ocean E.V.
12. Fisker Netherlands B.V.
13. Fisker Netherlands Sales B.V.
14. Fisker Norway AS
15. Fisker Spain, SL
16. Fisker Sweden AB
17. Fisker Switzerland GmbH
18. Fisker Switzerland Sales GmbH
19. Fisker (GB) Limited
20. Blue Current Holding LLC.
21. Fisker TN LLC
22. Platinum IPR LLC.
23. Terra Energy Inc.

SCHEDULE 3(g)

FEES AND EXPENSES TO FINANCIAL ADVISORS

1. $1,500,000 to Cowen and Co.

SCHEDULE 3(r)(ii)

AUTHORIZED AND OUTSTANDING CAPITAL STOCK

A. 1,250,000,000 shares of Class A Common Stock, of which 210,885,860 are issued and outstanding as of September 25, 2023.

SCHEDULE 3(r)(iii)

AVAILABLE SHARES; AFFILIATES

A. Reserved for issuance pursuant to Convertible Securities (other than the Notes): 121,458,783 shares.

B. As of the date hereof, owned by Persons who are "affiliates":[1]

1. 81,867,237 shares owned by Henrik Fisker

2. 81,867,237 shares owned by Dr. Geeta Gupta-Fisker

[1] Shares owned consists of (i) 66,177,064 shares of Class B common stock, (ii) 629,218 shares of Class A common stock held by the Mayfair Trust, (iii) 229,000 shares of Class A common stock held by the Fisker Foundation, and (iv) 14,831,955 shares of Class A common stock issuable upon the exercise of stock options held by the Mayfair Trust that are exercisable within 60 days of the date hereof. Mr. Fisker and Dr. Gupta-Fisker share voting and dispositive power with respect to the shares held by the Mayfair Trust and the Fisker Foundation and may be deemed to beneficially own the shares of Class A common stock held by the Mayfair Trust and the Fisker Foundation.

SCHEDULE 3(s)

INDEBTEDNESS

(A)	Borrowed money:	2026 Convertible Notes	$667,500,000
		2025 Convertible Notes	$337,000,000
(B)	Deferred purchase price of property, including leases:	** ROU for leased properties & Magna owned assets	$129,037,000
(C)	Reimbursement or payment obligations - LOCs, surety bonds and other similar instruments:	LOC - CATL and other	$100,000,000
(D)	Obligations evidenced by notes, bonds, debentures or similar instruments:		$ -
(E)	Indebtedness under any conditional sale or other title retention agreement:		$ -
(F)	Monetary obligations under any leasing or similar arrangement classified as a capital lease:		$ -
(G)	Indebtedness referred to in (A) through (F) above, secured by any Lien:		$ -
(H)	Contingent Obligations:	Refer to fn.2 below[2]	$ -
(I)	Other:		$100,000,000
Indebtedness			**$1,333,537,000**

[2] Contingent Obligation as defined in the SPA does not align with US GAAP and is not defined in the FASB Accounting Standards Codification. For accounting purposes, we evaluated (H) based on the guidance found in ASC 460, Guarantees.

SCHEDULE 3(t)

LITIGATION

None.

SCHEDULE 3(x)(i)

PATENTS

1. US11,260729
2. US11,220,182
3. US11,465,502
4. USD809972
5. USD840874
6. USD869710
7. USD832742
8. USD944119
9. USD760930
10. USD970412
11. USD991112

SCHEDULE 3(x)(ii)

EXPIRED, TERMINATED, ABANDONED IP

1. US16/347,956
2. US16/549,593
3. US16/549,687
4. US16/969,815
5. US29/564,949
6. US29/582,714
7. US29/619,730
8. US29/683,474
9. US29/695,101
10. US29/746,663
11. MX2019005336
12. IN201917018773
13. JP2019545894
14. CN201780077541.6
15. CN201980023442.9
16. CA3043171
17. EP17801254A
18. EP19755026A
19. KR1020197015282

SCHEDULE 3(nn)

MANAGEMENT

1. In 2013, Fisker Automotive, Inc. voluntarily filed for Chapter 11 bankruptcy with the United States Bankruptcy Court for the District of Delaware (Case Numbers: 1:13bk13086 and 1:13bk13087). These proceedings concluded on August 25, 2021 and September 27, 2021, respectively.

SCHEDULE 4(g)

USE OF PROCEEDS

1. Payments due on the $667.5 million principal amount of 2.50% convertible senior notes due in September 2026.

SCHEDULE 7(a)(xxi)

STOCKHOLDERS

1. Henrik Fisker

2. Dr. Geeta Gupta-Fisker

EXHIBIT C-2

Execution Version

AMENDMENT AND WAIVER AGREEMENT

This Amendment and Waiver Agreement (this "**Agreement**") is entered into as of the 22nd day of November, 2023, by and between Fisker Inc., a Delaware corporation (the "**Company**") and the investor signatory hereto (the "**Investor**"), with reference to the following facts:

A. Prior to the date hereof, pursuant to that Securities Purchase Agreement, dated as of July 10, 2023, by and between the Company and the investor party thereto (as amended, modified or waived from time to time, the "**Securities Purchase Agreement**"), the Company, among other things, issued $340,000,000 in aggregate original principal amount of Series A-1 senior convertible notes due 2025 (the "**Series A-1 Notes**") and $170,000,000 in aggregate original principal amount of Series B-1 senior convertible notes due 2025 (the "**Series B-1 Notes**," and together with the Series A-1 Notes, the "**Existing Notes**"). Capitalized terms not defined herein shall have the meaning set forth in the Securities Purchase Agreement.

B. As of the date hereof, the Company has failed to timely file its quarterly report on Form 10-Q for the quarter ended September 30, 2023 (the "**Existing Default**").

C. The Company desires to obtain a waiver, in part, of the Existing Default such that the Existing Default shall cease to be an Event of Default (as defined in the Note) (other than with respect to Section 30(nnn) of the Notes) (the "**Limited Waiver**"), and, in connection therewith, has agreed to grant (the "**Security Grant**") each holder of Notes (including the Existing Notes) a security interest in certain assets of the Company and its Subsidiaries, as described in (i) that certain supplemental indenture, in the form attached hereto as **Exhibit A** (the "**Security Grant Supplemental Indenture**"), (ii) that certain Pledge Agreement, in the form attached hereto as **Exhibit B** (the "**Pledge Agreement**") and (iii) that certain security agreement, by and among the Company, the Investor and certain subsidiaries of the Company and such other security documents and certificates as specified in the Pledge Agreement, together with the Pledge Agreement and the Security Grant Supplemental Indenture, collectively, the "**Security Documents**".

D. The Company and the Investor desire to amend certain terms and conditions of the Transaction Documents and waive, in part, certain terms and conditions of the Transaction Documents to effectuate the Security Grant, as provided herein and in the Security Documents.

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

1. **Amendments**. Effective as of the date hereof, the Securities Purchase Agreement, the Notes (including the Existing Notes) and each of the other Transaction Documents are hereby amended as follows (and any such agreements, covenants and related provisions therein shall be deemed incorporated by reference herein, *mutatis mutandis*, as amended as such):

(a) The defined term "Transaction Documents" is hereby amended to include this Agreement, the Guaranty (as defined in the Pledge Agreement), the Security Grant Supplemental Indenture and the Security Documents.

(b) The defined term "Security Documents", "Pledge Agreement", and "Security Grant Supplemental Indenture" shall have the meaning as set forth in this Agreement and "Collateral" shall have the meaning as set forth in the Pledge Agreement.

(c) The Notes (including any Existing Notes) shall be senior secured convertible notes, with such security interest as provided in the Security Documents.

2. **Limited Waiver**. Effective upon (a) the due execution and delivery by the Company, the Investor and, where applicable, each direct and indirect U.S. subsidiary of the Company and/or the Trustee, as applicable, of the Pledge Agreement, and the Security Grant Supplemental Indenture and (b) the satisfaction in full of any covenant or agreement therein required to be completed as of the date of execution thereof as required therein (other than, for the avoidance of doubt, terms or agreements to be entered into following the execution thereof), (i) in exchange for the Security Grant, the Investor hereby grants the Limited Waiver and (ii) the Investor hereby waives Section 13(o) of the Notes, in part, and amends each of the Notes and the form of Note attached to the Securities Purchase Agreement, as applicable, such that "$340,000,000" shall be reduced to $250,000,000.

3. **Ratifications**. Except as otherwise expressly provided herein, the Securities Purchase Agreement, and each other Transaction Document, 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 date hereof: (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.

4. **Replacement Registration Statement**. On or prior to January 31, 2024, the Company shall file a Registration Statement on Form S-1 (or such other available form) to register the issuance of the Additional Notes to permit one or more Additional Closings, when and as required, in accordance with the terms of the Securities Purchase Agreement (each, a "**Replacement Registration Statement**"). The Company shall use its reasonable best efforts to cause each Replacement Registration Statement (a) to clear all comments with the SEC as soon as reasonably practicable after the date of filing of such Replacement Registration Statement, but in no event later than the 90th (ninetieth) calendar day after such applicable filing date and (b) to be accelerated and become effective to permit each applicable Additional Closing, when and as required, in accordance with the terms of the Securities Purchase Agreement.

5. **Fees**. The Company shall promptly reimburse Kelley Drye & Warren, LLP (counsel to the Investor), on demand, a non-accountable amount of $75,000 for the costs and expenses incurred by it in connection with preparing and delivering this Agreement and the Security Documents and shall reimburse the Investor for any additional costs and expenses incurred in connection with the satisfaction of the terms and conditions thereof.

6. **Disclosure of Transaction**. On or before 9:00 a.m., New York time, on the first (1st) Business Day after the date of this Agreement, the Company shall file a Quarterly Report on Form 10-Q describing all the material terms of the transactions contemplated by this Agreement and the Pledge Agreement in the form required by the Exchange Act and attaching this Agreement

(including all attachments, the "**10-Q Filing**"). From and after the filing of the 10-Q Filing, the Company shall have disclosed all material, non-public information (if any) provided to the Investor by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated hereby and pursuant to and the Pledge Agreement. In addition, effective upon the filing of the 10-Q Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Investor or any of its affiliates, on the other hand, relating to the transactions contemplated hereby and pursuant to the Transaction Documents, shall terminate. 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 the Investor shall not have (unless expressly agreed to by the Investor after the date hereof in a written definitive and binding agreement executed by the Company and the Investor), any duty of confidentiality with respect to any material, non-public information regarding the Company or any of its Subsidiaries.

7. **Reliance by Trustee**. The Company and the Investor acknowledge and agree that Wilmington Savings Fund Society, FSB, as trustee, is an intended **third-party beneficiary** of this Agreement and is entitled to rely upon its terms for all purposes of the Indenture (as defined in the Indenture) and the Security Grant Supplemental Indenture.

8. **Miscellaneous Provisions.** Section 9 of the Securities Purchase Agreement (as amended hereby) is hereby incorporated by reference herein, *mutatis mutandis*.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the Investor and the Company have executed this Agreement as of the date set forth on the first page of this Agreement.

COMPANY:

FISKER INC.

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

IN WITNESS WHEREOF, the Investor and the Company have executed this Agreement as of the date set forth on the first page of this Agreement.

INVESTOR:

CVI INVESTMENTS, INC.
C/O Heights Capital Management, Inc.; its authorized agent

By:_____
Name: Martin Kobinger
Title: President

EXHIBIT A

Form of Security Grant Supplemental Indenture

See attached.

Execution Version

THIRD SUPPLEMENTAL INDENTURE TO
INDENTURE

Dated as of November 22, 2023

WILMINGTON SAVINGS FUND SOCIETY, FSB,

as Trustee,

CVI INVESTMENTS, INC.,

as Collateral Agent, and

The Guarantors (as defined herein) signatory hereto

Series A-1 Senior Convertible Note Due 2025
Series B-1 Senior Convertible Note Due 2025

FISKER INC.

THIRD SUPPLEMENTAL INDENTURE TO INDENTURE DATED JULY 11, 2023

Series A-1 Senior Convertible Note Due 2025
Series B-1 Senior Convertible Note Due 2025

THIRD SUPPLEMENTAL INDENTURE, dated as of November 22, 2023 (this "**Third Supplemental Indenture**"), by and among **FISKER INC.**, a Delaware corporation (the "**Company**"), **CVI INVESTMENTS, INC.** ("**Collateral Agent**"), the Guarantors (as defined below), and **WILMINGTON SAVINGS FUND SOCIETY, FSB**, as Trustee (the "**Trustee**").

RECITALS

A. The Company filed a registration statement on Form S-3 on December 23, 2021 (File Number 333-261875) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**SEC**") pursuant to Rule 415 under the Securities Act of 1933, as amended (the "**Securities Act**") and the Registration Statement has been declared effective by the SEC on January 4, 2022.

B. The Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 11, 2023 (the "**Base Indenture**"), the First Supplemental Indenture dated July 11, 2023 (the "**First Supplemental Indenture**") and the Second Supplemental Indenture dated September 29, 2023 (the "**Second Supplemental Indenture**" and, collectively with the Base Indenture and the First Supplemental Indenture, the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company.

C. The Indenture has been qualified under the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**").

D. Section 2 of the Indenture provides for various matters with respect to any series of Securities issued under the Indenture to be established in an indenture supplemental to the Indenture.

E. Section 9.01 of the Indenture provides that, without the consent of the Holders, for the Company and the Trustee may enter into an indenture supplemental to the Indenture to establish the form or terms of Securities of any series as provided by Section 2 of the Indenture.

F. In accordance with that certain Securities Purchase Agreement, dated July 10, 2023, as amended by that certain Amendment No. 1 to Securities Purchase Agreement dated as of September 29, 2023 (as so amended, the "**Securities Purchase Agreement**"), by and among the Company and the investors party thereto, at the applicable Closing (as defined in the Securities

Purchase Agreement) the Company sold $510,000,000 in original aggregate principal amount of Notes.

G. The parties hereby desire to supplement the Indenture pursuant to this Third Supplemental Indenture to set forth the terms and conditions of the Security Documents (defined below).

NOW, THEREFORE, THIS THIRD SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the issuance of the series of Securities provided for herein, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of such series, as follows:

ARTICLE I

RELATION TO INDENTURE; DEFINITIONS

Section 1.1. RELATION TO INDENTURE. This Third Supplemental Indenture constitutes an integral part of the Indenture.

Section 1.2. DEFINITIONS. For all purposes of this Third Supplemental Indenture:

(a) Capitalized terms used herein without definition shall have the meanings specified in the Indenture or in the Notes, as applicable;

(b) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Third Supplemental Indenture; and

(c) The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Third Supplemental Indenture.

ARTICLE II

GUARANTY; PLEDGE AND GRANT OF SECURITY INTERESTS

Section 2.1. GUARANTY. The obligations under the Transaction Documents will be guaranteed by the direct and indirect subsidiaries of the Company set forth on Schedule 2.1 hereto (collectively, the "**Guarantors**"), as evidenced by a guaranty to be entered into by the Guarantors in favor of the Collateral Agent (the "**Guaranty**").

Section 2.2. SECURITY. The Notes shall be secured by a first priority perfected security interest in substantially all of the existing and future assets of the Company and the Guarantors, including a pledge of all of the share capital in each of the Guarantors, as evidenced by a pledge agreement in the form attached hereto as Exhibit A (the "**Pledge Agreement**" and together with a security agreement by and among the Company, the Collateral Agent and the Guarantors, this Third Supplemental Indenture and such other security documents and agreements from time to time entered into by the Company or its Subsidiaries in favor of the Collateral Agent

to secure the obligations under the Transaction Documents, as each may be amended, restated, supplemented or otherwise modified from time to time, collectively, the "**Security Documents**").

Section 2.3. COLLATERAL AGENT. CVI Investments, Inc. shall initially be the collateral agent hereunder and under the other Security Documents (in such capacity, the "**Collateral Agent**"), and (ii) each holder of Notes (each, an "**Investor**"), by accepting such Notes, shall be deemed to have authorized the Collateral Agent (and its officers, directors, employees and agents) to take such action on such Investor's behalf in accordance with the terms of the Transaction Documents. The Collateral Agent shall not have, by reason hereof or any of the other Security Documents, a fiduciary relationship in respect of any Investor. Neither the Collateral Agent nor any of its officers, directors, employees or agents shall have any liability to any Investor 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 the Investor 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.

Section 2.4. SUCCESSOR COLLATERAL AGENT.

(a) 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 holders of a majority in aggregate principal amount of the Notes then outstanding may, by written consent, remove the Collateral Agent from all its functions and duties hereunder and under the other Transaction Documents.

(b) 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 collateral 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 Section 2.3 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.

(c) 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.

(d) In the event that a successor Collateral Agent is appointed pursuant to the provisions of this Section 2.4 that is not an Investor or an affiliate of any Investor (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 2.4), 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.

Section 2.5. PERFECTION. To the extent required by the Security Documents, the Company shall deliver 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.

Section 2.6. COVENANTS. In addition to any covenants set forth in Article 4 of the Indenture, the Company shall comply with the additional covenants set forth in Security Agreement and the Guaranty.

Section 2.7. TRUSTEE MATTERS.

(a) Duties. The Trustee has no obligation to undertake any of the duties of the Collateral Agent as set forth is this Third Supplemental Indenture.

(b) Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and perform such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the Indenture and this Third Supplemental Indenture.

(c) Expense. Notwithstanding anything in the Indenture to the contrary, any actions taken by the Trustee in any capacity shall be at the Company's reasonable expense.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1. PAYMENT OF EXPENSES. The Company shall pay all reasonable, documented out-of-pocket costs and expenses of the Trustee relating to the execution and delivery of this Third Supplemental Indenture, the Security Documents and the Guaranty, as applicable, and all compensation and expenses of the Trustee under the Indenture in accordance with the provisions of Section 7.07 of the Indenture.

Section 3.2. TRUSTEE AND COLLATERAL AGENT NOT RESPONSIBLE FOR RECITALS. The recitals herein contained are made by the Company and not by the Trustee or the Collateral Agent, and the Trustee and the Collateral Agent assume no responsibility for the correctness thereof. The Trustee and the Collateral Agent make no representation as to the validity or sufficiency of this Third Supplemental Indenture.

Section 3.3. ADOPTION, RATIFICATION AND CONFIRMATION. Except as expressly amended, supplemented and modified by this Third Supplemental Indenture, the Base Indenture, the First Supplemental Indenture and the Second Supplemental Indenture are in all respects ratified and confirmed and the Base Indenture, the First Supplemental Indenture and the Second Supplemental Indenture as so amended hereby shall be read, taken and construed as one and the same instrument.

Section 3.4. CONFLICT WITH INDENTURE; TRUST INDENTURE ACT. Notwithstanding anything to the contrary in the Indenture, if any conflict arises between the terms and conditions of this Third Supplemental Indenture (including, without limitation, the terms and conditions of the Notes) and the Indenture, the terms and conditions of this Third Supplemental Indenture (including the Notes) shall control; provided, however, that if any provision of this Third Supplemental Indenture or the Notes limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required thereunder to be a part of and govern this Third Supplemental Indenture, the latter provisions shall control. If any provision of this Third Supplemental Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded,

the latter provisions shall be deemed to apply to the Indenture as so modified or excluded, as the case may be.

Section 3.5. AMENDMENTS; WAIVER. This Third Supplemental Indenture may be amended by the written consent of the Company and the Required Holders (as defined in the Notes); provided however, no amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent. Notwithstanding anything in any other Transaction Document to the contrary, no amendment to any Transaction Document that adversely impact the rights, duties, immunities or liabilities of the Trustee hereunder, pursuant to the Indenture and/or the Notes, as applicable, shall be effective without the Trustee's prior written consent. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

Section 3.6. SUCCESSORS. This Third Supplemental Indenture shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes.

Section 3.7. SEVERABILITY; ENTIRE AGREEMENT. If any provision of this Third Supplemental Indenture shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Third Supplemental Indenture in that jurisdiction or the validity or enforceability of any provision of this Third Supplemental Indenture in any other jurisdiction.

Section 3.8. The Indenture, this Third Supplemental Indenture, the Transaction Documents and the exhibits hereto and thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 3.9. COUNTERPARTS. This Third Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 3.10. GOVERNING LAW. This Third Supplemental Indenture and the Indenture shall each be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 of the Notes, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The Borough of Manhattan, New York, 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 22 of the Notes. **THE COMPANY 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 THIRD SUPPLEMENTAL INDENTURE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

Section 3.11. U.S.A. PATRIOT ACT. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Supplemental Indenture agree that they shall provide the Trustee with such information as it may reasonably request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed on the date or dates indicated in the acknowledgments and as of the day and year first above written.

FISKER INC.

By:_____
Name:
Title:

FISKER GROUP INC.

By:_____
Name:
Title:

FISKER GMBH

By:_____
Name:
Title:

CVI INVESTMENTS, INC.,
as Collateral Agent
C/O Heights Capital Management, Inc., its authorized agent

By:_____
Name: Martin Kobinger
Title: President

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By:_____
Name: Patrick J. Healy
Title: Senior Vice President

Schedule 2.1

Fisker Group Inc.

Fisker GmbH [Austrian Subsidiary]

Exhibit A

Form of Pledge Agreement

EXHIBIT B

Form of Pledge Agreement

See attached.

PLEDGE AGREEMENT

PLEDGE AGREEMENT, dated as of November 22, 2023 (this "**Agreement**"), made by Fisker Inc., a company organized under the laws of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**"), and each of the undersigned Subsidiaries (as defined below) of the Company from time to time, if any (each a "**Grantor**" and together with the Company, collectively, the "**Grantors**"), in favor of CVI Investments, Inc. with offices located at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, in its capacity as collateral agent (together with its successors and assignees, in such capacity, the "**Collateral Agent**") for the Noteholders (as defined below).

W I T N E S S E T H:

WHEREAS, the Company is party to that certain Securities Purchase Agreement, dated as of July 10, 2023, (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**") by and among the Company and each party listed as an "Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company shall be required to sell, and the Investor shall purchase or have the right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**") providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, under the terms of the Indenture, the Investor shall have executed and delivered to the Collateral Agent this Agreement providing for the grant to the Collateral Agent, for the ratable benefit of itself and the Noteholders, of a valid, enforceable, and perfected security interest in certain assets of each Grantor to secure all of the Company's obligations under the Transaction Documents; and

WHEREAS, the Grantors are Affiliates that are part of a common enterprise such that each Grantor will derive substantial direct and indirect financial and other benefits from the consummation of the transactions contemplated under the Transaction Documents and, accordingly, the consummation of such transactions are in the best interests of each Grantor;

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Investor to perform under the Securities Purchase Agreement, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows:

SECTION 1. Definitions.

(a) Reference is hereby made to the Securities Purchase Agreement, the Indenture and the Notes for a statement of the terms thereof. All terms used in this Agreement and the recitals hereto which are defined in the Securities Purchase Agreement, the Notes or in the Code, and which are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Code on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of the Code except as the Collateral Agent may otherwise determine in its sole and absolute discretion.

(b) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"**Affiliate**" of any Person means any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person and any officer or director of such Person. Without limiting the generality of the foregoing, a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"**Bankruptcy Code**" means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

"**Bankruptcy Event of Default**" shall have the meaning set forth in the Note.

"**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.

"**Investor**" or "**Investors**" shall have the meaning set forth in the recitals hereto.

"**Capital Stock**" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not an individual or a corporation, any and all partnership, membership, trust or other equity interests of such Person.

"**Code**" means Articles 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes

of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Collateral**" shall have the meaning set forth in Section 3(a) of this Agreement.

"**Collateral Agent**" shall have the meaning set forth in the preamble hereto.

"**Company**" shall have the meaning set forth in the preamble hereto.

"**Domestic Subsidiary**" means any Subsidiary other than a Foreign Subsidiary.

"**Event of Default**" shall have the meaning set forth in Section 4(a) of the Notes.

"**Excluded Accounts**" means any deposit accounts or securities accounts that are maintained exclusively by any Grantor for one or more of the purposes described in the following clauses: (a) payroll, healthcare and other employee wage and benefit accounts and (b) tax accounts, including, without limitation, sales tax accounts and payroll or withholding tax accounts.

"**Excluded Property**" means (a)(i) any governmental licenses or state or local franchises, charters and authorizations to the extent the grant of a security interest is prohibited or restricted thereby (except to the extent such prohibition or restriction is ineffective under the Code or other applicable law) other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (ii) any property or assets as to which pledges thereof or security interests therein are prohibited or restricted by applicable law (including any requirement to obtain the consent of any (x) governmental authority or (y) similar regulatory third party, in each case, except to the extent such consent has been obtained) after giving effect to the applicable anti-assignment provisions of the Code and other applicable law (provided that such property shall be Excluded Property only to the extent and for so long as such prohibition is in effect); (iii) any lease, license or other contract or agreement or any property or assets subject to an agreement binding on and relating to such property at the time of acquisition thereof (and not entered into in contemplation of such acquisition), to the extent that a grant of a Lien therein would violate or invalidate, such lease, license or other contract or agreement or create a right of termination or right of acceleration in favor of any party (other than the Company or any of its Subsidiaries) thereto or otherwise require consent (other than the Company or any of its Subsidiaries) thereunder (after giving effect to the applicable anti-assignment provisions of the Code or other applicable law) other than proceeds and receivables thereof; (iv) any Excluded Accounts; (v) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto; (iv) any property subject to a purchase money arrangement or finance lease to the extent that a grant of a security interest therein would violate or invalidate such purchase money arrangement or finance lease or create a right of termination in favor of any other party thereto (other than the Company or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law, other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (vii) the portion of the voting Capital Stock of any Foreign Subsidiary in excess of 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary to the extent that at any time the pledging of more than 65% of the total outstanding voting Capital Stock of such Foreign Subsidiary would result in a material adverse tax consequence to a Grantor; (viii)

any "margin stock", as such term is defined in Regulation U promulgated by the Board of Governors of the Federal Reserve System of the United States of America.

Notwithstanding anything to the contrary, "Excluded Property" shall not include any proceeds, products, substitutions or replacements of any "Excluded Property" referred to in clauses (i) through (viii) (unless such proceeds, substitutions or replacements would constitute "Excluded Property" referred to in any of clauses (i) through (viii)).

"**Foreign Subsidiary**" means any Subsidiary of a Grantor organized under the laws of a jurisdiction other than the United States, any of the states thereof, Puerto Rico or the District of Columbia.

"**Governmental Authority**" means any nation or government, any Federal, state, city, town, municipality, county, local, foreign or other political subdivision thereof or thereto and any department, commission, board, bureau, court, tribunal, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guaranty**" mean any guarantee in form and substance acceptable to and in favor of the Collateral Agent, for the ratable benefit of itself and the Noteholders, with respect to the Company's obligations under the Securities Purchase Agreement, the Notes and the other Transaction Documents (as defined in the Securities Purchase Agreement).

"**Insolvency Proceeding**" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law or law for the relief of debtors, any proceeding relating to assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or any proceeding seeking reorganization, arrangement, or other similar relief.

"**Lien**" means any mortgage, lien, pledge, charge, security interest, adverse claim or other encumbrance upon or in any property or assets.

"Noteholders" means, at any time, the holders of the Notes at such time.

"**Notes**" shall have the meaning set forth in the recitals hereto.

"**Obligations**" shall have the meaning set forth in Section 4 of this Agreement.

"**Paid in Full"** or "**Payment in Full"** means the indefeasible payment in full in cash of all of the Obligations.

"**Perfection Requirement" or "Perfection Requirements**" shall have the meaning set forth in Section 5(j) of this Agreement.

"**Permitted Liens**" shall have the meaning set forth in the Notes.

"**Person**" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"**Pledged Collateral**" shall have the meaning set forth in Section 2(a).

"**Pledged Entity**" means, each Person listed from time to time on Schedule I hereto as a "Pledged Entity," together with each other Person, any right in or interest in or to all or a portion of whose Securities or Capital Stock is acquired or otherwise owned by a Grantor after the date hereof.

"**Pledged Equity**" means all of each Grantor's right, title and interest in and to all of the Securities and Capital Stock now or hereafter owned by such Grantor (including, without limitation, those interests listed opposite the name of such Grantor on Schedule I), regardless of class or designation, including all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including, without limitation, any certificates representing such Securities and/or Capital Stock, the right to receive any certificates representing any of such Securities and/or Capital Stock, all warrants, options, subscription, share appreciation rights and other rights, contractual or otherwise, in respect thereof, and the right to receive dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and 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 foregoing.

"**Securities Purchase Agreement**" shall have the meaning set forth in the recitals hereto.

"Subsidiary" means any Person in which a Grantor 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 all of the foregoing, collectively, "**Subsidiaries**".

SECTION 2. Pledge of Pledged Collateral.

(a) As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby assigns and pledges to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under all of the following, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired: (i) the Pledged Equity; (ii) subject to all payments of principal or interest, dividends, distributions, cash, Securities, Instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the Pledged Equity; (iii) all rights and privileges of such Grantor with respect to the Securities and other property referred to in clauses (i) and (ii) and above; (iv) all Proceeds of, and Security Entitlements in respect of, any of the foregoing and (v) all books and records pertaining to the items described in clauses (i) through (iv) above (the items referred to in clauses (i) through (v) above being collectively referred to as the "**Pledged Collateral**"); provided that the Pledged Collateral shall not include Excluded Property.

(b) All of the Pledged Equity is presently owned by the applicable Grantor as set forth in Schedule I free and clear of all Liens other than Permitted Liens, and is presently represented by the certificates listed on Schedule I hereto (if applicable). As of the date hereof,

there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Pledged Equity other than as contemplated and permitted by the Transaction Documents. Each Grantor is the sole holder of record and the sole beneficial owner of the Pledged Equity, as applicable. All of the Pledged Equity has been duly and validly authorized and issued by the issuer thereof and (i) in the case of Pledged Equity (other than Pledged Equity consisting of limited liability company interests or partnership interests which, pursuant to the relevant organizational or formation documents, cannot be fully paid and non-assessable), is fully paid and non-assessable.

(c) The assignment, pledge, Lien and security interest granted in Section 2(a) of this Agreement are granted as security only and shall not subject the Collateral Agent or any Investor to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Pledged Collateral.

SECTION 3. Grant of Security Interest

(a) As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under all personal property and assets of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible (together with the Pledged Collateral, the "**Collateral**"), including, without limitation, the following: all Accounts; all Chattel Paper (whether tangible or Electronic Chattel Paper); all Commercial Tort Claims, including, without limitation, those specified on Schedule II hereto; all Documents; all Equipment; all Fixtures; all General Intangibles (including, without limitation, all Payment Intangibles); all Goods; all Instruments; all Inventory; all Investment Property (and, regardless of whether classified as Investment Property under the Code, all Pledged Equity); all Intellectual Property and all Licenses; all Letter-of-Credit Rights; all cash and other property from time to time deposited therein, and all monies and property in the possession or under the control of the Collateral Agent or any Noteholder or any Affiliate, representative, agent or correspondent of the Collateral Agent or any such Noteholder; all other tangible and intangible personal property of each Grantor (whether or not subject to the Code), including, without limitation, all Deposit Accounts and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of any Grantor described in the preceding clauses of this Section 3(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by each Grantor in respect of any of the items listed above), and all books and other Records, in each case, to the extent of such Grantor's rights therein, that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 3(a) or are otherwise necessary or helpful in the collection or realization thereof; and all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever any Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

(b) Notwithstanding anything herein to the contrary, the term "**Collateral**" shall not include any Excluded Property.

SECTION 4. Security for Obligations. The Lien and security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether direct or indirect, absolute or contingent, and whether now existing or hereafter incurred (collectively, the "**Obligations**"):

(a) the payment by the Company and each other Grantor, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of the Securities Purchase Agreement, this Agreement, the Notes and the other Transaction Documents; and

(b) the due and punctual performance and observance by each Grantor of all of its other obligations from time to time existing in respect of any of the Transaction Documents, including without limitation, with respect to any conversion or redemption rights of the Noteholders under the Notes.

SECTION 5. Representations and Warranties. Each Grantor represents and warrants as follows:

(a) Schedule III hereto sets forth (i) the exact legal name of each Grantor, and (ii) the state of incorporation, organization or formation and the organizational identification number of each Grantor in such state. The information set forth in Schedule III hereto with respect to such Grantor is true and accurate in all respects. Such Grantor has not previously changed its name (or operated under any other name), jurisdiction of organization or organizational identification number from those set forth in Schedule III hereto except as disclosed in Schedule III hereto.

(b) There is no pending or, to its knowledge, written notice threatening any action, suit, proceeding or claim affecting any Grantor before any Governmental Authority or any arbitrator, or any order, judgment or award issued by any Governmental Authority or arbitrator, in each case, that may adversely affect the grant by any Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Collateral, or the exercise by the Collateral Agent of any of its rights or remedies hereunder.

(c) The exercise by the Collateral Agent of any of its rights and remedies hereunder will not contravene any law or any contractual restriction binding on or otherwise affecting any Grantor or any of its properties and will not result in or require the creation of any Lien, upon or with respect to any of its properties other than as granted pursuant to this Agreement.

(d) Subject to Section 6, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority, is required for (i) the grant by each Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Pledged Collateral, or (ii) the exercise by the Collateral Agent of any of its rights and remedies hereunder, except for the filing under the Code as in effect in the applicable jurisdiction of the financing statements to be filed on the date of this Agreement (a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**").

(e) Subject to Section 6, this Agreement creates in favor of the Collateral Agent a legal, valid and enforceable Lien on and security interest in the Collateral, as security for the

Obligations. The performance of the Perfection Requirements results in (and when performed in accordance with Sections 2, 3 and 6 shall result in) the perfection of such Lien on and security interest in the Collateral, to the extent that such Lien and security interest can be perfected by filing a financing statement under the Code. Such Lien and security interest is (or in the case of Collateral in which any Grantor obtains any right, title or interest after the date hereof, will be), subject only to Permitted Liens and the Perfection Requirements, a first priority, valid, enforceable and perfected Lien on and security interest in all personal property of each Grantor (other than Excluded Property).

(f) Such Grantor (i) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation and (ii) has all requisite corporate, limited liability company or limited partnership power and authority to conduct its business as now conducted and as presently contemplated and to execute and deliver this Agreement and each other Transaction Document to which such Grantor is a party, and to consummate the transactions contemplated hereby and thereby.

(g) The execution, delivery and performance by each Grantor of this Agreement and each other Transaction Document to which such Grantor is a party (i) have been duly authorized by all necessary corporate, limited liability company or limited partnership action, (ii) do not and will not contravene its charter or by-laws, limited liability company or operating agreement, certificate of partnership or partnership agreement, as applicable, or any applicable law or any contractual restriction binding on such Grantor or its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Transaction Document) upon or with respect to any of its assets or properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to it or its operations or any of its assets or properties.

(h) This Agreement has been duly executed and delivered by each Grantor and is the legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law). Each of the other Transaction Documents to which any Grantor is or will be a party, when delivered, duly executed and delivered by such Grantor and the legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

(i) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

SECTION 6. Covenants as to the Collateral. Until all of the Obligations shall have been fully performed and Paid in Full, unless the Collateral Agent shall otherwise consent in writing (in its sole and absolute discretion):

(a) Covenant to Perfect: Guaranty.

(i) No later than the fifth Business Day following the date of this Agreement (or such later date as the Collateral Agent may agree), the Grantors shall (A) execute and deliver to the Collateral Agent, for recording with the United States Patent and Trademark Office and United States Copyright Office, as applicable, a short-form grant of security interest, in form and substance reasonably acceptable to the Collateral Agent, with respect to certain Intellectual Property included in the Collateral; and (B) deliver, or caused to the Collateral Agent the originals of any certificates evidencing any Pledged Equity, together with customary indorsements in blank.

(ii) Each Grantor agrees that in furtherance of Section 3, this Agreement shall be supplemented by a security agreement or other similar agreements or instruments in form and substance satisfactory to the Collateral Agent which shall be executed and delivered by such Grantor in favor of the Collateral Agent no later than December 8, 2023 (or such later date as the Collateral Agent may agree).

(iii) Each Grantor (other than the Company) shall execute and deliver a Guaranty no later than December 8, 2023 (or such later date as the Collateral Agent may agree).

Further Assurances. Each Grantor will, at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that the Collateral Agent may reasonably request in order to: (i) perfect and protect the Lien and security interest of the Collateral Agent created hereby; (ii) enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) otherwise effect the purposes of this Agreement.

(c) Transfers and Other Liens.

(i) Except as otherwise expressly permitted in the other Transaction Documents, no Grantor shall, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any Collateral whether in a single transaction or a series of related transactions, other than (A) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by such Grantor for fair value in the ordinary course of business consistent with past practices and (B) sales of Inventory and product in the ordinary course of business.

(ii) Except as expressly permitted in the other Transaction Documents, no Grantor shall, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its Capital Stock.

(iii) No Grantor shall, directly or indirectly, without the prior written consent of the Required Holders, (A) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (B) issue any other Securities that would cause a breach or default under the Notes.

(iv) Except as expressly permitted in the other Transaction Documents, no Grantor shall enter into, renew, extend or be a party to, any transaction or series of related

transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except 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 than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof.

(v) No Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral other than a Permitted Lien.

(d) Future Subsidiaries. If any Grantor hereafter creates or acquires any Domestic Subsidiary, simultaneously with the creation or acquisition of such Subsidiary, such Grantor shall cause such Subsidiary to become a party to this Agreement as an additional "Grantor" hereunder and deliver to the Collateral Agent such additional documents and instruments required to perfect the pledge and granting of security interests hereunder.

SECTION 7. Additional Provisions Concerning the Collateral.

(a) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Collateral Agent to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office, (ii) authorizes the Collateral Agent at any time and from time to time to file, one or more financing or continuation statements, and amendments thereto, relating to the Collateral (including, without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Collateral Agent may determine regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the Code or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing or continuation statements, or amendments thereto, prior to the date hereof.

(b) Each Grantor hereby irrevocably appoints the Collateral Agent as its attorney-in-fact and proxy, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Collateral Agent's discretion, to take any action and to execute any instrument which the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement. This power is coupled with an interest and is irrevocable until all of the Obligations are fully performed and Paid in Full.

(c) As long as no Event of Default shall have occurred and be continuing and, other than in the case of a Bankruptcy Event of Default, the Collateral Agent shall have given written notice to the Grantors of the suspension of the Grantors' rights under this Section 7(c), Grantor shall have the right, from time to time, to vote and give consents with respect to the

Pledged Equity, or any part thereof for all purposes not inconsistent with the provisions of this Agreement, the Securities Purchase Agreement or any other Transaction Document; provided, however, that no vote shall be cast, and no consent shall be given or action taken, which would have the effect of impairing the position or interest of the Collateral Agent in respect of the Pledged Equity or which would authorize, effect or consent to (unless and to the extent expressly permitted by the Securities Purchase Agreement) the dissolution or liquidation, in whole or in part, of a Pledged Entity; the consolidation or merger of a Pledged Entity with any other Person; the sale, disposition or encumbrance of all or substantially all of the assets of a Pledged Entity, except for Liens in favor of the Collateral Agent; any change in the authorized number of shares, the stated capital or the authorized share capital of a Pledged Entity or the issuance of any additional shares of its Capital Stock; or the alteration of the voting rights with respect to the Capital Stock of a Pledged Entity.

(d) Each Grantor shall be entitled, from time to time, to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Equity to the extent not in violation of the Securities Purchase Agreement other than any and all: (A) dividends and interest paid or payable other than in cash in respect of any Pledged Equity, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Pledged Equity; (B) dividends and other distributions paid or payable in cash in respect of any Pledged Equity in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in capital of a Pledged Entity; and (C) cash paid, payable or otherwise distributed, in respect of principal of, or in redemption of, or in exchange for, any Pledged Equity; provided, however, that until actually paid all rights to such distributions shall remain subject to the Lien created by this Agreement; and

(e) all dividends and interest (other than such cash dividends and interest as are permitted to be paid to any Grantor in accordance with clause (i) above) and all other distributions in respect of any of the Pledged Equity, whenever paid or made, shall be delivered to the Collateral Agent to hold as Pledged Equity and shall, if received by any Grantor, be received in trust for the benefit of the Collateral Agent (for the ratable benefit of the Collateral Agent and the Noteholders), be segregated from the other property or funds of such Grantor, and be forthwith delivered to the Collateral Agent as Pledged Equity in the same form as so received (with any necessary endorsement).

SECTION 8. Amendments to Notes

(a) Section 4(a) of the Notes (including the form of Note attached to the Securities Purchase Agreement) are hereby amended to add the following:

> "(xvi) any provision of any Transaction Document (including, without limitation) the Security Documents or the Guaranty 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 parties thereto, or the validity or enforceability thereof shall be contested 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 Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including, without limitation, the Security Documents and the Guaranty);
>
> (xvii) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (as defined in the Securities Purchase Agreement) on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent (as defined in the Securities Purchase Agreement) or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;"

(b) Each of the Notes (including the form of Note attached to the Securities Purchase Agreement) are hereby amended to add the following as a new Section 33:

> 33. SECURITY. This Note and the Other Notes are secured and guaranteed to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement, the other Security Documents and the Guaranty).

(c) The last sentence of Section 20 of each of the Notes (including the form of Note attached to the Securities Purchase Agreement) is hereby amend and restated as follows:

> Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms in such other Transaction Documents unless otherwise consented to in writing by the Holder.

SECTION 9. Remedies Upon Event of Default; Application of Proceeds. If any Event of Default shall have occurred and be continuing:

(a) The Collateral Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein, in any other Transaction Document or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Collateral Agent's name or into the name of its nominee or nominees (to the extent the Collateral Agent has not theretofore done so) and thereafter receive, for the ratable benefit of itself and the Noteholders, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith,

assemble all or part of its respective Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place or places to be designated by the Collateral Agent that is reasonably convenient to both parties, and the Collateral Agent may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Collateral Agent's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale (including, without limitation, by credit bid), at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable and/or (B) lease, license or dispose of the Collateral or any part thereof upon such terms as the Collateral Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least ten (10) days' notice to any Grantor of the time and place of any public sale or the time after which any private sale or other disposition of its respective Collateral is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Collateral Agent and the Noteholders arising by reason of the fact that the price at which its respective Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree, and waives all rights that any Grantor may have to require that all or any part of such Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of its respective Collateral by the Collateral Agent shall be made without warranty, (ii) the Collateral Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (iii) such actions set forth in clauses (i) and (ii) above shall not adversely affect the commercial reasonableness of any such sale of Collateral.

(b) Without limiting the generality of the foregoing, if any Event of Default shall have occurred be continuing, Secured Party, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are, to the extent permitted by applicable law, hereby waived), may in such circumstances forthwith vote, collect, receive, appropriate and realize upon any Collateral. To the extent permitted by applicable law, Grantor waives all claims, damages and demands it may acquire against Secured Party arising out of the exercise by Secured Party of any rights hereunder, except for Secured Party's gross negligence, willful misconduct or breach of this Agreement.

SECTION 10. Indemnity; Expenses.

(a) Each Grantor, jointly and severally, agrees to indemnify and hold harmless the Collateral Agent and each other Indemnitee (as defined in the Securities Purchase Agreement) to the same extent and subject to the same terms that the Company has agreed to indemnify the

Indemnitees under Section 9(k) of the Securities Purchase Agreement, which Section 9(k) is hereby incorporated by reference, *mutatis mutandis*.

(b) Each Grantor agrees, jointly and severally, to pay to the Collateral Agent upon demand the amount of any and all costs and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for the Collateral Agent and of any experts and agents (including, without limitation, any collateral trustee which may act as agent of the Collateral Agent), which the Collateral Agent may incur in connection with (i) the preparation, negotiation, execution, delivery, recordation, administration, amendment, waiver or other modification or termination of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any Collateral, (iii) the exercise or enforcement of any of the rights or remedies of the Collateral Agent hereunder, or (iv) the failure by any Grantor to perform or observe any of the provisions hereof.

SECTION 11. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, first-class postage prepaid and return receipt requested), telecopied, e-mailed or delivered, if to any Grantor, to the Company's address, or if to the Collateral Agent or any Noteholder, to it at its respective address, each as set forth in Section 9(f) of the Securities Purchase Agreement.

SECTION 12. Miscellaneous.

(a) No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and no waiver of any provision of this Agreement, and no consent to any departure by each Grantor therefrom, shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) This Agreement shall create a continuing Lien on and security interest in the Collateral and shall (i) remain in full force and effect until the full performance and Payment in Full of the Obligations, and (ii) be binding on each Grantor and all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the Code and shall inure, together with all rights and remedies of the Collateral Agent and the Noteholders hereunder, to the ratable benefit of the Collateral Agent and the Noteholders and their respective permitted successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, without notice to any Grantor, the Collateral Agent and the Noteholders may assign or otherwise transfer their rights and obligations under this Agreement and any of the other Transaction Documents, to any other Person and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Collateral Agent and the Noteholders herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to the Collateral Agent or any such Noteholder shall mean the assignee of the Collateral Agent or such Noteholder. None of the rights or obligations of any Grantor hereunder may be assigned, delegated or otherwise transferred without the prior written consent of the Collateral Agent in its sole and absolute discretion, and any such assignment, delegation or transfer without such consent of the Collateral Agent shall be null and void.

(c) Upon the full performance and Payment in Full of the Obligations, (i) this Agreement and the security interests created hereby shall terminate and all rights to the Collateral shall revert to the respective Grantor that granted such security interests hereunder, and (ii) the Collateral Agent will, upon any Grantor's request and at such Grantor's expense, (A) return to such Grantor such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

(d) All security interests granted or contemplated hereby shall be for the benefit of the Collateral Agent and the Noteholders.

(e) Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

(f) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(g) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same Agreement. Delivery of any executed counterpart of a signature page of this Agreement by pdf, facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(h) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Collateral Agent, any Noteholder or any other Person upon (i) the occurrence of any Insolvency Proceeding of any of the Company or any Grantor or (ii) otherwise, in all cases as though such payment had not

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

FISKER INC.

By: _____
Name:
Title:

FISKER GROUP INC.

By: _____
Name:
Title:

FISKER GMBH

By: _____
Name:
Title:

ACCEPTED BY:

CVI INVESTMENTS, INC.,
as Collateral Agent

By: _____
Name:
Title:

SCHEDULE I

Pledged Equity

Securities

Grantor	Name of Issuer / Pledged Entity	Number of Shares	Class	Certificate No.(s)
Fisker Inc.	Fisker Group Inc.	1000	Common Stock	N/A
Fisker Group Inc.	Fisker GmbH	3500	Common Stock	N/A

SCHEDULE II
Commercial Tort Claims

None.

SCHEDULE III

Persons

Transaction Party Name	Jurisdiction of Organization	Federal Employer I.D.	Organizational I.D.
Fisker Inc.	Delaware	82-3100340	6577789
Fisker Group Inc.	Delaware	81-3883342	6136073
Fisker GmbH	Austria	N/A	N/A

EXHIBIT C-3

EXECUTION COPY

SECOND AMENDMENT AND WAIVER AGREEMENT

This Second Amendment and Waiver Agreement (this "**Agreement**") is entered into as of the 21st day of January, 2024, by and between Fisker Inc., a Delaware corporation (the "**Company**"), and the investor signatory hereto (the "**Investor**"), with reference to the following facts:

A. Prior to the date hereof, pursuant to that Securities Purchase Agreement, dated as of July 10, 2023, by and between the Company and the Investor (as amended, modified or waived from time to time, the "**Securities Purchase Agreement**"), the Company, among other things, issued $340,000,000 in aggregate original principal amount of Series A-1 senior convertible notes due 2025 (the "**Series A-1 Notes**") and $170,000,000 in aggregate original principal amount of Series B-1 senior convertible notes due 2025 (the "**Series B-1 Notes**," and together with the Series A-1 Notes, the "**Existing Notes**"). Capitalized terms not defined herein shall have the meaning set forth in the Securities Purchase Agreement.

B. Prior to the date hereof, the Company failed to timely file its quarterly report on Form 10-Q for the quarter ended September 30, 2023 (the "**September Default**"), which September Default was waived by the Investor for all purposes under the Transaction Documents (other than with respect to Section 30(nnn) of the Existing Notes) pursuant to that certain Amendment and Waiver Agreement, dated as of November 22, 2023, between the Company and the Investor (the "**Initial Waiver**").

C. The Company desires to obtain a waiver of certain terms and conditions of the Transaction Documents to facilitate various commercial agreements between the Company and/or certain of its Subsidiaries, on the one hand, and an automotive original equipment manufacturer (or equipment or part manufacturer) and/or certain of its affiliate(s) (collectively, the "**OEM**"), on the other hand, relating to, among other things, (a) the development and manufacture of one or more of the Company's vehicles, platforms and/or technologies, (b) the licensing by the Company and/or its Subsidiaries to the OEM of one or more of the Company's platforms and/or technologies and certain Intellectual Property (as defined under the Security Agreement) and Intellectual Property Rights (as defined under the Securities Purchase Agreement) relating thereto and (c) certain other commercial arrangements between the Company and/or certain of its Subsidiaries, on the one hand, and the OEM, on the other hand (collectively, the "**OEM Commercial Agreements**").

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

1. **Limited Waiver**. Effective as of the Effective Time (as defined below):

(a) Waiver of Minimum Cash Balance Requirement. The Investor hereby waives the requirement for the Company to maintain a minimum cash balance as provided in Section 13(o) of the Existing Notes. For the avoidance of doubt, as of the Effective Time, Section 13(o) of the Existing Notes shall have no further force or effect.

(b) Economic Antidilution Waiver Solely with Respect to Strategic Offerings. The Investor hereby waives, in part, Section 7(a) of the Existing Notes such that "Excluded Securities" shall be deemed to include (as a new clause (v) in such definition):

> "Any shares of Common Stock, warrants or options issued or issuable in connection with any bona fide strategic or commercial alliances, acquisitions, mergers, licensing arrangements, and strategic partnerships, provided, that (x) the primary purpose of such issuance is not to raise capital as reasonably determined, and (y) the purchaser or acquirer or recipient of the securities in such issuance solely consists of either (I) the actual participants in such strategic or commercial alliance, strategic or commercial licensing arrangement or strategic or commercial partnership, (II) the actual owners of such assets or securities acquired in such acquisition or merger or (III) the stockholders, partners, employees, consultants, officers, directors or members of the foregoing Persons, in each case, which is, itself or through its subsidiaries, an operating company or an owner of an asset, in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, and (z) the number or amount of securities issued to such Persons by the Company shall not be disproportionate to each such Person's actual participation in (or fair market value of the contribution to) such strategic or commercial alliance or strategic or commercial partnership or ownership of such assets or securities to be acquired by the Company, as applicable."

(c) September Default Remedies. Upon the timely filing by the Company of its Annual Report on Form 10-K for the fiscal period ended on December 31, 2023 with the SEC, (i) the Investor hereby agrees to waive and not exercise any of its remedies under the Existing Notes due to the September Default and (ii) Section 4(f) of the Securities Purchase Agreement is hereby amended by replacing "the Company shall timely file all reports" with "the Company shall timely file all reports (except, the failure to timely file will be deemed to have been cured on the date of the timely filing with the SEC of the Company's next required Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as applicable)".

(d) Waivers and Releases with Respect to OEM Commercial Agreements. Effective immediately and automatically upon the execution by the applicable parties thereto of any OEM Commercial Agreement, the Investor hereby irrevocably:

(i) waives and releases the Company and its Subsidiaries from any and all restrictions and other limitations on, and compliance with any and all applicable representations and warranties by, the Company and its Subsidiaries solely with respect to Intellectual Property and Intellectual Property Rights with respect to any license, transfer, assignment, or other disposition of, or grant of any right, title or interest with respect to, any such Intellectual Property and Intellectual Property Rights, solely as required by the applicable OEM Commercial Agreement (including, solely to the extent required to satisfy the Company's obligations pursuant to the applicable OEM Commercial Agreement, as set forth in Sections 9, 13(c), 13(f) and 13(k) of the Existing Notes, Sections 5(g), 5(h), 6(g) and 6(h) of the Security Agreement and Section 3(x) of

the Securities Purchase Agreement (collectively, the "**IP Provisions**")), it being understood and agreed that any such waiver and release shall be solely to the extent of any such license, transfer, assignment, or other disposition of, or grant of any right, title or interest with respect to, any of the Company's or any of its Subsidiaries' Intellectual Property or Intellectual Property Rights to the OEM or to any joint venture entity formed by the Company and the OEM, in each case, to carry out the objectives of such OEM Commercial Agreement as necessary and required pursuant to the terms of such OEM Commercial Agreement (collectively, the "**OEM Transferable IP**") (it being understood that any such license, transfer, assignment, or other disposition of, or grant of any right, title or interest, conducted in accordance with this provision shall be permitted under, and shall not be construed as a breach of, any of the terms or conditions (including, for the avoidance of doubt, the IP Provisions) of any of the Transaction Documents);

(ii) releases, cancels and terminates (and shall cause the Collateral Agent (as defined in the Security Agreement) to release, cancel and terminate) any and all of the Liens created by the Existing Notes or any of the Security Documents on any OEM Transferable IP, solely to the extent any such OEM Transferable IP are jointly developed, or jointly owned, by the OEM, on the one hand, and the Company and/or any of its Subsidiaries, on the other hand, or are otherwise transferred or assigned to the OEM, pursuant to the terms and conditions of such OEM Commercial Agreement; and

(iii) agrees to provide such additional reasonable consents, waivers and releases as may be reasonably requested by the Company to carry out the objectives of such OEM Commercial Agreement.

2. **Other Amendments**. Effective as of the Effective Time (as defined below):

(a) Section 4(cc) of the Securities Purchase Agreement is hereby amended to replace (i) "January 31, 2024" with "March 8, 2024" and (ii) "March 31, 2024" with "May 1, 2024" and to add the following to the end: "The Company agrees that the proxy statement with respect to the Stockholder Meeting shall be filed with the SEC by no later than January 30, 2024."

(b) Effective as of January 1, 2024, Section 3(c) of the Securities Purchase Agreement is hereby amended by replacing "782 million shares of Common Stock" with "626 million shares of Common Stock".

(c) Effective as of January 1, 2024, Section 4(n) of the Securities Purchase Agreement is hereby amended by replacing "782 million shares of Common Stock" with "626 million shares of Common Stock".

(d) Section 4 of the Initial Waiver is hereby amended by replacing "On or prior to January 31, 2024" with "Within 10 Business Days from the filing of the Company's Form 10-K for the fiscal year ended December 31, 2023".

(e) Subclause (ix) of the defined term "Equity Conditions" (as defined in Section 30(z) of the Existing Notes) is hereby amended to delete "on each Trading Day during the Equity Conditions Measuring Period,".

(f) The defined term "Volume Failure", as defined in Section 30(ppp) of the Existing Notes is hereby amended to read as follows: "means, with respect to a particular date of determination, if either (x) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on more than five (5) Trading Days during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination, or (y) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during such five (5) Trading Day period (except, if a Holiday occurs during such five (5) Trading Day Period and trading in the Common Stock of the Company is not suspended on the last Trading Day of such applicable measuring period, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on more than one (1) Trading Day during the five (5) Trading Day period ending on the Trading Day immediately preceding such date of determination), as applicable, is less than $20,000,000".

3. **Release; Non-Disparagement**.

(a) Release. The Company, on behalf of itself, each Subsidiary and each of their past and/or present, officers, directors, employees, predecessors, successors, assigns, affiliates, parents and subsidiaries (together, the "**Fisker Releasing Parties**") fully, irrevocably and generally releases the Investor and each of its past and present parents, subsidiaries, affiliates, successors, assigns, owners, officers, directors, trustees, shareholders, unitholders, members, partners, employees, contractors, agents, insurers, attorneys, investment bankers, advisors, auditors, accountants, partners, general partners, heirs, executors, administrators, and representatives (collectively the "**Released Parties**"), from any and all claims (whether direct, class, derivative, representative or otherwise), actions, suits, liabilities, damages (whether compensatory, punitive or otherwise), losses, costs, expenses, and rights and causes of action, known or Unknown Claims (as defined below), that they now have or have ever had or may ever have in the future, whether resulting from any action or inaction with respect to, based upon, arising with respect to, or directly or indirectly relating to, as applicable, the Existing Notes, the Transaction Documents and/or any of the Securities (the "**Released Claims**"). Released Claims shall not include claims to enforce this Agreement or for breach of this Agreement.

"**Unknown Claims**" means claims which the Fisker Releasing Parties do not know or do or do not suspect to exist in their favor at the time of the release of the Released Claims, which, if known by them might have affected their release of the Released Claims, or might have affected their decision(s) with respect to this Agreement. With respect to any and all Released Claims, the Fisker Releasing Parties stipulate and agree that they expressly waive, the provisions, rights, and benefits of California Civil Code §1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR

HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Fisker Releasing Parties hereby further waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Fisker Releasing Parties acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but expressly fully, finally and forever waive, compromise, settle, discharge, extinguish and release fully, finally and forever, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories or authorities. The Fisker Releasing Parties acknowledge that the foregoing waiver was separately bargained for and is an essential element of this Agreement. Notwithstanding the foregoing, nothing in this Section 3(a) shall limit the rights of the Company pursuant to Section 22 of the Existing Notes with respect to disputes as to any applicable calculations or fair market value determinations.

(b) Non-Disparagement. The Company, on behalf of itself, its Subsidiaries, and each of the other Fisker Releasing Parties, agrees that it will not at any time make, publish or communicate (whether made or given orally, in writing, in any digital medium, in any filing with any Governmental Entity or in any other manner) to any Person, any Disparaging (defined below) remarks, comments or statements concerning any of the Released Parties or any of the Transaction Documents. For purposes of this Agreement, "**Disparaging**" remarks, comments or statements are those that impugn, or threaten to impugn, the character, honesty, integrity, morality, legality, business acumen or abilities of the individual or Person or Transaction Document being disparaged, as applicable. Disparaging remarks shall expressly include, but not be limited to, any suggestion that any of the Released Parties violates or operates in contravention of federal or state securities laws, that any term or condition of any of the Transaction Documents are void or invalid, or any other remark, comment or statement that undermines any of the Released Parties' reputation or the validity or enforceability of any of the Transaction Documents (whether made or given orally, in writing, in any digital medium, in any filing with any Governmental Entity or in any other manner to any Person). The Company further agrees that it should be jointly and severally liable under this Section 3(b) for any Disparaging remarks, comments or statements of any of the Fisker Releasing Parties. The Fisker Releasing Parties acknowledge that the foregoing non-disparagement agreement was separately bargained for and is an essential element of this Agreement.

4. **Ratifications**. Except as otherwise expressly provided herein, the Securities Purchase Agreement, and each other Transaction Document, 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 date hereof: (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.

5. **Fees**. The Company shall promptly reimburse Kelley Drye & Warren, LLP (counsel to the Investor) a non-accountable amount of $76,442.85, with respect to its legal fees incurred in connection with preparing and delivering this Agreement and legal fees and expenses of Kelley Drye & Warren LLP with respect to the Security Documents through the date hereof.

6. **Effective Time**. This Agreement shall be effective upon the time of execution and delivery by the parties hereto of this Agreement (the "**Effective Time**").

7. **Disclosure of Transaction**. On or before 9:00 a.m., New York time, on the first (1st) Business Day after 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 this Agreement and the Pledge Agreement in the form required by the Exchange Act and attaching this 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 the Investor by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated hereby and pursuant to and the Pledge Agreement. In addition, effective upon the filing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Investor or any of its affiliates, on the other hand, relating to the transactions contemplated hereby and pursuant to the Transaction Documents, shall terminate. 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 the Investor shall not have (unless expressly agreed to by the Investor after the date hereof in a written definitive and binding agreement executed by the Company and the Investor), any duty of confidentiality with respect to any material, non-public information regarding the Company or any of its Subsidiaries.

8. **Reliance by Trustee**. The Company and the Investor acknowledge and agree that Wilmington Savings Fund Society, FSB, as trustee, is an intended third-party beneficiary of this Agreement and is entitled to rely upon its terms for all purposes of the Indenture (as defined in the Indenture) and the Security Grant Supplemental Indenture.

9. **Due Performance; Equitable Relief**. The parties hereto agree that irreparable damage, for which monetary damages (even if available) would not be an adequate remedy, shall occur in the event that the parties hereto do not perform the provisions of this Agreement or any of the Transaction Documents (including the Notes) in accordance with its specified terms or otherwise breach such provisions. Accordingly, the parties acknowledge and agree that the parties shall be entitled to an injunction, specific performance or other equitable relief to prevent breaches of the Transaction Documents and to enforce specifically the terms and provisions hereof, as applicable, in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereto agrees that it shall not oppose the granting of an injunction, specific performance and/or other equitable relief on the basis that any other party has an adequate remedy at law or that any award of an injunction, specific performance and/or other equitable relief is not an appropriate remedy for any reason at law or in equity. Any party seeking: (i) an injunction or injunctions to

prevent breaches of the Transaction Documents; (ii) to enforce specifically the terms and provisions of the Transaction Documents; and/or (iii) other equitable relief, shall not be required to show proof of irreparable harm or to provide any bond or other security in connection with any such remedy.

10. **Miscellaneous Provisions.** Section 9 of the Securities Purchase Agreement (as amended hereby) is hereby incorporated by reference herein, *mutatis mutandis*.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the Investor and the Company have executed this Agreement as of the date set forth on the first page of this Agreement.

COMPANY:

FISKER INC.

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

IN WITNESS WHEREOF, the Investor and the Company have executed this Agreement as of the date set forth on the first page of this Agreement.

INVESTOR:

CVI INVESTMENTS, INC.
By: Heights Capital Management, Inc., its authorized agent

By: _____
Name: Martin Kobinger
Title: President

EXHIBIT C-4

EXECUTION VERSION

AMENDMENT AND WAIVER AGREEMENT

This Amendment and Waiver Agreement (this "**Amendment**") is entered into as of the 18th day of March, 2024, by the investor signatory hereto (the "**Investor**") in favor of Fisker Inc., a Delaware corporation (the "**Company**"), with reference to the following facts:

A. Prior to the date hereof, pursuant to that Securities Purchase Agreement, dated as of July 10, 2023, by and between the Company and the investors party thereto (as amended, modified or waived from time to time, the "**Securities Purchase Agreement**"), the Company, among other things, issued $340,000,000 in aggregate original principal amount of Series A-1 senior convertible notes due 2025 (the "**Series A-1 Notes**") and $170,000,000 in aggregate original principal amount of Series B-1 senior convertible notes due 2025 (the "**Series B-1 Notes**," and together with the Series A-1 Notes, the "**Existing Notes**"). Capitalized terms not defined herein shall have the meaning set forth in the Securities Purchase Agreement or the Existing Notes, as applicable.

B. Prior to the date hereof, the Company failed to timely file its quarterly report on Form 10-Q for the quarter ended September 30, 2023 (the "**September Default**"). Pursuant to the terms of the Second Amendment and Waiver Agreement, dated as of January 21, 2024, by and between the Company and the Investor, and subject to the timely filing by the Company of its Annual Report on Form 10-K for the fiscal period ended on December 31, 2023 with the Securities and Exchange Commission (the "**SEC**"), the Investor agreed to waive and not exercise any of its remedies under the Existing Notes due to the September Default (the "**September Waiver**").

C. As of the date hereof, the Company has (i) failed to timely file its Annual Report on Form 10-K for the year ended December 31, 2023 (the "**Existing 10-K Default**") and (ii) failed to make an interest payment under its outstanding unsecured 2.50% convertible notes due 2026 (the "**Existing 2026 Notes Default**" and, together with the Existing 10-K Default, the "**Existing Defaults**").

D. The Company desires to obtain a waiver of the September Default.

E. The Company desires to obtain a waiver, in part, of the Existing Defaults such that the Existing Defaults shall cease to be Events of Default (as defined in the Existing Notes) (other than with respect to Section 30(nnn) of the Existing Notes) (the "**Limited Waiver**" and together with the September Waiver, the "**Waivers**").

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

1. **Waiver**. The Investor hereby grants the Waivers; provided that (x) the Limited Waiver of the Existing 2026 Notes Default shall only be effective until April 14, 2024 and (y) the Company agrees that, notwithstanding anything to the contrary in Section 3(e) of the Existing Notes, the Triggering Event Redemption Right Period associated with the Existing Defaults (which is not waived pursuant to this Amendment) shall expire upon until the filing by the Company of its next quarterly or annual report with the SEC pursuant to the 1934 Act within the applicable

time periods specified by the applicable SEC rules and regulations (without giving effect to any grace period provided by Rule 12b-25 or any successor rule under the 1934 Act).

2. **Amendments**. The Company and the Investor hereby:

a. Amend and restate Section 4(f) of the Securities Purchase Agreement to provide: "Until the date on which the Buyers shall have sold all of the Securities (the "**Reporting Period**"), the Company shall file all reports required to be filed with the SEC pursuant to the 1934 Act within the applicable time periods specified by the applicable SEC rules and regulations (giving effect to any grace period provided by Rule 12b-25 or any successor rule under the 1934 Act; provided that such grace periods shall not be counted for purposes of Sections 3(e) and 30(nnn) of the Existing Notes), 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 or otherwise permit such termination.".

b. Amend Section 3(e)(i) of the Existing Notes to add the following proviso at the end of subsection (x) therein: " (provided that if the Triggering Event is associated with the Company's failure to file a report required to be filed with the SEC pursuant to the 1934 Act within the applicable time period specified by the applicable SEC rules and regulations (without giving effect to any grace period provided by Rule 12b-25 or any successor rule under the 1934 Act), then such Triggering Event will be deemed to be cured upon the filing by the Company of its next quarterly or annual report with the SEC pursuant to the 1934 Act within the applicable time periods specified by the applicable SEC rules and regulations (without giving effect to any grace period provided by Rule 12b-25 or any successor rule under the 1934 Act))."

3. **Release; Non-Disparagement**.

a. Release. The Company, on behalf of itself, each Subsidiary and each of their past and/or present, officers, directors, employees, predecessors, successors, assigns, affiliates, parents and subsidiaries (together, the "**Fisker Releasing Parties**") fully, irrevocably and generally releases the Investor and each of its past and present parents, subsidiaries, funds, affiliates, successors, assigns, owners, officers, directors, trustees, shareholders, unitholders, members, partners, employees, contractors, agents, insurers, attorneys, investment bankers, advisors, auditors, accountants, partners, general partners, heirs, executors, administrators, and representatives (collectively the "**Released Parties**"), from any and all claims (whether direct, class, derivative, representative or otherwise), actions, suits, liabilities, damages (whether compensatory, punitive or otherwise), losses, costs, expenses, and rights and causes of action, known or Unknown Claims (as defined below), that they now have or have ever had or may ever have in the future, whether resulting from any action or inaction with respect to, based upon, arising with respect to, or directly or indirectly relating to, as applicable, the Existing Notes, the Transaction

Documents and/or any of the Securities (the "**Released Claims**"). Released Claims shall not include claims to enforce this Amendment or for breach of this Amendment.

"**Unknown Claims**" means claims which the Fisker Releasing Parties do not know or do or do not suspect to exist in their favor at the time of the release of the Released Claims, which, if known by them might have affected their release of the Released Claims, or might have affected their decision(s) with respect to this Amendment. With respect to any and all Released Claims, the Fisker Releasing Parties stipulate and agree that they expressly waive, the provisions, rights, and benefits of California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Fisker Releasing Parties hereby further waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Fisker Releasing Parties acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but expressly fully, finally and forever waive, compromise, settle, discharge, extinguish and release fully, finally and forever, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories or authorities. The Fisker Releasing Parties acknowledge that the foregoing waiver was separately bargained for and is an essential element of this Amendment. Notwithstanding the foregoing, nothing in this Section 3(a) shall limit the rights of the Company pursuant to Section 22 of the Existing Notes with respect to disputes as to any applicable calculations or fair market value determinations.

b. Non-Disparagement. The Company, on behalf of itself, its Subsidiaries, and each of the other Fisker Releasing Parties, agrees that it will not at any time make, publish or communicate (whether made or given orally, in writing, in any digital medium, in any filing with any Governmental Entity or in any other manner) to any Person, any Disparaging (defined below) remarks, comments or statements concerning any of the Released Parties or any of the Transaction Documents. For purposes of this Amendment, "**Disparaging**" remarks, comments or statements are those that impugn, or threaten to impugn, the character, honesty, integrity, morality, legality, business acumen or abilities of the individual or Person or Transaction Document being disparaged, as applicable. Disparaging remarks shall expressly include, but not be limited to, any suggestion that any of the Released Parties violates or operates in contravention of federal or state securities

laws, that any term or condition of any of the Transaction Documents are void or invalid, or any other remark, comment or statement that undermines any of the Released Parties' reputation or the validity or enforceability of any of the Transaction Documents (whether made or given orally, in writing, in any digital medium, in any filing with any Governmental Entity or in any other manner to any Person). The Company further agrees that it should be jointly and severally liable under this Section 3(b) for any Disparaging remarks, comments or statements of any of the Fisker Releasing Parties. The Fisker Releasing Parties acknowledge that the foregoing non-disparagement agreement was separately bargained for and is an essential element of this Amendment.

4. **Ratifications**. Except as otherwise expressly provided herein, the Securities Purchase Agreement, and each other Transaction Document, 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 date hereof: (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 or waived by this Amendment, 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 or waived by this Amendment.

5. **Effective Time**. This Amendment shall be effective upon the time of execution and delivery by the parties hereto of this Amendment (the "**Effective Time**").

6. **Disclosure of Transaction**. On or before 7:59 a.m., New York time, on March 18, 2024 ("**Disclosure Date**"), the Company shall file a Current Report on Form 8-K describing all the material terms of this Amendment in the form required by the Exchange Act and attaching this Amendment (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 the Investor by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with this Amendment.

7. **Reliance by Trustee**. The Company and the Investor acknowledge and agree that Wilmington Savings Fund Society, FSB, as trustee, is an intended third-party beneficiary of this Agreement and is entitled to rely upon its terms for all purposes of the Indenture (as defined in the Indenture) and the Security Grant Supplemental Indenture

8. **Due Performance; Equitable Relief**. The parties hereto agree that irreparable damage, for which monetary damages (even if available) would not be an adequate remedy, shall occur in the event that the parties hereto do not perform the provisions of this Amendment or any of the Transaction Documents (including the Notes) in accordance with its specified terms or otherwise breach such provisions. Accordingly, the parties acknowledge and agree that the parties shall be entitled to an injunction, specific performance or other equitable relief to prevent breaches of the Transaction Documents and to enforce specifically the terms and provisions hereof, as applicable, in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereto agrees that it shall not oppose the granting of an injunction, specific performance and/or other equitable relief on the basis that any other party has an adequate remedy at law or that any award of an injunction, specific performance and/or other equitable relief is not an appropriate

remedy for any reason at law or in equity. Any party seeking: (i) an injunction or injunctions to prevent breaches of the Transaction Documents; (ii) to enforce specifically the terms and provisions of the Transaction Documents; and/or (iii) other equitable relief, shall not be required to show proof of irreparable harm or to provide any bond or other security in connection with any such remedy.

9. **Miscellaneous Provisions.** Section 9 of the Securities Purchase Agreement (as amended hereby) is hereby incorporated by reference herein, *mutatis mutandis*.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the Investor and the Company have executed this Amendment as of the date set forth on the first page of this Amendment.

COMPANY:

FISKER INC.

By: Geeta Gupta-Fisker (Mar 17, 2024 21:21 PDT)

Name: Dr. Geeta Gupta-Fisker

Title: Chief Financial Officer and Chief Operating Officer

IN WITNESS WHEREOF, the Investor and the Company have executed this Amendment as of the date set forth on the first page of this Amendment.

INVESTOR:

CVI INVESTMENTS, INC.

By: Heights Capital Management, Inc., its authorized agent

By: _____
Name: Martin Kobinger
Title: President

EXHIBIT D

FISKER INC.

as the Company

and

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Trustee

Senior Indenture

Dated as of July 11, 2023

TABLE OF CONTENTS

Page

Page

Page

FISKER INC.
RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939, AS AMENDED, AND INDENTURE, DATED AS OF JULY 11, 2023

TRUST INDENTURE ACT SECTION	INDENTURE SECTION
Section 310(a)(1)	7.11
(a)(2)	7.11
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	7.11
(b)	7.03
Section 311(a)	7.03
(b)	7.03
(c)	7.03
Section 312(a)	4.03
(b)	4.03
(c)	4.03
Section 313(a)	7.06
(b)	7.06
(c)	7.05
(d)	7.06
Section 314(a)(1)	4.05
(a)(4)	4.04
(b)	Not Applicable
(c)(1)	10.04
(c)(2)	10.04
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	10.04
Section 315(a)	7.02
(b)	7.02
(c)	7.02
(d)(1)	7.02
(d)(2)	7.02
(d)(3)	7.02
(e)	6.12
Section 316(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	Not Applicable
(b)	6.07
(c)	9.03
Section 317(a)(1)	6.08
(a)(2)	6.09
(b)	7.12
Section 318(a)	10.01

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

SENIOR INDENTURE, dated as of July 11, 2023, between Fisker Inc., a Delaware corporation, as the Company, and Wilmington Savings Fund Society, FSB, as Trustee.

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the issue from time to time of its senior debentures, notes or other evidences of indebtedness to be issued in one or more series (the "**Securities**") up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture and to provide, among other things, for the authentication, delivery and administration thereof, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid indenture and agreement according to its terms have been done;

NOW, THEREFORE:

In consideration of the premises and the purchases of the Securities by the holders thereof, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective holders from time to time of the Securities or of any and all series thereof and of the coupons, if any, appertaining thereto as follows:

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions.*

"**Affiliate**" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with") when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agent**" means any Registrar, Paying Agent, transfer agent or Authenticating Agent.

"**Board Resolution**" means one or more resolutions of the board of directors of the Company or any authorized committee thereof, certified by the secretary or an assistant secretary to have been duly adopted and to be in full force and effect on the date of certification, and delivered to the Trustee.

"**Business Day**" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close in The City of New York, with respect to any Security the interest on which is based on the offered quotations in the interbank Eurodollar market for dollar deposits in London, or with respect to Securities denominated in a specified currency other than United States dollars, in the principal financial center of the country of the specified currency.

"**Capital Lease**" means, with respect to any Person, any lease of any property which, in conformity with GAAP, is required to be capitalized on the balance sheet of such Person.

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Company**" means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to Article 5 of this Indenture and thereafter means the successor.

"**Corporate Trust Office**" means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be administered, which office is, at the date of this Indenture, located at 500 Delaware Avenue, Wilmington, DE 19801, Attention: Corporate Trust – Fisker Inc.

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

"**Depositary**" means, with respect to the Securities of any series issuable or issued in the form of one or more Registered Global Securities, the Person designated as Depositary by the Company pursuant to Section 2.03 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Depositary**" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "**Depositary**" as used with respect to the Securities of any such series shall mean the Depositary with respect to the Registered Global Securities of that series.

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

"**GAAP**" means generally accepted accounting principles in the United States as in effect as of the date hereof applied on a basis consistent with the principles, methods, procedures and practices employed in the preparation of the Company's audited financial statements, including, without limitation, those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as is approved by a significant segment of the accounting profession.

"**Holder**" or "**Securityholder**" means the registered holder of any Security with respect to Registered Securities and the bearer of any Unregistered Security or any coupon appertaining thereto, as the case may be.

"**Indenture**" means this Indenture as originally executed and delivered or as it may be amended or supplemented from time to time by one or more indentures supplemental to this Indenture entered into pursuant to the applicable provisions of this Indenture and shall include the forms and terms of the Securities of each series established as contemplated pursuant to Sections 2.01 and 2.03.

"**Officer**" means, with respect to the Company, the chairman of the board of directors, the president or chief executive officer, any executive vice president, any senior vice president, any vice president, the chief financial officer, the general counsel, the treasurer or any assistant treasurer, or the secretary or any assistant secretary.

"**Officer's Certificate**" means a certificate signed in the name of the Company by the chairman of the board of directors, the president or chief executive officer, an executive vice president, a senior vice president or a vice president, the chief financial officer, the treasurer or any assistant treasurer, or the secretary or any assistant secretary, and delivered to the Trustee. Each such certificate shall comply with Section 314 of the Trust Indenture Act, if applicable, and include (except as otherwise expressly provided in this Indenture) the statements provided in Section 10.04, if applicable.

"**Opinion of Counsel**" means a written opinion signed by legal counsel, who may be an employee of or counsel to the Company. Each such opinion shall comply with Section 314 of the Trust Indenture Act, if applicable, and include the statements provided in Section 10.04, if and to the extent required thereby.

"**Original Issue Date**" of any Security (or portion thereof) means the earlier of (a) the date of authentication of such Security or (b) the date of any Security (or portion thereof) for which such Security was issued (directly or indirectly) on registration of transfer, exchange or substitution.

"**Original Issue Discount Security**" means any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 6.02.

"**Periodic Offering**" means an offering of Securities of a series from time to time, the specific terms of which Securities, including, without limitation, the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Securities.

"**Person**" means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"**Principal**" of a Security means the principal amount of, and, unless the context indicates otherwise, includes any premium payable on, the Security.

"**Registered Global Security**" means a Security evidencing all or a part of a series of Registered Securities, issued to the Depositary for such series in accordance with Section 2.02, and bearing the legend prescribed in Section 2.02.

"**Registered Security**" means any Security registered on the Security Register (as defined in Section 2.05).

"**Responsible Officer**" when used with respect to the Trustee, shall mean an officer of the Trustee in the Corporate Trust Office (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

"**Securities**" means any of the securities, as defined in the first paragraph of the recitals hereof, that are authenticated and delivered under this Indenture and, unless the context indicates otherwise, shall include any coupon appertaining thereto.

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

"**Subsidiary**" means, with respect to any Person, any corporation, association or other business entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"**Trustee**" means the party named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of Article 7 and thereafter shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbbb), as it may be amended from time to time.

"**Unregistered Security**" means any Security other than a Registered Security.

"**U.S. Government Obligations**" means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

"**Yield to Maturity**" means, as the context may require, the yield to maturity (i) on a series of Securities or (ii) if the Securities of a series are issuable from time to time, on a Security of such series, calculated at the time of issuance of such series in the case of clause (i) or at the time of issuance of such Security of such series in the case of clause (ii), or, if applicable, at the most recent redetermination of interest on such series or on such Security, and calculated in accordance with the constant interest method or such other accepted financial practice as is specified in the terms of such Security.

Section 1.02. *Other Definitions*. Each of the following terms is defined in the section set forth opposite such term:

Term	Section
Authenticating Agent	2.02
Cash Transaction	7.03
Dollars	4.02
Event of Default	6.01
Judgment Currency	10.15(a)
mandatory sinking fund payment	3.05
optional sinking fund payment	3.05
Paying Agent	2.05
record date	2.04
Registrar	2.05
Required Currency	10.15(a)
Security Register	2.05
self-liquidating paper	7.03
sinking fund payment date	3.05
tranche	2.14

Section 1.03. *Incorporation by Reference of Trust Indenture Act*. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. The following terms used in this Indenture that are defined by the Trust Indenture Act have the following meanings:

"**indenture securities**" means the Securities;

"**indenture security holder**" means a Holder or a Securityholder;

"**indenture to be qualified**" means this Indenture;

"**indenture trustee**" or "**institutional trustee**" means the Trustee; and

"**obligor**" on the indenture securities means the Company or any other obligor on the Securities.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by reference in the Trust Indenture Act to another statute or defined by a rule of the Commission and not otherwise defined herein have the meanings assigned to them therein.

Section 1.04. *Rules of Construction*. Unless the context otherwise requires:

(a) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(b) words in the singular include the plural, and words in the plural include the singular;

(c) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(d) all references to Sections or Articles refer to Sections or Articles of this Indenture unless otherwise indicated; and

(e) use of masculine, feminine or neuter pronouns should not be deemed a limitation, and the use of any such pronouns should be construed to include, where appropriate, the other pronouns.

ARTICLE 2

THE SECURITIES

Section 2.01. *Form and Dating*. The Securities of each series shall be substantially in such form or forms (not inconsistent with this Indenture) as shall be established by or pursuant to one or more Board Resolutions or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law, or with any rules of any securities exchange or usage, all as may be determined by the Officers executing such Securities as evidenced by their execution of the Securities. Unless otherwise so established, Unregistered Securities shall have coupons attached.

Section 2.02. *Execution and Authentication*. Two Officers shall execute the Securities and one Officer shall execute the coupons appertaining thereto for the Company by facsimile or manual signature in the name and on behalf of the Company. If an Officer whose signature is on a Security or coupon appertaining thereto no longer holds that office at the time the Security is authenticated, the Security and such coupon shall nevertheless be valid.

The Trustee, at the expense of the Company, may appoint an authenticating agent (the "**Authenticating Agent**") to authenticate Securities. The Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Authenticating Agent.

A Security and the coupons appertaining thereto shall not be valid until the Trustee or Authenticating Agent manually signs the certificate of authentication on the Security or on the Security to which such coupon appertains by an authorized officer. The signature shall be conclusive evidence that the Security or the Security to which the coupon appertains has been authenticated under this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series having attached thereto appropriate coupons, if any, executed by the Company to the Trustee for authentication together with the applicable documents referred to below in this Section, and the Trustee shall thereupon authenticate and deliver such Securities to or upon the written order of the Company. In authenticating any Securities of a series, the Trustee shall be entitled to receive prior to the authentication of any Securities of such series, and (subject to Article 7) shall be fully protected in relying upon, unless and until such documents have been superseded or revoked:

(a) any Board Resolution and/or executed supplemental indenture referred to in Sections 2.01 and 2.03 by or pursuant to which the forms and terms of the Securities of that series were established;

(b) an Officer's Certificate setting forth the form or forms and terms of the Securities, stating that the form or forms and terms of the Securities of such series have been, or, in the case of a Periodic Offering, will be when established in accordance with such procedures as shall be referred to therein, established in compliance with this Indenture; and

(c) an Opinion of Counsel substantially to the effect that the form or forms and terms of the Securities of such series have been, or, in the case of a Periodic Offering, will be when established in accordance with such procedures as shall be referred to therein, established in compliance with this Indenture and that the supplemental indenture, to the extent applicable, and Securities have been duly authorized and, if executed and authenticated in accordance with the provisions of the Indenture and delivered to and duly paid for by the purchasers thereof on the date of such opinion, would be entitled to the benefits of the Indenture and would be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting creditors' rights generally, general principles of equity, and covering such other matters as shall be specified therein and as shall be reasonably requested by the Trustee.

The Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Sections 2.01 and 2.02, if, in connection with a Periodic Offering, all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Board Resolution otherwise required pursuant to Section 2.01 or the written order, Officer's Certificate and Opinion of Counsel otherwise required pursuant to Section 2.02 at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the forms and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Sections 2.01 and 2.02, as applicable, in connection with the first authentication of Securities of such series.

If the Company shall establish pursuant to Section 2.03 that the Securities of a series or a portion thereof are to be issued in the form of one or more Registered Global Securities, then the Company shall execute and the Trustee shall authenticate and deliver one or more Registered Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of all of the Securities of such series issued in such form and not yet cancelled, (ii) shall be registered in the name of the Depositary for such Registered Global Security or Securities or the nominee of such Depositary, (iii) shall be delivered by the Trustee to such Depositary or its custodian or pursuant to such Depositary's instructions and (iv) shall bear a legend substantially to the following effect: "Unless and until it is exchanged in whole or in part for Securities in definitive registered form, this Security may not be transferred except as a whole by the Depositary to the nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary."

Section 2.03. *Form of Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

"This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

WILMINGTON SAVINGS FUND SOCIETY, FSB
AS TRUSTEE

By _____
AUTHORIZED SIGNATORY"

Section 2.04. *Amount Unlimited; Issuable in Series.* The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to Board Resolution or one or more indentures supplemental hereto, prior to the initial issuance of Securities of any series, subject to the last sentence of this Section 2.03:

(a) the designation of the Securities of the series, which shall distinguish the Securities of the series from the Securities of all other series;

(b) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture and any limitation on the ability of the Company to increase such aggregate principal amount after the initial issuance of the Securities of that series (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, or upon redemption of, other Securities of the series pursuant hereto);

(c) the date or dates on which the principal of the Securities of the series is payable (which date or dates may be fixed or extendible);

(d) the rate or rates (which may be fixed or variable) per annum at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable and

(in the case of Registered Securities) on which a record shall be taken for the determination of Holders to whom interest is payable and/or the method by which such rate or rates or date or dates shall be determined;

(e) if other than as provided in Section 4.02, the place or places where the principal of and any interest on Securities of the series shall be payable, any Registered Securities of the series may be surrendered for exchange, notices, demands to or upon the Company in respect of the Securities of the series and this Indenture may be served and notice to Holders may be published;

(f) the right, if any, of the Company to redeem Securities of the series, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which Securities of the series may be so redeemed, pursuant to any sinking fund or otherwise;

(g) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any mandatory redemption, sinking fund or analogous provisions or at the option of a Holder thereof and the price or prices at which and the period or periods within which and any of the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(h) if other than minimum denominations of $1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(i) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof;

(j) if other than the coin or currency in which the Securities of the series are denominated, the coin or currency in which payment of the principal of or interest on the Securities of the series shall be payable or if the amount of payments of principal of and/or interest on the Securities of the series may be determined with reference to an index based on a coin or currency other than that in which the Securities of the series are denominated, the manner in which such amounts shall be determined;

(k) if other than the currency of the United States of America, the currency or currencies, including composite currencies, in which payment of the Principal of and interest on the Securities of the series shall be payable, and the manner in which any such currencies shall be valued against other currencies in which any other Securities shall be payable;

(l) whether the Securities of the series or any portion thereof will be issuable as Registered Securities (and if so, whether such Securities will be issuable as Registered Global Securities) or Unregistered Securities (with or without coupons) (and if so, whether such Securities will be issued in temporary or permanent global form), or any combination of the foregoing, any restrictions applicable to the offer, sale or delivery of Unregistered Securities or the payment of interest thereon and, if other than as provided herein, the terms upon which Unregistered Securities of any series may be exchanged for Registered Securities of such series and vice versa;

(m) whether the Securities of the series may be exchangeable for and/or convertible into the common stock of the Company or any other security;

(n) whether and under what circumstances the Company will pay additional amounts on the Securities of the series held by a person who is not a U.S. person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem such Securities rather than pay such additional amounts;

(o) if the Securities of the series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(p) any trustees, depositaries, authenticating or paying agents, transfer agents or the registrar or any other agents with respect to the Securities of the series;

(q) provisions, if any, for the defeasance of the Securities of the series (including provisions permitting defeasance of less than all Securities of the series), which provisions may be in addition to, in substitution for, or in modification of (or any combination of the foregoing) the provisions of Article 8;

(r) if the Securities of the series are issuable in whole or in part as one or more Registered Global Securities or Unregistered Securities in global form, the identity of the Depositary or common Depositary for such Registered Global Security or Securities or Unregistered Securities in global form;

(s) any other Events of Default or covenants with respect to the Securities of the series; and

(t) any other terms of the Securities of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and coupons, if any, appertaining thereto shall be substantially identical, except in the case of Registered Securities as to date and denomination, except in the case of any Periodic Offering and except as may otherwise be provided by or pursuant to the Board Resolution referred to above or as set forth in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to such Board Resolution or in any such indenture supplemental hereto and any forms and terms of Securities to be issued from time to time may be completed and established from time to time prior to the issuance thereof by procedures described in such Board Resolution or supplemental indenture.

Unless otherwise expressly provided with respect to a series of Securities, the aggregate principal amount of a series of Securities may be increased and additional Securities of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased.

Section 2.05. *Denomination and Date of Securities; Payments of Interest*. The Securities of each series shall be issuable as Registered Securities or Unregistered Securities in denominations established as contemplated by Section 2.03 or, if not so established with respect to Securities of any series, in denominations of $1,000 and any integral multiple thereof. The Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the Officers of the Company executing the same may determine, as evidenced by their execution thereof.

Unless otherwise specified with respect to a series of Securities, each Security shall be dated the date of its authentication. The Securities of each series shall bear interest, if any, from the date, and such interest and shall be payable on the dates, established as contemplated by Section 2.03.

The person in whose name any Registered Security of any series is registered at the close of business on any record date applicable to a particular series with respect to any interest payment date for such series shall be entitled to receive the interest, if any, payable on such interest payment date notwithstanding any transfer or exchange of such Registered Security subsequent to the record date and prior to such interest payment date, except if and to the extent the Company shall default in the payment of the interest due on such interest payment date for such series, in which case the provisions of Section 2.13 shall apply. The term "**record date**" as used with respect to any interest payment date (except a date for payment of defaulted interest) for the Securities of any series shall mean the date specified as such in the terms of the Registered Securities of such series established as contemplated by Section 2.03, or, if no such date is so established, the fifteenth day next preceding such interest payment date, whether or not such record date is a Business Day.

Section 2.06. *Registrar and Paying Agent; Agents Generally*. The Company shall maintain an office or agency where Securities may be presented for registration, registration of transfer or for exchange (the "**Registrar**") and an office or agency where Securities may be presented for payment (the "**Paying Agent**"), which shall be in the Borough of Manhattan, The City of New York. The Company shall cause the Registrar to keep a register of the Registered Securities and of their registration, transfer and exchange (the "**Security Register**"). The Company may have one or more additional Paying Agents or transfer agents with respect to any series.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture and the Trust Indenture Act that relate to such Agent. The Company shall give prompt written notice to the Trustee of the name and address of any Agent and any change in the name or address of an Agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such. The Company may remove any Agent upon written notice to such Agent and the Trustee; *provided* that no such removal shall become effective until (i) the acceptance of an appointment by a successor Agent to such Agent as evidenced by an appropriate agency agreement entered into by the Company and such successor Agent and delivered to the Trustee or (ii) written notification to the Trustee that the Trustee shall serve as such Agent until the appointment of a successor Agent in accordance with clause (i) of this proviso. The Company or any affiliate of the

Company may act as Paying Agent or Registrar; *provided* that neither the Company nor an affiliate of the Company shall act as Paying Agent in connection with the defeasance of the Securities or the discharge of this Indenture under Article 8.

The Company initially appoints the Trustee as Registrar, Paying Agent and Authenticating Agent. If, at any time, the Trustee is not the Registrar, the Registrar shall make available to the Trustee ten days prior to each interest payment date and at such other times as the Trustee may reasonably request the names and addresses of the Holders as they appear in the Security Register.

Section 2.07. *Paying Agent to Hold Money in Trust*. Not later than 10:00 a.m. New York City time on each due date or, in the case of Unregistered Securities, 10:00 a.m. New York City time on the Business Day prior to the due date, of any Principal or interest on any Securities, the Company shall deposit with the Paying Agent money in immediately available funds sufficient to pay such Principal or interest. The Company shall require each Paying Agent other than the Trustee to agree in writing that such Paying Agent shall hold in trust for the benefit of the Holders of such Securities or the Trustee all money held by the Paying Agent for the payment of Principal of and interest on such Securities and shall promptly notify the Trustee in writing of any default by the Company in making any such payment. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds disbursed, and the Trustee may at any time during the continuance of any payment default, upon written request to a Paying Agent, require such Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon doing so, the Paying Agent shall have no further liability for the money so paid over to the Trustee. If the Company or any affiliate of the Company acts as Paying Agent, it will, on or before each due date of any Principal of or interest on any Securities, segregate and hold in a separate trust fund for the benefit of the Holders thereof a sum of money sufficient to pay such Principal or interest so becoming due until such sum of money shall be paid to such Holders or otherwise disposed of as provided in this Indenture, and will promptly notify the Trustee in writing of its action or failure to act as required by this Section.

Section 2.08. *Transfer and Exchange*. Unregistered Securities (except for any temporary global Unregistered Securities) and coupons (except for coupons attached to any temporary global Unregistered Securities) shall be transferable by delivery.

At the option of the Holder thereof, Registered Securities of any series (other than a Registered Global Security, except as set forth below) may be exchanged for a Registered Security or Registered Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Registered Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with and upon payment, if the Company shall so require, of the charges hereinafter provided. If the Securities of any series are issued in both registered and unregistered form, except as otherwise established pursuant to Section 2.03, at the option of the Holder thereof, Unregistered Securities of any series may be exchanged for Registered Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Unregistered Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 4.02, with, in the case of Unregistered Securities that have coupons attached, all unmatured coupons and all matured coupons in default thereto appertaining, and upon payment, if the Company shall so require, of the charges hereinafter provided. At the option of the Holder thereof, if Unregistered Securities of any series, maturity date, interest rate and original issue date are issued in more than one authorized denomination, except as otherwise established pursuant to Section 2.03, such Unregistered Securities may be exchanged for Unregistered Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Unregistered Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 4.02, with, in the case of Unregistered Securities that have coupons attached, all unmatured coupons and all matured coupons in default thereto appertaining, and upon payment, if the Company shall so require, of the charges hereinafter provided. Registered Securities of any series may not be exchanged for Unregistered Securities of such series. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Upon surrender for registration of transfer of any Registered Security of a series at the agency of the Company that shall be maintained for that purpose in accordance with Section 2.05 and upon payment, if the Company shall so require, of the charges hereinafter provided, the Company shall execute, and the Trustee shall authenticate and

deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount.

All Registered Securities presented for registration of transfer, exchange, redemption or payment shall be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder or his attorney duly authorized in writing.

The Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any exchange or registration of transfer of Securities. No service charge shall be made for any such transaction.

Notwithstanding any other provision of this Section 2.07, unless and until it is exchanged in whole or in part for Securities in definitive registered form, a Registered Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

If at any time the Depositary for any Registered Global Securities of any series notifies the Company that it is unwilling or unable to continue as Depositary for such Registered Global Securities or if at any time the Depositary for such Registered Global Securities shall no longer be eligible under applicable law, the Company shall appoint a successor Depositary eligible under applicable law with respect to such Registered Global Securities. If a successor Depositary eligible under applicable law for such Registered Global Securities is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of the Company's order for the authentication and delivery of definitive Registered Securities of such series and tenor, will authenticate and deliver Registered Securities of such series and tenor, in any authorized denominations, in an aggregate principal amount equal to the principal amount of such Registered Global Securities, in exchange for such Registered Global Securities.

The Company may at any time and in its sole discretion and subject to the procedures of the Depositary determine that any Registered Global Securities of any series shall no longer be maintained in global form. In such event the Company will execute, and the Trustee, upon receipt of the Company's order for the authentication and delivery of definitive Registered Securities of such series and tenor, will authenticate and deliver, Registered Securities of such series and tenor in any authorized denominations, in an aggregate principal amount equal to the principal amount of such Registered Global Securities, in exchange for such Registered Global Securities.

Any time the Registered Securities of any series are not in the form of Registered Global Securities pursuant to the preceding two paragraphs, the Company agrees to supply the Trustee with a reasonable supply of certificated Registered Securities without the legend required by Section 2.02 and the Trustee agrees to hold such Registered Securities in safekeeping until authenticated and delivered pursuant to the terms of this Indenture.

If established by the Company pursuant to Section 2.03 with respect to any Registered Global Security, the Depositary for such Registered Global Security may surrender such Registered Global Security in exchange in whole or in part for Registered Securities of the same series and tenor in definitive registered form on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge:

(a) to the Person specified by such Depositary new Registered Securities of the same series and tenor, of any authorized denominations as requested by such Person, in an aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Registered Global Security; and

(b) to such Depositary a new Registered Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Registered Global Security and the aggregate principal amount of Registered Securities authenticated and delivered pursuant to clause (a) above.

Registered Securities issued in exchange for a Registered Global Security pursuant to this Section 2.07 shall be registered in such names and in such authorized denominations as the Depositary for such Registered Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or an agent of the Company or the Trustee. The Trustee or such agent shall deliver such Securities to or as directed by the Persons in whose names such Securities are so registered.

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

Notwithstanding anything herein or in the forms or terms of any Securities to the contrary, none of the Company, the Trustee or any agent of the Company or the Trustee shall be required to exchange any Unregistered Security for a Registered Security if such exchange would result in adverse U.S. federal income tax consequences to the Company (such as, for example, the inability of the Company to deduct from its income, as computed for U.S. federal income tax purposes, the interest payable on the Unregistered Securities) under then applicable U.S. federal income tax laws. The Trustee and any such agent shall be entitled to rely on an Officer's Certificate or an Opinion of Counsel in determining such result.

The Registrar shall not be required (i) to issue, authenticate, register the transfer of or exchange Securities of any series for a period of 15 days before a selection of such Securities to be redeemed or (ii) to register the transfer of or exchange any Security selected for redemption in whole or in part.

Section 2.09. *Replacement Securities*. If any mutilated Security or a Security with a mutilated coupon appertaining to it is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver, in exchange for such mutilated Security or in exchange for the Security to which a mutilated coupon appertains, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such mutilated Security or to the Security to which such mutilated coupon appertains.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or coupon and (ii) such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or coupon has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen), a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains.

In case any such mutilated, destroyed, lost or stolen Security or coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or coupon (without surrender thereof except in the case of a mutilated Security or coupon) if the applicant for such payment shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, and in the case of destruction, loss or theft, evidence satisfactory to the Company and the Trustee and any agent of them of the destruction, loss or theft of such Security and the ownership thereof; *provided, however*, that the Principal of and any interest on Unregistered Securities shall, except as otherwise provided in Section 4.02 be payable only at an office or agency located outside the United States of America.

Upon the issuance of any new Security under this Section, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series, with its coupons, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security or in exchange for any mutilated Security, or in exchange for a Security to which a mutilated,

destroyed, lost or stolen coupon appertains, shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security and its coupons, if any, or the mutilated, destroyed, lost or stolen coupon shall be at any time enforceable by anyone, and any such new Security and coupons, if any, shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series and their coupons, if any, duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) any other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons.

Section 2.10. *Outstanding Securities*. Securities outstanding at any time are all Securities that have been authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those described in this Section as not outstanding and those that have been defeased pursuant to Section 8.05.

If a Security is replaced pursuant to Section 2.08, it ceases to be outstanding unless and until the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a holder in due course.

If the Paying Agent (other than the Company or an affiliate of the Company) holds on the maturity date or any redemption date or date for repurchase of the Securities money sufficient to pay Securities payable or to be redeemed or repurchased on that date, then on and after that date such Securities cease to be outstanding and interest on them shall cease to accrue.

A Security does not cease to be outstanding because the Company or one of its affiliates holds such Security, *provided*, *however*, that, in determining whether the Holders of the requisite principal amount of the outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any affiliate of the Company shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities as to which a Responsible Officer of the Trustee has received written notice to be so owned shall be so disregarded. Any Securities so owned which are pledged by the Company, or by any affiliate of the Company, as security for loans or other obligations, otherwise than to another such affiliate of the Company, shall be deemed to be outstanding, if the pledgee is entitled pursuant to the terms of its pledge agreement and is free to exercise in its or his discretion the right to vote such securities, uncontrolled by the Company or by any such affiliate.

Section 2.11. *Temporary Securities*. Until definitive Securities of any series are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities of such series. Temporary Securities of any series shall be substantially in the form of definitive Securities of such series but may have insertions, substitutions, omissions and other variations determined to be appropriate by the Officers executing the temporary Securities, as evidenced by their execution of such temporary Securities. If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of any series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series and tenor upon surrender of such temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 4.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series and tenor and authorized denominations. Until so exchanged, the temporary Securities of any series shall be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 2.12. *Cancellation*. The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Registrar, any transfer agent and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee shall cancel and dispose of in accordance with its customary procedures all Securities surrendered for transfer, exchange, payment or cancellation and shall deliver a certificate of disposition to the Company. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee for cancellation.

Section 2.13. *CUSIP Numbers*. The Company in issuing the Securities may use "CUSIP" and "CINS" numbers (if then generally in use), and the Trustee shall use CUSIP numbers or CINS numbers, as the case may be, in notices of redemption or exchange as a convenience to Holders and no representation shall be made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or exchange. The Company shall promptly notify the Trustee in writing of any change in any CUSIP number and/or ISIN.

Section 2.14. *Defaulted Interest*. If the Company defaults in a payment of interest on the Registered Securities, it shall pay, or shall deposit with the Paying Agent money in immediately available funds sufficient to pay, the defaulted interest plus (to the extent lawful) any interest payable on the defaulted interest (as may be specified in the terms thereof, established pursuant to Section 2.03) to the Persons who are Holders on a subsequent special record date, which shall mean the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, whether or not such day is a Business Day. At least 15 days before such special record date, the Company shall mail to each Holder of such Registered Securities and to the Trustee a notice that states the special record date, the payment date and the amount of defaulted interest to be paid. The Trustee will have no duty whatsoever to determine whether any defaulted interest is payable or the amount thereof.

Section 2.15. *Series May Include Tranches*. A series of Securities may include one or more tranches (each a "**tranche**") of Securities, including Securities issued in a Periodic Offering. The Securities of different tranches may have one or more different terms, including authentication dates and public offering prices, but all the Securities within each such tranche shall have identical terms, including authentication date and public offering price. Notwithstanding any other provision of this Indenture, with respect to Sections 2.02 (other than the fourth, sixth and seventh paragraphs thereof) through 2.04, 2.07, 2.08, 2.10, 3.01 through 3.05, 4.02, 6.01 through 6.14, 8.01 through 8.07, 9.02 and Section 10.07, if any series of Securities includes more than one tranche, all provisions of such sections applicable to any series of Securities shall be deemed equally applicable to each tranche of any series of Securities in the same manner as though originally designated a series unless otherwise provided with respect to such series or tranche pursuant to Section 2.03. In particular, and without limiting the scope of the next preceding sentence, any of the provisions of such sections which provide for or permit action to be taken with respect to a series of Securities shall also be deemed to provide for and permit such action to be taken instead only with respect to Securities of one or more tranches within that series (and such provisions shall be deemed satisfied thereby), even if no comparable action is taken with respect to Securities in the remaining tranches of that series.

ARTICLE 3

REDEMPTION

Section 3.01. *Applicability of Article*. The provisions of this Article shall be applicable to the Securities of any series which are redeemable before their maturity or to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 2.03 for Securities of such series.

Section 3.02. *Notice of Redemption; Partial Redemptions*. Notice of redemption to the Holders of Registered Securities of any series to be redeemed as a whole or in part at the option of the Company shall be given by mailing by first class mail, postage prepaid (or delivering by electronic transmission in accordance with the applicable procedures of the Depositary) notice of such redemption, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Registered Securities of such series at their last addresses as they shall appear upon the registry books. Notice of redemption to the Holders of Unregistered Securities of any series to be redeemed as a whole or in part who have filed their names and addresses with the Trustee pursuant to Section 313(c)(2) of the Trust Indenture Act, shall be given by mailing by first class mail, postage prepaid (or delivering by electronic transmission in accordance with the applicable procedures of the Depositary) notice of such redemption, at least 30 days and not more than 60 days prior to the date fixed for redemption, to such Holders at such addresses as were so furnished to the Trustee (and, in the case of any such notice given by the Company, the Trustee shall make such information available to the Company for such purpose).

60 days prior to the date fixed for redemption. Any notice which is mailed, delivered or published in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the

notice. Failure to give notice by mail or by electronic transmission, or any defect in the notice to the Holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security of such series.

The notice of redemption to each such Holder shall (i) identify the Securities to be redeemed (including the CUSIP numbers), (ii) specify the principal amount of each Security of such series held by such Holder to be redeemed, , (iii) the date fixed for redemption, (iv) the redemption price, or if not then ascertainable, the manner of calculation thereof, (v) the place or places of payment, (vi) the name and address of the Paying Agent, (vii) that payment will be made upon presentation and surrender of such Securities to the Paying Agent and, in the case of Securities with coupons attached thereto, of all coupons appertaining thereto maturing after the date fixed for redemption, (viii) that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, (ix) that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue, (x) that, unless the Company defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Securities of any series called for redemption ceases to accrue on and after the redemption date, (xi) the paragraph or subparagraph of the Securities or the Section of this Indenture pursuant to which the Securities called for redemption are being redeemed, and (xii) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN Number, if any, listed in such notice or printed on the Securities. In case any Security of a series is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such series and tenor in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company; *provided* that the Company shall have delivered to the Trustee, at least two Business Days before notice of redemption is required to be sent or caused to be sent to Holders pursuant to this Section 3.02 (unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in this Section 3.02.

On or before 10:00 a.m. New York City time on the redemption date or, in the case of Unregistered Securities, on or before 10:00 a.m. New York City time on the Business Day prior to the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 2.06) an amount of money sufficient to redeem on the redemption date all the Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. If all of the outstanding Securities of a series are to be redeemed, the Company will deliver to the Trustee at least 10 days prior to the last date on which notice of redemption may be given to Holders pursuant to the first paragraph of this Section 3.02 (or such shorter period as shall be acceptable to the Trustee) an Officer's Certificate stating that all such Securities are to be redeemed. If less than all the outstanding Securities of a series are to be redeemed, the Company will deliver to the Trustee at least 15 days prior to the last date on which notice of redemption may be given to Holders pursuant to the first paragraph of this Section 3.02 (or such shorter period as shall be acceptable to the Trustee) an Officer's Certificate stating the aggregate principal amount of such Securities to be redeemed. In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall deliver to the Trustee, prior to the giving of any notice of redemption to Holders pursuant to this Section, an Officer's Certificate evidencing compliance with such restriction or condition.

If less than all the Securities of a series are to be redeemed, the particular Securities to be redeemed shall be selected by the Trustee, from the outstanding Securities of such series not previously called for redemption, (a) if the Securities are listed on an exchange, in compliance with the requirements of such exchange or (b) on a pro rata basis (or in the case of global Securities, by such method as required by the Depository). Securities may be redeemed in part in principal amounts equal to authorized denominations for Securities of such series. The Trustee shall promptly notify the Company in writing of the Securities of such series selected for redemption and, in the case of any Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all

purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

Section 3.03. *Payment of Securities Called for Redemption*. If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after such date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to such date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue, and the unmatured coupons, if any, appertaining thereto shall be void and, except as provided in Sections 7.12 and 8.02, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a place of payment specified in said notice, together with all coupons, if any, appertaining thereto maturing after the date fixed for redemption, said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; *provided* that payment of interest becoming due on or prior to the date fixed for redemption shall be payable in the case of Securities with coupons attached thereto, to the Holders of the coupons for such interest upon surrender thereof, and in the case of Registered Securities, to the Holders of such Registered Securities registered as such on the relevant record date subject to the terms and provisions of Sections 2.04 and 2.13 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount Security) borne by such Security.

If any Security with coupons attached thereto is surrendered for redemption and is not accompanied by all appurtenant coupons maturing after the date fixed for redemption, the surrender of such missing coupon or coupons may be waived by the Company and the Trustee, if there be furnished to each of them such security or indemnity as they may require to save each of them harmless.

Upon presentation of any Security of any series redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of such series and tenor (with any unmatured coupons attached), of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

Section 3.04. *Exclusion of Certain Securities From Eligibility for Selection for Redemption*. Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by an authorized officer of the Company and delivered to the Trustee at least 40 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

Section 3.05. *Mandatory and Optional Sinking Funds*. The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "**mandatory sinking fund payment**", and any payment in excess of such minimum amount provided for by the terms of the Securities of any series is herein referred to as an "**optional sinking fund payment**". The date on which a sinking fund payment is to be made is herein referred to as the "**sinking fund payment date**".

In lieu of making all or any part of any mandatory sinking fund payment with respect to any series of Securities in cash, the Company may at its option (a) deliver to the Trustee Securities of such series theretofore purchased or otherwise acquired (except through a mandatory sinking fund payment) by the Company or receive credit for Securities of such series (not previously so credited) theretofore purchased or otherwise acquired (except as aforesaid) by the Company and delivered to the Trustee for cancellation pursuant to Section 2.11, (b) receive credit for optional sinking fund payments (not previously so credited) made pursuant to this Section, or (c) receive credit

for Securities of such series (not previously so credited) redeemed by the Company at the option of the Company pursuant to the terms of such Securities or through any optional sinking fund payment. Securities so delivered or credited shall be received or credited by the Trustee at the sinking fund redemption price specified in such Securities.

On or before the sixtieth day next preceding each sinking fund payment date for any series, or such shorter period as shall be acceptable to the Trustee, the Company will deliver to the Trustee an Officer's Certificate (a) specifying the portion of the mandatory sinking fund payment to be satisfied by payment of cash and the portion to be satisfied by credit of specified Securities of such series and the basis for such credit, (b) stating that none of the specified Securities of such series has theretofore been so credited, (c) stating that no defaults in the payment of interest or Events of Default with respect to such series have occurred (which have not been waived or cured) and are continuing and (d) stating whether or not the Company intends to exercise its right to make an optional sinking fund payment with respect to such series and, if so, specifying the amount of such optional sinking fund payment which the Company intends to pay on or before the next succeeding sinking fund payment date. Any Securities of such series to be credited and required to be delivered to the Trustee in order for the Company to be entitled to credit therefor as aforesaid which have not theretofore been delivered to the Trustee shall be delivered for cancellation pursuant to Section 2.11 to the Trustee with such Officer's Certificate (or reasonably promptly thereafter if acceptable to the Trustee). Such Officer's Certificate shall be irrevocable and upon its receipt by the Trustee the Company shall become unconditionally obligated to make all the cash payments or delivery of Securities therein referred to, if any, on or before the next succeeding sinking fund payment date. Failure of the Company, on or before any such sixtieth day, to deliver such Officer's Certificate and Securities specified in this paragraph, if any, shall not constitute a default but shall constitute, on and as of such date, the irrevocable election of the Company (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (ii) that the Company will make no optional sinking fund payment with respect to such series as provided in this Section.

If the sinking fund payment or payments (mandatory or optional or both) to be made in cash on the next succeeding sinking fund payment date plus any unused balance of any preceding sinking fund payments made in cash shall exceed $50,000 (or a lesser sum if the Company shall so request with respect to the Securities of any series), such cash shall be applied on the next succeeding sinking fund payment date to the redemption of Securities of such series at the sinking fund redemption price thereof together with accrued interest thereon to the date fixed for redemption. If such amount shall be $50,000 (or such lesser sum) or less and the Company makes no such request then it shall be carried over until a sum in excess of $50,000 (or such lesser sum) is available. The Trustee shall select, in the manner provided in Section 3.02, for redemption on such sinking fund payment date a sufficient principal amount of Securities of such series to absorb said cash, as nearly as may be, and shall (if requested in writing by the Company) inform the Company of the serial numbers of the Securities of such series (or portions thereof) so selected. Securities shall be excluded from eligibility for redemption under this Section if they are identified by registration and certificate number in an Officer's Certificate delivered to the Trustee at least 60 days prior to the sinking fund payment date as being owned of record and beneficially by, and not pledged or hypothecated by either (a) the Company or (b) an entity specifically identified in such Officer's Certificate as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. The Trustee, in the name and at the expense of the Company (or the Company, if it shall so request the Trustee in writing) shall cause notice of redemption of the Securities of such series to be given in substantially the manner provided in Section 3.02 (and with the effect provided in Section 3.03) for the redemption of Securities of such series in part at the option of the Company. The amount of any sinking fund payments not so applied or allocated to the redemption of Securities of such series shall be added to the next cash sinking fund payment for such series and, together with such payment, shall be applied in accordance with the provisions of this Section. Any and all sinking fund moneys held on the stated maturity date of the Securities of any particular series (or earlier, if such maturity is accelerated), which are not held for the payment or redemption of particular Securities of such series shall be applied, together with other moneys, if necessary, sufficient for the purpose, to the payment of the Principal of, and interest on, the Securities of such series at maturity.

On or before 10:00 a.m. New York City time on each sinking fund payment date or, in the case of Unregistered Securities, 10:00 a.m. New York City time on the Business Day prior to the sinking fund payment date, the Company shall pay to the Trustee in cash or shall otherwise provide for the payment of all interest accrued to the date fixed for redemption on Securities to be redeemed on the next following sinking fund payment date.

The Trustee shall not redeem or cause to be redeemed any Securities of a series with sinking fund moneys or mail any notice of redemption of Securities of such series by operation of the sinking fund during the continuance of a Default in payment of interest on such Securities or of any Event of Default except that, where the mailing of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem or cause to be redeemed such Securities, *provided* that it shall have received from the Company a sum sufficient for such redemption. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such Default or Event of Default shall occur, and any moneys thereafter paid into the sinking fund, shall, during the continuance of such Default or Event of Default, be deemed to have been collected under Article 6 and held for the payment of all such Securities. In case such Event of Default shall have been waived as provided in Section 6.04 or the Default cured on or before the sixtieth day preceding the sinking fund payment date in any year, such moneys shall thereafter be applied on the next succeeding sinking fund payment date in accordance with this Section to the redemption of such Securities.

ARTICLE 4

COVENANTS

Section 4.01. *Payment of Securities*. The Company shall pay the Principal of and interest on the Securities on the dates and in the manner provided in the Securities and this Indenture. The interest on Securities with coupons attached (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature. The interest on any temporary Unregistered Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be paid, as to the installments of interest evidenced by coupons attached thereto, if any, only upon presentation and surrender thereof, and, as to the other installments of interest, if any, only upon presentation of such Unregistered Securities for notation thereon of the payment of such interest. The interest on Registered Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only to the Holders thereof (subject to Section 2.04) and at the option of the Company may be paid by mailing checks for such interest payable to or upon the written order of such Holders at their last addresses as they appear on the Security Register of the Company.

Notwithstanding any provisions of this Indenture and the Securities of any series to the contrary, if the Company and a Holder of any Registered Security so agree, payments of interest on, and any portion of the Principal of, such Holder's Registered Security (other than interest payable at maturity or on any redemption or repayment date or the final payment of Principal on such Security) shall be made by the Paying Agent, upon receipt from the Company of immediately available funds by 11:00 a.m., New York City time (or such other time as may be agreed to between the Company and the Paying Agent), directly to the Holder of such Security (by wire transfer through the Fedwire Funds Service or otherwise) if the Holder has delivered written instructions to the Trustee 15 days prior to such payment date requesting that such payment will be so made and designating the bank account to which such payments shall be so made and in the case of payments of Principal, surrenders the same to the Trustee in exchange for a Security or Securities aggregating the same principal amount as the unredeemed principal amount of the Securities surrendered. The Trustee shall be entitled to rely on the last instruction delivered by the Holder pursuant to this Section 4.01 unless a new instruction is delivered 15 days prior to a payment date. The Company will indemnify and hold each of the Trustee and any Paying Agent harmless against any loss, liability or expense (including attorneys' fees) resulting from any act or omission to act on the part of the Company or any such Holder in connection with any such agreement or from making any payment in accordance with any such agreement.

The Company shall pay interest on overdue Principal, and interest on overdue installments of interest, to the extent lawful, at the rate per annum specified in the Securities.

Section 4.02. *Maintenance of Office or Agency*. The Company will maintain in the United States of America an office or agency where Securities may be surrendered for registration of transfer or exchange or for presentation for payment and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company hereby initially designates Wilmington Savings Fund Society, FSB, located at 500 Delaware Avenue, Wilmington, DE 19801, as such office or agency of the Company. The Company will give

prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 10.02.

The Company will maintain one or more agencies in a city or cities located outside the United States of America (including any city in which such an agency is required to be maintained under the rules of any stock exchange on which the Securities of any series are listed) where the Unregistered Securities, if any, of each series and coupons, if any, appertaining thereto may be presented for payment. No payment on any Unregistered Security or coupon will be made upon presentation of such Unregistered Security or coupon at an agency of the Company within the United States of America nor will any payment be made by transfer to an account in, or by mail to an address in, the United States of America unless, pursuant to applicable United States laws and regulations then in effect, such payment can be made without adverse tax consequences to the Company. Notwithstanding the foregoing, if full payment in United States Dollars ("**Dollars**") at each agency maintained by the Company outside the United States of America for payment on such Unregistered Securities or coupons appertaining thereto is illegal or effectively precluded by exchange controls or other similar restrictions, payments in Dollars of Unregistered Securities of any series and coupons appertaining thereto which are payable in Dollars may be made at an agency of the Company maintained in the United States of America.

The Company may also from time to time designate one or more other offices or agencies where the Securities of any series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 4.03. *Securityholders' Lists*. The Company will furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the holders of the Securities pursuant to Section 312 of the Trust Indenture Act of 1939 (a) semi-annually not more than 15 days after each record date for the payment of semi-annual interest on the Securities, as hereinabove specified, as of such record date, and (b) at such other times as the Trustee may request in writing, within thirty days after receipt by the Company of any such request as of a date not more than 15 days prior to the time such information is furnished.

Section 4.04. *Certificate to Trustee*. The Company will furnish to the Trustee annually, on or before a date not more than four months after the end of its fiscal year (which, on the date hereof, is a calendar year), a brief certificate (which need not contain the statements required by Section 10.04) from its principal executive, financial or accounting officer as to his or her knowledge of the compliance of the Company with all conditions and covenants under this Indenture (such compliance to be determined without regard to any period of grace or requirement of notice provided under this Indenture) which certificate shall comply with the requirements of the Trust Indenture Act. Such certificate need not include a reference to any non-compliance that has been fully cured prior to the date as of which such certificate speaks.

Section 4.05. *Reports by the Company.* So long as any Securities are outstanding, the Company shall file with the Trustee, within 15 days after the Company files the same with the Commission, copies of the annual reports and of the information, documents, and other reports which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. The Company shall be deemed to have complied with the previous sentence to the extent that such information, documents and reports are filed with the Commission via its "EDGAR" system (or any successor electronic delivery procedure) or posted on its website.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no duty to monitor or confirm, on a continuing basis or otherwise, the Company's or any other Person's compliance with any of the covenants under this Indenture, to determine whether the Company posts

reports, information or documents on the Commission's website or otherwise, to collect any such information from the Commission's website, the Company's website or otherwise, or to review or analyze reports delivered to it to ensure compliance with the provisions of this Indenture, to ascertain the correctness or otherwise of the information or statements contained therein or to participate in any conference calls.

Section 4.06. *Additional Amounts*. If the Securities of a series provide for the payment of additional amounts, at least 10 days prior to the first interest payment date with respect to that series of Securities and at least 10 days prior to each date of payment of Principal of or interest on the Securities of that series if there has been a change with respect to the matters set forth in the below-mentioned Officer's Certificate, the Company shall furnish to the Trustee and the principal paying agent, if other than the Trustee, an Officer's Certificate instructing the Trustee and such paying agent whether such payment of Principal of or interest on the Securities of that series shall be made to Holders of the Securities of that series without withholding or deduction for or on account of any tax, assessment or other governmental charge described in the Securities of that series. If any such withholding or deduction shall be required, then such Officer's Certificate shall specify by country the amount, if any, required to be withheld or deducted on such payments to such Holders and shall certify the fact that additional amounts will be payable and the amounts so payable to each Holder, and the Company shall pay to the Trustee or such paying agent the additional amounts required to be paid by this Section.

Whenever in this Indenture there is mentioned, in any context, the payment of the Principal of or interest or any other amounts on, or in respect of, any Security of any series, such mention shall be deemed to include mention of the payment of additional amounts provided by the terms of such series established hereby or pursuant hereto to the extent that, in such context, additional amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of additional amounts (if applicable) in any provision hereof shall not be construed as excluding the payment of additional amounts in those provisions hereof where such express mention is not made.

ARTICLE 5

SUCCESSOR CORPORATION

Section 5.01. *When Company May Merge, Etc*. The Company shall not consolidate with, merge with or into, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets (in one transaction or a series of related transactions) to, any Person unless either (x) the Company shall be the continuing Person or (y) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or to which properties and assets of the Company shall be sold, conveyed, transferred or leased shall be a Person organized and validly existing under the laws of the United States of America or any jurisdiction thereof and shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, all of the obligations of the Company on all of the Securities and under this Indenture and the Company in the case of clauses (x) and (y) shall have delivered to the Trustee (A) an Opinion of Counsel stating that such consolidation, merger or sale, conveyance, transfer or lease and such supplemental indenture (if any) complies with this provision and that all conditions precedent provided for herein relating to such transaction have been complied with and that such supplemental indenture (if any) constitutes the legal, valid and binding obligation of the Company and such successor enforceable against such entity in accordance with its terms, subject to customary exceptions and (B) an Officer's Certificate to the effect that immediately after giving effect to such transaction, no Default shall have occurred and be continuing.

Section 5.02. *Successor Substituted*. Upon any consolidation or merger, or any sale, conveyance, transfer, lease or other disposition of all or substantially all of the property and assets of the Company in accordance with Section 5.01 of this Indenture, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, conveyance, transfer, lease or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein and thereafter the predecessor Person, except in the case of a lease, shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 6

DEFAULT AND REMEDIES

Section 6.01. *Events of Default*. An "**Event of Default**" shall occur with respect to the Securities of any series if:

(a) the Company defaults in the payment of the Principal of any Security of such series when the same becomes due and payable at maturity, upon acceleration, redemption or mandatory repurchase, including as a sinking fund installment, or otherwise;

(b) the Company defaults in the payment of interest on any Security of such series when the same becomes due and payable, and such default continues for a period of 30 days;

(c) the Company defaults in the performance of or breaches any other covenant or agreement of the Company in this Indenture with respect to any Security of such series or in the Securities of such series and such default or breach continues for a period of 30 consecutive days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of 25% or more in aggregate principal amount of the Securities of all series affected thereby specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(e) the Company (i) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (ii) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for all or substantially all of the property and assets of the Company or (iii) effects any general assignment for the benefit of creditors; or

(f) any other Event of Default established pursuant to Section 2.03 with respect to the Securities of such series occurs.

Section 6.02. *Acceleration*. (a) If an Event of Default other than as described in clauses (d) or (e) of with respect to the Securities of any series then outstanding occurs and is continuing, then, and in each and every such case, except for any series of Securities the principal of which shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of any such series then outstanding hereunder (all such series voting together as a single class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (or, if the Securities of any such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series established pursuant to Section 2.03) of all Securities of such series, and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable.

(a) If an Event of Default described in clause (d) or (e) of Section 6.01 occurs and is continuing, then the principal amount (or, if any Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof established pursuant to Section 2.03) of all the Securities then outstanding and interest accrued thereon, if any, shall be and become immediately due and payable, without any notice or other action by any Holder or the Trustee, to the full extent permitted by applicable law.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal (or, if the Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof established pursuant to Section 2.03) of the Securities of any series (or of all the Securities, as the case may be) shall have been so declared or become due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of each such series (or of all the Securities, as the case may be) and the principal of any and all Securities of each such series (or of all the Securities, as the case may be) which shall have become due otherwise than by acceleration (with interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue

installments of interest, at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of each such series to the date of such payment or deposit) and such amount as shall be sufficient to cover all amounts owing the Trustee under Section 7.07, and if any and all Events of Default under the Indenture, other than the non-payment of the principal of Securities which shall have become due by acceleration, shall have been cured, waived or otherwise remedied as provided herein, then and in every such case the Holders of a majority in aggregate principal amount of all the then outstanding Securities of all such series that have been accelerated (voting as a single class), by written notice to the Company and to the Trustee, may waive all defaults with respect to all such series (or with respect to all the Securities, as the case may be) and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

For all purposes under this Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared or become due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

Section 6.03. *Other Remedies*. If a payment default or an Event of Default with respect to the Securities of any series occurs and is continuing, the Trustee may pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of Principal of and interest on the Securities of such series or to enforce the performance of any provision of the Securities of such series or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding.

Section 6.04. *Waiver of Past Defaults.* Subject to Sections 6.02, 6.07 and 9.02, the Holders of at least a majority in principal amount (or, if the Securities are Original Issue Discount Securities, such portion of the principal as is then accelerable under Section 6.02) of the outstanding Securities of all series affected (voting as a single class), by notice to the Trustee, may waive an existing Default or Event of Default with respect to the Securities of such series and its consequences, except a Default in the payment of Principal of or interest on any Security as specified in clauses (a) or (b) of Section 6.01 or in respect of a covenant or provision of this Indenture which cannot be modified or amended without the consent of the Holder of each outstanding Security affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default with respect to the Securities of such series arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto.

Section 6.05. *Control by Majority*. Subject to Sections 7.01 and 7.02(e), the Holders of at least a majority in aggregate principal amount (or, if any Securities are Original Issue Discount Securities, such portion of the principal as is then accelerable under Section 6.02) of the outstanding Securities of all series affected (voting as a single class) may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series by this Indenture; *provided*, that the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that may involve the Trustee in personal liability or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such direction is unduly prejudicial to the rights of any such other Holders); and *provided further*, that the Trustee may take any other action it deems proper that is not inconsistent with any directions received from Holders of Securities pursuant to this Section 6.05.

Section 6.06. *Limitation on Suits*. No Holder of any Security of any series may institute any proceeding, judicial or otherwise, with respect to this Indenture or the Securities of such series, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Securities of such series;

(b) the Holders of at least 25% in aggregate principal amount of outstanding Securities of all such series affected shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity satisfactory to the Trustee against any costs, liabilities or expenses to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Securities of all such affected series have not given the Trustee a written direction that is inconsistent with such written request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over such other Holder.

Section 6.07. *Rights of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of Principal of or interest, if any, on such Holder's Security on or after the respective due dates expressed on such Security, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee.* If an Event of Default with respect to the Securities of any series in payment of Principal or interest specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount (or such portion thereof as specified in the terms established pursuant to Section 2.03 of Original Issue Discount Securities) of Principal of, and accrued interest remaining unpaid on, together with interest on overdue Principal of, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest on, the Securities of such series, in each case at the rate or Yield to Maturity (in the case of Original Issue Discount Securities) specified in such Securities, and such further amount as shall be sufficient to cover all amounts owing the Trustee under Section 7.07.

Section 6.09. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for amounts due the Trustee under Section 7.07) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any moneys, securities or other property payable or deliverable upon conversion or exchange of the Securities or upon any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it under Section 7.07. Nothing herein contained shall be deemed to empower the Trustee to authorize or consent to, or accept or adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10. *Application of Proceeds.* Any moneys collected by the Trustee pursuant to this Article in respect of the Securities of any series shall be applied in the following order at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of Principal or interest, upon presentation of the several Securities and coupons appertaining to such Securities in respect of which moneys have been collected and noting thereon the payment, or issuing Securities of such series and tenor in reduced principal amounts in exchange for the presented Securities of such series and tenor if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and its agents and counsel under Section 7.07 applicable to the Securities of such series in respect of which moneys have been collected;

SECOND: In case the principal of the Securities of such series in respect of which moneys have been collected shall not have become and be then due and payable, to the payment of interest on the Securities of such series in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in such Securities, such payments to be made ratably to the persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Securities of such series in respect of which moneys have been collected shall have become and shall be then due and payable, to the payment of the whole amount then owing and unpaid upon all the Securities of such series for Principal and interest, with interest upon the overdue Principal, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities of such series, then to the payment of such Principal and interest or Yield to Maturity, without preference or priority of Principal over interest or Yield to Maturity, or of interest or Yield to Maturity over Principal, or of any installment of interest over any other installment of interest, or of any Security of such series over any other Security of such series, ratably to the aggregate of such Principal and accrued and unpaid interest or Yield to Maturity; and

FOURTH: To the payment of the remainder, if any, to the Company or any other person lawfully entitled thereto.

Section 6.11. *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then, and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored to their former positions hereunder and thereafter all rights and remedies of the Company, Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.12. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, in either case in respect to the Securities of any series, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys' fees, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by a Holder pursuant to Section 6.07, a suit instituted by the Trustee or a suit by Holders of more than 10% in principal amount of the outstanding Securities of such series.

Section 6.13. *Rights and Remedies Cumulative*. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities in Section 2.08, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.14. *Delay or Omission not Waiver*. No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

ARTICLE 7

TRUSTEE

Section 7.01. *General*. The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act and as set forth herein. Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, unless it receives indemnity satisfactory to it against any loss, liability or expense. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article 7.

Section 7.02. *Certain Rights of Trustee*. Subject to Trust Indenture Act Sections 315(a) through (d):

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, Officer's Certificate, Opinion of Counsel (or both), statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person or persons. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(b) before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel, which shall conform to Section 10.04 and shall cover such other matters as the Trustee may reasonably request. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion. Subject to Sections 7.01 and 7.02, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or bad faith on the part of the Trustee (as determined by a court of competent jurisdiction in a final, non-appealable judgment), be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such certificate, in the absence of gross negligence or bad faith on the part of the Trustee (as determined by a court of competent jurisdiction in a final, non-appealable judgment), shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof;

(c) the Trustee may act through its attorneys and agents not regularly in its employ and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care;

(d) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, unless such Holders shall have offered to the Trustee security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers conferred upon it by this Indenture or for any action it takes or omits to take in accordance with the direction of the Holders in accordance with Section 6.05 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(g) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon; and

(h) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all Events of Default, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, Officer's Certificate, Opinion of Counsel, Board Resolution, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Securities of all series affected then outstanding; *provided* that, if the payment within a reasonable time to the

Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity against such expenses or liabilities as a condition to proceeding; and

(i) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

(k) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 7.03. *Individual Rights of Trustee*. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311. For purposes of Trust Indenture Act Section 311(b)(4) and (6), the following terms shall mean:

(a) "**cash transaction**" means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; and

(b) "**self-liquidating paper**" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

Section 7.04. *Trustee's Disclaimer*. The recitals contained herein and in the Securities (except the Trustee's certificate of authentication) shall be taken as statements of the Company and not of the Trustee and the Trustee assumes no responsibility for the correctness of the same. Neither the Trustee nor any of its agents (a) makes any representation as to the validity or adequacy of this Indenture, the Securities or in any document issued in connection with the sale of the Securities and (b) shall be accountable for the Company's use or application of the proceeds from the Securities.

Section 7.05. *Notice of Default*. If any Default with respect to the Securities of any series occurs and is continuing and if such Default is known to the actual knowledge of a Responsible Officer with the Corporate Trust Department of the Trustee, the Trustee shall give to each Holder of Securities of such series notice of such Default within 90 days after it occurs to all Holders of Securities of such series in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, unless such Default shall have been cured or waived before the transmittal of such notice; provided, however, that, except in the case of a Default in the payment of the Principal of or interest on any Security, the Trustee shall be protected in withholding such notice if the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 7.06. *Reports by Trustee to Holders*. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each May 15 following the date of this Indenture, deliver to Holders a brief report, dated as of such May 15, which complies with the provisions of such Section 313(a).

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when any Securities are listed on any stock exchange.

Section 7.07. *Compensation and Indemnity*. The Company shall pay to the Trustee (in each of its capacities hereunder) such compensation as shall be agreed upon in writing from time to time for its services. The compensation of the Trustee shall not be limited by any law on compensation of a Trustee of an express trust. The Company shall reimburse the Trustee and any predecessor Trustee upon request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Trustee or such predecessor Trustee. Such expenses shall include the reasonable compensation and expenses of the Trustee's or such predecessor Trustee's agents, counsel and other persons not regularly in their employ.

The Company shall indemnify, defend and protect each of the Trustee (in its individual capacity and Trustee capacities), any predecessor Trustee and their officers, directors, agents and employees for, and hold them harmless against, any and all loss, claim, liability, damage, cost or expense(including taxes other than taxes based on the income of the Trustee) incurred by them arising out of or in connection with the acceptance or administration of this Indenture and the Securities or the issuance of the Securities or of series thereof or the trusts hereunder and the performance of duties under this Indenture and the Securities, including the costs and expenses of enforcing this Indenture against the Company (whether asserted by the Company or any Holder or any other person) and defending themselves against or investigating any claim or liability and of complying with any process served upon them or any of their officers in connection with the exercise or performance of any of their powers or duties under this Indenture and the Securities, except that the Company shall not be obligated to reimburse any expense or indemnify against any loss or liability incurred by the Trustee as determined to have been caused by the Trustee's own negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel.

To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay Principal of, and interest on particular Securities.

The obligations of the Company under this Section to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture or the rejection or termination of this Indenture under bankruptcy law or the earlier resignation or removal of the Trustee. Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities or coupons, and the Securities are hereby subordinated to such senior claim. Without prejudice to any other rights available to the Trustee under applicable law, if the Trustee renders services and incurs expenses following an Event of Default under Section 6.01(d) or Section 6.01(e) hereof, the parties hereto and the holders by their acceptance of the Securities hereby agree that such expenses are intended to constitute expenses of administration under any bankruptcy law.

Section 7.08. *Replacement of Trustee*. A resignation or removal of the Trustee as Trustee with respect to the Securities of any series and appointment of a successor Trustee as Trustee with respect to the Securities of any series shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign as Trustee with respect to the Securities of any series at any time by so notifying the Company in writing. The Holders of a majority in principal amount of the outstanding Securities of any series may remove the Trustee as Trustee with respect to the Securities of such series by so notifying the Trustee in writing not less than 30 days prior to the effective date of such removal and may appoint a successor Trustee with respect thereto with the consent of the Company. The Company may remove the Trustee as Trustee with respect to the Securities of any series if: (i) the Trustee is no longer eligible under Section 7.11 of this Indenture; (ii) the Trustee is

adjudged a bankrupt or insolvent; (iii) a receiver or other public officer takes charge of the Trustee or its property; or (iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed as Trustee with respect to the Securities of any series, or if a vacancy exists in the office of Trustee with respect to the Securities of any series for any reason, the Company shall promptly appoint a successor Trustee with respect thereto. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the outstanding Securities of such series may appoint a successor Trustee in respect of such Securities to replace the successor Trustee appointed by the Company. If the successor Trustee with respect to the Securities of any series does not deliver its written acceptance required by Section 7.09 within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of a majority in principal amount of the outstanding Securities of such series may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect thereto.

The Company shall give notice of any resignation and any removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee in respect of the Securities of such series to all Holders of Securities of such series. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Notwithstanding replacement of the Trustee with respect to the Securities of any series pursuant to this Section 7.08 and Section 7.09, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

Section 7.09. *Acceptance of Appointment by Successor*. In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges and subject to the lien provided for in Section 7.07, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject to the lien provided for in Section 7.07.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, subject to the lien provided for in Section 7.07.

Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article and qualified under Section 310(b) of the Trust Indenture Act.

Section 7.10. *Successor Trustee by Merger, Etc*. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or national banking association, the resulting, surviving or transferee corporation or national banking association without any further act shall be the successor Trustee with the same effect as if the successor Trustee had been named as the Trustee herein.

Section 7.11. *Eligibility*. This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Section 310(a). The Trustee shall have a combined capital and surplus of at least $25,000,000 as set forth in its most recent published annual report of condition.

Section 7.12. *Money Held in Trust*. The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law and except for money held in trust under Article 8 of this Indenture.

ARTICLE 8

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 8.01. *Satisfaction and Discharge of Indenture*. If at any time (a) the Company shall have paid or caused to be paid the Principal of and interest on all the Securities of any series outstanding hereunder (other than Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08) as and when the same shall have become due and payable, or (b) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated (other than any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.08) or (c) (i) all the securities of such series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (ii) the Company shall have irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds the entire amount in cash (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 8.04) or U.S. Government Obligations, maturing as to principal and interest in such amounts and at such times as will insure (without consideration of the reinvestment of such interest) the availability of cash, or a combination thereof, sufficient, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (in the case of U.S. Government Obligations), to pay at maturity or upon redemption all Securities of such series (other than any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.08) not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due on or prior to such date of maturity or redemption as the case may be, and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to Securities of such series, then this Indenture shall cease to be of further effect with respect to Securities of such series (except as to (i) rights of registration of transfer and exchange of securities of such series, and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Securities, (iii) rights of holders to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration) and remaining rights of the holders to receive mandatory sinking fund payments, if any, (iv) the rights, obligations and immunities of the Trustee hereunder and (v) the rights of the Securityholders of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and the Trustee, on demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction of and discharging this Indenture with respect to such series; *provided*,

that the rights of Holders of the Securities to receive amounts in respect of Principal of and interest on the Securities held by them shall not be delayed longer than required by then-applicable mandatory rules or policies of any securities exchange upon which the Securities are listed. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Securities of such series.

Section 8.02. *Application by Trustee of Funds Deposited for Payment of Securities.* Subject to Section 8.04, all moneys (including U.S. Government Obligations and the proceeds thereof) deposited with the Trustee pursuant to Section 8.01, Section 8.05 or Section 8.06 shall be held in trust and applied by it to the payment, either directly or through any paying agent to the Holders of the particular Securities of such series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for Principal and interest; but such money need not be segregated from other funds except to the extent required by law.

Section 8.03. *Repayment of Moneys Held by Paying Agent.* In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series, all moneys then held by any paying agent under the provisions of this Indenture with respect to such series of Securities shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

Section 8.04. *Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years*. Any moneys deposited with or paid to the Trustee or any paying agent for the payment of the Principal of or interest on any Security of any series and not applied but remaining unclaimed for two years after the date upon which such Principal or interest shall have become due and payable, shall, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee for such series or such paying agent, and the Holder of the Security of such series shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Company for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

Section 8.05. *Defeasance and Discharge of Indenture*. The Company shall be deemed to have paid and shall be discharged from any and all obligations in respect of the Securities of any series, on the 123rd day after the deposit referred to in clause (i) hereof has been made, and the provisions of this Indenture shall no longer be in effect with respect to the Securities of such series (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except as to: (a) rights of registration of transfer and exchange, and the Company's right of optional redemption, (b) substitution of apparently mutilated, defaced, destroyed, lost or stolen Securities, (c) rights of holders to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration), (d) the rights, obligations and immunities of the Trustee hereunder and (e) the rights of the Securityholders of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them; *provided* that the following conditions shall have been satisfied:

(i) with reference to this provision the Company has deposited or caused to be irrevocably deposited with the Trustee (or another qualifying trustee satisfying the requirements of Section 7.11) as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of such series, (A) money in an amount, or (B) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due date of any payment referred to in subclause (x) or (y) of this clause (i) money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (in the case of U.S. Government Obligations), to pay and discharge without consideration of the reinvestment of such interest and after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee (x) the principal of, premium, if any, and each installment of interest on the outstanding Securities of such series on the due dates thereof and (y) any mandatory sinking fund payments or analogous payments applicable to the Securities of such series on the day on which such payments are due and payable in accordance with the terms of Securities of such series and the Indenture with respect to the Securities of such series;

(ii) the Company has delivered to the Trustee (A) either (x) an Opinion of Counsel to the effect that Holders of Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of the Company's exercise of its option under this Section 8.05 and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred, which Opinion of Counsel must be based upon a ruling of the Internal Revenue Service to the same effect or a change in applicable federal income tax law or related treasury regulations after the date of this Indenture or (y) a ruling directed to the Trustee received from the Internal Revenue Service to the same effect as the aforementioned Opinion of Counsel and (B) an Opinion of Counsel to the effect that the creation of the defeasance trust does not violate the Investment Company Act of 1940 and after the passage of 123 days following the deposit, the trust fund will not be subject to the effect of Section 547 of the U.S. Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law;

(iii) immediately after giving effect to such deposit on a pro forma basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing on the date of such deposit or during the period ending on the 123rd day after the date of such deposit, and such deposit shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which the Company is bound;

(iv) if at such time the Securities of such series are listed on a national securities exchange, the Company has delivered to the Trustee an Opinion of Counsel to the effect that the Securities of such series will not be delisted as a result of such deposit, defeasance and discharge;

(v) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge under this Section have been complied with; and

(vi) if the Securities of such series are to be redeemed prior to the final maturity thereof (other than from mandatory sinking fund payments or analogous payments), notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made.

Section 8.06. *Defeasance of Certain Obligations*. The Company may omit to comply with any term, provision or condition set forth in, and this Indenture will no longer be in effect with respect to, any covenant established pursuant to Section 2.03(r) and clause (c) (with respect to any covenants established pursuant to Section 2.03(r)) and clause (f) of Section 6.01 shall be deemed not to be an Event of Default with respect to Securities of any series, if:

(a) with reference to this Section 8.06, the Company has deposited or caused to be irrevocably deposited with the Trustee (or another qualifying trustee satisfying the requirements of Section 7.11) as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of such series and the Indenture with respect to the Securities of such series, (i) money in an amount or (ii) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than one day before the due dates thereof or earlier redemption (irrevocably provided for under agreements satisfactory to the Trustee), as the case may be, of any payment referred to in subclause (x) or (y) of this clause (a) money in an amount, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (in the case of U.S. Government Obligations), to pay and discharge without consideration of the reinvestment of such interest and after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee (x) the principal of, premium, if any, and each installment of interest on the outstanding Securities of such series on the due date thereof or earlier redemption (irrevocably provided for under arrangements satisfactory to the Trustee), as the case may be, and (y) any mandatory sinking fund payments or analogous payments applicable to the Securities of such series and the Indenture with respect to the Securities of such series on the day on which such payments are due and payable in accordance with the terms of the Indenture and of Securities of such series and the Indenture with respect to the Securities of such series;

(b) the Company has delivered to the Trustee (i) an Opinion of Counsel to the effect that Holders of Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of the Company's exercise of its option under this Section 8.06 and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred and (ii) an Opinion of Counsel to the effect that the creation of the defeasance trust does not violate the Investment Company Act of 1940 and after the passage of 123 days following the deposit, the trust fund will not be subject to the effect of Section 547 of the U.S. Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law;

(c) immediately after giving effect to such deposit on a pro forma basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing on the date of such deposit or during the period ending on the 123rd day after the date of such deposit, and such deposit shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which the Company is bound;

(d) if at such time the Securities of such series are listed on a national securities exchange, the Company has delivered to the Trustee an Opinion of Counsel to the effect that the Securities of such series will not be delisted as a result of such deposit, defeasance and discharge; and

(e) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under this Section have been complied with.

Section 8.07. *Reinstatement*. If the Trustee or paying agent is unable to apply any monies or U.S. Government Obligations in accordance with Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article until such time as the Trustee or paying agent is permitted to apply all such monies or U.S. Government Obligations in accordance with Article 8; *provided, however*, that if the Company has made any payment of Principal of or interest on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the monies or U.S. Government Obligations held by the Trustee or paying agent.

Section 8.08. *Indemnity*. The Company shall pay and indemnify the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.08 and Section 8.02, the "**Trustee**") against any tax, fee or other charge, imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 8.01, 8.05 or 8.06 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Securities and any coupons appertaining thereto.

Section 8.09. *Excess Funds*. Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon request of the Company, any money or U.S. Government Obligations (or other property and any proceeds therefrom) held by it as provided in Section 8.01, 8.05 or 8.06 which, in the opinion of a nationally recognized investment banking firm, appraisal firm or firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a discharge or defeasance, as applicable, in accordance with this Article 8.

Section 8.10. *Qualifying Trustee*. Any trustee appointed pursuant to Section 8.05 or 8.06 for the purpose of holding money or U.S. Government Obligations deposited pursuant to such Sections shall be appointed under an agreement in form acceptable to the Trustee and shall provide to the Trustee a certificate, upon which certificate the Trustee shall be entitled to conclusively rely, that all conditions precedent provided for herein to the related defeasance have been complied with. In no event shall the Trustee be liable for any acts or omissions of said trustee.

ARTICLE 9

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 9.01. *Without Consent of Holders*. The Company and the Trustee may amend or supplement this Indenture or the Securities of any series without notice to or the consent of any Holder:

(a) to cure any ambiguity, defect or inconsistency in this Indenture; *provided* that such amendments or supplements shall not materially and adversely affect the interests of the Holders;

(b) to comply with Article 5;

(c) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act;

(d) to evidence and provide for the acceptance of appointment hereunder with respect to the Securities of any or all series by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 7.09;

(e) to establish the form or forms or terms of Securities of any series or of the coupons appertaining to such Securities as permitted by Section 2.03;

(f) to provide for uncertificated or Unregistered Securities and to make all appropriate changes for such purpose; and

(g) to make any change that does not materially and adversely affect the rights of any Holder.

Section 9.02. *With Consent of Holders*. Subject to Sections 6.04 and 6.07, without prior notice to any Holders, the Company and the Trustee may amend this Indenture and the Securities of any series with the written consent of the Holders of a majority in principal amount of the outstanding Securities of all series affected by such amendment (each such series voting as a separate class), and the Holders of a majority in principal amount of the outstanding Securities of all series affected thereby (each such series voting as a separate class) by written notice to the Trustee may waive future compliance by the Company with any provision of this Indenture or the Securities of such series. Notwithstanding the provisions of this Section 9.02, without the consent of each Holder affected thereby, an amendment or waiver, including a waiver pursuant to Section 6.04, may not:

(a) change the stated maturity of the Principal of, or any sinking fund obligation or any installment of interest on, such Holder's Security;

(b) reduce the Principal amount thereof or the rate of interest thereon (including any amount in respect of original issue discount);

(c) reduce the above stated percentage of outstanding Securities the consent of whose holders is necessary to modify or amend the Indenture with respect to the Securities of the relevant series; and

(d) reduce the percentage in principal amount of outstanding Securities of the relevant series the consent of whose Holders is required for any supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain Defaults and their consequences provided for in this Indenture.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of Holders of Securities of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series or of the coupons appertaining to such Securities.

It shall not be necessary for the consent of any Holder under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall give to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. The Company will mail supplemental indentures to Holders upon request. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

Section 9.03. *Revocation and Effect of Consent.* Until an amendment or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the Security of the consenting Holder, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of its Security. Such revocation shall be effective only if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver shall become effective with respect to any Securities affected thereby on receipt by the Trustee of written consents from the requisite Holders of outstanding Securities affected thereby.

The Company may, but shall not be obligated to, fix a record date (which may be not less than five nor more than 60 days prior to the solicitation of consents) for the purpose of determining the Holders of the Securities of any series affected entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then, notwithstanding the immediately preceding paragraph, those Persons who were such Holders at such record date (or their duly designated proxies) and only those Persons shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such Persons continue to be such Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

After an amendment, supplement or waiver becomes effective with respect to the Securities of any series affected thereby, it shall bind every Holder of such Securities unless it is of the type described in any of clauses (a) through (d) of Section 9.02. In case of an amendment or waiver of the type described in clauses (a) through (d) of Section 9.02, the amendment or waiver shall bind each such Holder who has consented to it and every subsequent Holder of a Security that evidences the same indebtedness as the Security of the consenting Holder.

Section 9.04. *Notation on or Exchange of Securities*. If an amendment, supplement or waiver changes the terms of any Security, the Trustee may require the Holder thereof to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder and the Trustee may place an appropriate notation on any Security of such series thereafter authenticated. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security of the same series and tenor that reflects the changed terms.

Section 9.05. *Trustee to Sign Amendments, Etc*. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel, each stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article 9 is authorized or permitted by this Indenture, stating that all requisite consents have been obtained or that no consents are required and stating that such supplemental indenture constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to customary exceptions. The Trustee may, but shall not be obligated to, execute any such amendment, supplement or waiver that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.06. *Conformity With Trust Indenture Act*. Every supplemental indenture executed pursuant to this Article 9 shall conform to the requirements of the Trust Indenture Act as then in effect.

ARTICLE 10

MISCELLANEOUS

Section 10.01. *Trust Indenture Act of 1939*. This Indenture shall incorporate and be governed by the provisions of the Trust Indenture Act that are required to be part of and to govern indentures qualified under the Trust Indenture Act.

Section 10.02. *Notices*. Any notice or communication shall be sufficiently given if written and (a) if delivered in person when received or (b) if mailed by first class mail 5 days after mailing, or (c) as between the Company and the Trustee if sent by facsimile or electronic transmission, when transmission is confirmed, in each case addressed as follows:
if to the Company:

Fisker Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Attention: Dr. Geeta Gupta-Fisker
Email: legal@fiskerinc.com

if to the Trustee:

Wilmington Savings Fund Society, FSB
500 Delaware Avenue
Wilmington, DE 19801
Attention: Corporate Trust – Fisker Inc.

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication shall be sufficiently given to Holders of the Securities by mailing to such Holders at their addresses as they shall appear on the Security Register. Notice mailed shall be sufficiently given if so mailed within the time prescribed. Copies of any such communication or notice to a Holder shall also be mailed to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event to a Holder of a Registered Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Security (or its designee) pursuant to the applicable procedures of such Depositary, if any, prescribed for the giving of such notice.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. Except as otherwise provided in this Indenture, if a notice or communication is mailed in the manner provided in this Section 10.02, it is duly given, whether or not the addressee receives it.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case it shall be impracticable to give notice as herein contemplated, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 10.03. *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officer's Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 10.04. *Statements Required in Certificate or Opinion*. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate required by Section 4.04) shall include:

(a) a statement that the person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based;

(c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; *provided*, *however*, that, with respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 10.05. *Evidence of Ownership*. The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Holder of any Unregistered Security and the Holder of any coupon as the absolute owner of such Unregistered Security or coupon (whether or not such Unregistered Security or coupon shall be overdue) for the purpose of receiving payment thereof or on account thereof and for all other purposes, and neither the Company, the Trustee, nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. The fact of the holding by any Holder of an Unregistered Security, and the identifying number of such Security and the date of his holding the same, may be proved by the production of such Security or by a certificate executed by any trust company, bank, banker or recognized securities dealer wherever situated satisfactory to the Trustee, if such certificate shall be deemed by the Trustee to be satisfactory. Each such certificate shall be dated and shall state that on the date thereof a Security bearing a specified identifying number was deposited with or exhibited to such trust company, bank, banker or recognized securities dealer by the person named in such certificate. Any such certificate may be issued in respect of one or more Unregistered Securities specified therein. The holding by the person named in any such certificate of any Unregistered Securities specified therein shall be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (1) another certificate bearing a later date issued in respect of the same Securities shall be produced or (2) the Security specified in such certificate shall be produced by some other Person, or (3) the Security specified in such certificate shall have ceased to be outstanding. Subject to Article 7, the fact and date of the execution of any such instrument and the amount and numbers of Securities held by the Person so executing such instrument may also be proven in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in any other manner which the Trustee may deem sufficient.

The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the person in whose name any Registered Security shall be registered upon the Security Register for such series as the absolute owner of such Registered Security (whether or not such Registered Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the Principal of and, subject to the provisions of this Indenture, interest on such Registered Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary.

Section 10.06. *Rules by Trustee, Paying Agent or Registrar*. The Trustee may make reasonable rules for action by or at a meeting of Holders. The Paying Agent or Registrar may make reasonable rules for its functions.

Section 10.07. *Payment Date Other Than a Business Day*. Except as otherwise provided with respect to a series of Securities, if any date for payment of Principal or interest on any Security shall not be a Business Day at any place of payment, then payment of Principal of or interest on such Security, as the case may be, need not be made on such date, but may be made on the next succeeding Business Day at any place of payment with the same force and effect as if made on such date and no interest shall accrue in respect of such payment for the period from and after such date.

Section 10.08. *Governing Law*. The laws of the State of New York shall govern this Indenture and the Securities.

Section 10.09. *No Adverse Interpretation of Other Agreements*. This Indenture may not be used to interpret another indenture or loan or debt agreement of the Company or any Subsidiary of the Company. Any such indenture or agreement may not be used to interpret this Indenture.

Section 10.10. *Successors*. All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 10.11. *Duplicate Originals*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of this Indenture by facsimile or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Indenture. Any party delivering an executed counterpart of this Indenture by facsimile or electronic transmission also shall deliver an original executed counterpart of this Indenture, but failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Indenture.

Section 10.12. *Separability*. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.13. *Table of Contents, Headings, Etc*. The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms and provisions hereof.

Section 10.14. *Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability*. No recourse under or upon any obligation, covenant or agreement contained in this Indenture or any indenture supplemental hereto, or in any Security or any coupons appertaining thereto, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such or against any past, present or future stockholder, officer, director or employee, as such, of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities and the coupons appertaining thereto by the holders thereof and as part of the consideration for the issue of the Securities and the coupons appertaining thereto.

Section 10.15. *Judgment Currency*. The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the Principal of or interest on the Securities of any series (the "**Required Currency**") into a currency in which a judgment will be rendered (the "**Judgment Currency**"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a Business Day, then, to the extent permitted by applicable law, the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the Business Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture.

Section 10.16. *Governing Law*. THIS INDENTURE AND THE SECURITIES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE SECURITIES.

Section 10.17 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE 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 INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.18 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, (i) any act or provision of any present or future law or regulation or governmental authority, (ii) any act of God, (iii) natural disaster, (iv) war, (v) terrorism, (vi) civil unrest, (vii) accidents, (viii) labor dispute, (ix) disease, (x) epidemic or pandemic, (xi) quarantine, (xii) national emergency, (xiii) loss or malfunction of utility or computer software or hardware, (xiv) communications system failure, (xv) malware or ransomware or (xvi) unavailability of the Federal Reserve Bank wire or telex system or other wire or other funds transfer systems, or (xvii) unavailability of securities clearing system; it being understood that the Trustee shall use

reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 10.19 *USA PATRIOT ACT*. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The Issuer agrees that it will provide the Trustee with information about the Issuer as the Trustee may reasonably request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

[*Signatures on following page*]

SIGNATURES

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

FISKER INC.
as the Company

By: Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as the
Trustee

By: _____
Name:
Title:

SIGNATURES

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

FISKER INC.
as the Company

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as the
Trustee

By: Patrick J. Healy
Name: Patrick J. Healy
Title: Senior Vice President

EXHIBIT D-1

FISKER INC.

TO

FIRST SUPPLEMENTAL INDENTURE TO
INDENTURE DATED JULY 11, 2023

Dated as of July 11, 2023

WILMINGTON SAVINGS FUND SOCIETY, FSB,

as Trustee

Series A-1 Senior Convertible Note Due 2025

FISKER INC.

FIRST SUPPLEMENTAL INDENTURE TO INDENTURE DATED JULY 11, 2023

Series A-1 Senior Convertible Note Due 2025

FIRST SUPPLEMENTAL INDENTURE, dated as of July 11, 2023 (this "**First Supplemental Indenture**"), between **FISKER INC.**, a Delaware corporation (the "**Company**"), and **WILMINGTON SAVINGS FUND SOCIETY, FSB**, as Trustee (the "**Trustee**").

RECITALS

A. The Company filed a registration statement on Form S-3 on December 23, 2021 (File Number 333-261875) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**SEC**") pursuant to Rule 415 under the Securities Act of 1933, as amended (the "**Securities Act**") and the Registration Statement has been declared effective by the SEC on January 4, 2022.

B. The Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 11, 2023, substantially in the form filed as an exhibit to the Registration Statement (the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company.

C. The Indenture has been qualified under the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**").

D. Section 2 of the Indenture provides for various matters with respect to any series of Securities issued under the Indenture to be established in an indenture supplemental to the Indenture.

E. Section 9.01 of the Indenture provides that, without the consent of the Holders, for the Company and the Trustee may enter into an indenture supplemental to the Indenture to establish the form or terms of Securities of any series as provided by Section 2 of the Indenture.

F. In accordance with that certain Securities Purchase Agreement, dated July 10, 2023 (the "**Securities Purchase Agreement**"), by and among the Company and the investors party thereto (the "**Investors**"), at the applicable Closing (as defined in the Securities Purchase Agreement) related to this First Supplemental Indenture, the Company has agreed to sell to the Investors, and the Investors have agreed to purchase from the Company, up to $680,000,000 in aggregate principal amount of Notes (in one or more tranches, in accordance with the terms of the Securities Purchase Agreement), subject to the satisfaction of certain terms and conditions set forth in the Securities Purchase Agreement, in each case, pursuant to (i) the Indenture, (ii) this First Supplemental Indenture, (iii) the Securities Purchase Agreement and (iv) the Registration Statement.

G. The Company hereby desires to supplement the Indenture pursuant to this First Supplemental Indenture to set forth the terms and conditions of the Notes to be issued in accordance herewith.

NOW, THEREFORE, THIS FIRST SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the issuance of the series of Securities provided for herein, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of such series, as follows:

ARTICLE I

RELATION TO INDENTURE; DEFINITIONS

Section 1.1. RELATION TO INDENTURE. This First Supplemental Indenture constitutes an integral part of the Indenture.

Section 1.2. DEFINITIONS. For all purposes of this First Supplemental Indenture:

(a) Capitalized terms used herein without definition shall have the meanings specified in the Indenture or in the Notes, as applicable;

(b) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this First Supplemental Indenture; and

(c) The terms "herein," "hereof," "hereunder" and other words of similar import refer to this First Supplemental Indenture.

ARTICLE II

THE SERIES OF SECURITIES

Section 2.1. TITLE. There shall be a series of Securities designated the "Series A-1 Senior Convertible Notes Due 2025" (the "**Notes**").

Section 2.2. LIMITATION ON AGGREGATE PRINCIPAL AMOUNT. The aggregate principal amount of the Notes to be sold pursuant to the Securities Purchase Agreement and to be issued pursuant to this First Supplemental Indenture on the date hereof shall be $340,000,000.

Section 2.3. PRINCIPAL PAYMENT DATE. The principal amount of the Notes outstanding (together with any accrued and unpaid interest and other amounts) shall be payable in accordance with the terms and conditions set forth in the Notes on each Conversion Date, Alternate Conversion Date, redemption date and on the Maturity Date, in each case as defined in the Notes.

Section 2.4. INTEREST AND INTEREST RATES. Interest shall accrue and shall be payable at such times and in the manner set forth in the Notes.

Section 2.5. PLACE OF PAYMENT. Except as otherwise provided by the Notes, the place of payment where the Notes may be presented or surrendered for payment, where the Notes may be surrendered for registration of transfer or exchange (to the extent required or permitted, as applicable, by the terms of the Notes) and where notices and demand to or upon the Trustee in respect of the Notes and the Indenture may be served shall be: 500 Delaware Avenue, Wilmington, DE 19801, Attn.: Corporate Trust - Fisker Inc.; Telephone: (302) 573-3269; Facsimile: (302) 421-9137; Email: JMcNichol@wsfsbank.com.

Section 2.6. REDEMPTION. The Company may redeem the Notes, in whole or in part, at such times and in the manner set forth in the Notes.

Section 2.7. DENOMINATION. The Notes shall be issuable only in registered form without coupons and in minimum denominations of $1,000 and integral multiples thereof.

Section 2.8. CURRENCY. Principal and interest and any other amounts payable, from time to time, on the Notes shall be payable in such coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts in accordance with Section 23(b) of the Notes.

Section 2.9. FORM OF SECURITIES. The Notes shall be issued in the form attached hereto as **Exhibit A**. **Exhibit A** also includes the form of Trustee's certificate of authentication for the Notes. The Company has elected to issue only definitive Securities and shall not issue any global Securities hereunder.

Section 2.10. CONVERTIBLE SECURITIES. The Notes are convertible into shares of Common Stock (as defined in the Notes) of the Company upon the terms and conditions set forth in the Notes and all references to "Common Stock" in the Indenture shall be deemed to be references to Common Stock for all purposes thereunder. In connection with any conversion of any given Note into Common Stock, the Trustee may rely conclusively, without any independent investigation, on any Conversion Notice (as defined in the Notes) executed by the applicable Holder of such Note and an Acknowledgement (as defined in the Notes) signed by the Company (in each case, in the forms attached as Exhibits I and II to the Note), in lieu of the Company's obligations to deliver an Officer's Certificate, Board Resolutions or an Opinion of Counsel pursuant to Article Two, Article Three or Section 7.02 of the Indenture in connection with any conversion of any Note. The applicable Conversion Notice and/or Acknowledgement (unless subsequently revoked or withdrawn) shall be deemed to be a joint instruction by the Company and such Holder to the Trustee to record on the register of the Notes such conversion and decrease in the principal amount of such Note by such aggregate principal amount of the Note converted, in each case, as set forth in such applicable Conversion Notice and/or Acknowledgement.

Section 2.11. REGISTRAR. The Trustee shall only serve initially as the Security Registrar and not as a paying agent and, in such capacity, shall maintain a register (the "**Security Register**") in which the Trustee shall register the Notes and transfers of the Notes. The entries in the Security Register shall be conclusive and binding for all purposes absent manifest error. The initial Security Register shall be created by the Trustee in connection with the authentication of the initial Notes in the names and amounts detailed in the related Company Order. No Note may be transferred or exchanged except in compliance with the authentication procedures of the Trustee

in accordance with this First Supplemental Indenture. The Trustee shall not register a transfer, exchange, redemption, conversion, cancellation or any other action with respect to a Note unless instructed to do so in an Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable. Each Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable, given to the Trustee in accordance with this Section 2.11 shall constitute a representation and warranty to the Trustee that the Trustee shall be fully indemnified in connection with any liability arising out of or related to any action taken by the Trustee in good faith reliance on such Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable.

Section 2.12. SINKING FUND OBLIGATIONS. The Company has no obligation to redeem or purchase any Notes pursuant to any sinking fund or analogous requirement or upon the happening of a specified event or at the option of a Holder thereof.

Section 2.13. NO PAYING AGENT. Notwithstanding anything in Section 2.06 of the Indenture to the contrary, the Company shall not be required to appoint and has not appointed any Paying Agent in respect of the Notes pursuant to the Indenture or any Supplemental Indenture and all amounts payable, from time to time, pursuant to the Notes shall, for so long as so long as no Paying Agent has been appointed, be paid directly by the Company to the applicable Holder.

Section 2.14. EVENTS OF DEFAULT. The Company has elected that the provisions of Section 4 of the Notes shall govern all Events of Default in lieu of Section 6 of the Indenture.

Section 2.15. EXCLUDED DEFINITIONS. The Company has elected that none of the following definitions in the Indenture shall be applicable to the Notes and any analogous definitions set forth in the Notes shall govern in lieu thereof:

- Definition of "Affiliate" in Section 1.01;
- Definition of "Business Day" in Section 1.01;
- Definition of "Event of Default" in Section 6.01;
- Definition of "Person" in Section 1.01; and
- Definition of "Subsidiary" in Section 1.01.

Section 2.16. EXCLUDED PROVISIONS. The Company has elected that none of the following provisions of the Indenture shall be applicable to the Notes and any analogous provisions (including definitions related thereto) of this First Supplemental Indenture and/or the Notes shall govern in lieu thereof:

- Section 2.03 (Form of Certificate of Authentication)
- Section 2.07 (Paying Agent to Hold Money in Trust)
- Section 2.08 (Transfer and Exchange)

- Section 2.09 (Replacement Securities)
- Section 2.10 (Outstanding Securities)
- Section 2.14 (Defaulted Interest)
- Article 3 (Redemption)
- Section 4.1 (Payment of Securities)
- Section 4.06 (Additional Amounts)
- Article 5 (Successor Corporation)
- Article 6 (Default and Remedies)
- Article 8 (Satisfaction, and Discharge of Indenture; Unclaimed Funds)
- Section 9.01 (Without Consent of Holders)
- Section 10.14 (Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability)
- Section 10.15 (Judgement Currency)

Section 2.17. COVENANTS. In addition to any covenants set forth in Article 4 of the Indenture, the Company shall comply with the additional covenants set forth in Section 13 of the Notes.

Section 2.18. IMMEDIATELY AVAILABLE FUNDS. All cash payments of principal and interest shall be made in U.S. dollars and immediately available funds.

Section 2.19. TRUSTEE MATTERS.

(a) Duties of Trustee. Notwithstanding anything in the Indenture to the contrary:

(i) the sole duty of the Trustee is to act as the Registrar unless otherwise agreed to by the Required Holders (as defined in the Notes), the Trustee and the Company in an additional supplemental Indenture (other than this First Supplemental Indenture) or as separately agreed to in a writing by the Trustee and the Required Holders;

(ii) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including as Registrar), and to each agent, custodian, and any other such Persons employed to act hereunder;

(iii) the Trustee has no duty to make any calculations called for under the Notes, and shall be protected in conclusively relying without liability upon an Officer's Certificate with respect thereto without independent verification;

(iv) for the protection and enforcement of the provisions of the Indenture, this First Supplemental Indenture and the Notes, the Trustee shall be entitled to such relief as can be given at either law or equity;

(v) in the event that the Holders of the Notes have waived any Event of Default with respect to this First Supplemental Indenture or the Notes, the default covered thereby shall be deemed to be cured for all purposes hereunder and the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other default to impair any right consequent thereon;

(vi) the Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of the Notes, and the Trustee shall not be responsible for the failure by the Company to comply with any provisions of the Notes;

(vii) the Trustee will not at any time be under any duty or responsibility to any Holder to determine the Conversion Price (or any adjustment thereto) or whether any facts exist that may require any adjustment to the Conversion Price, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in the Indenture, this First Supplemental Indenture, in any supplemental indenture or the Notes provided to be employed, in making the same;

(viii) the Trustee will not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, cash or other property that may at any time be issued or delivered upon the conversion of any Note; and the Trustee makes any representations with respect thereto; and

(ix) the Trustee will not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities, cash or other property upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company with respect thereto.

(b) Additional Indemnification. In addition to any indemnification rights set forth in the Indenture, the Company agrees the Trustee may retain one separate counsel on behalf of itself and the Holders (and in the case of an actual or perceived conflict of interest, one additional separate counsel on behalf of the Holders) and, if deemed advisable by such counsel, local counsel, and the Company shall pay the reasonable fees and expenses of such separate counsel and local counsel.

(c) Successor Trustee Petition Right. If an instrument of acceptance by a successor Trustee required by Section 7.08 or 7.09 of the Indenture has not been delivered to the Trustee within 30 days after the giving of a notice of removal, the Trustee being removed, at the

expense of the Company, may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(d) Trustee as Creditor. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

(e) Reports by the Company. The parties hereto acknowledge and agree that delivery of such reports, information, and documents to the Trustee pursuant to the provisions of Section 4.05 of the Indenture is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no duty to monitor or confirm, on a continuing basis or otherwise, the Company's or any other Person's compliance with any of the covenants under the Indenture and this First Supplemental Indenture, to determine whether such reports, information or documents are available on the SEC's website (including the EDGAR system or any successor system,) the Company's website or otherwise, to examine such reports, information, documents and other reports to ensure compliance with the provisions of this Indenture, or to ascertain the correctness or otherwise of the information or the statements contained therein.

(f) Statements by Officers as to Default. In addition to the Company's obligations pursuant to the Indenture, the Company agrees as follows:

(i) Annually, within 120 days after the close of each fiscal year beginning with the first fiscal year during which the Notes remain outstanding, the Company will deliver to the Trustee an Officer's Certificate (one of which Officers signatory thereto shall be the Chief Executive Officer, Chief Financial Officer or Chief Corporate and Strategy Officer of the Company) as to the knowledge of such Officers of the Company's compliance (without regard to any period of grace or requirement of notice provided herein) with all conditions and covenants under the Indenture, this First Supplemental Indenture and the Notes and, if any Event of Default has occurred and is continuing, specifying all such Events of Defaults and the nature and status thereof of which such Officers have knowledge.

(ii) The Company shall, so long as any of the Notes remain outstanding, deliver to the Trustee, as soon as practicable and in any event within 30 days after the Company becomes aware of any Event of Default, an Officer's Certificate specifying such Events of Default, its status and the actions that the Company is taking or proposes to take in respect thereof.

(g) Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and perform such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the Indenture and this First Supplemental Indenture.

(h) Expense. Notwithstanding anything in the Indenture to the contrary, any actions taken by the Trustee in any capacity shall be at the Company's reasonable expense.

Section 2.20. SATISFACTION; DISCHARGE. The Indenture and this First Supplemental Indenture will be discharged and will cease to be of further effect with respect to the Notes (except as to any surviving rights expressly provided for herein and in the Transaction Documents (as defined in the Securities Purchase Agreement)), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of the Indenture and this First Supplemental Indenture with respect to the Notes, when all outstanding amounts under the Notes shall have been paid in full (and/or converted into shares of Common Stock or other securities in accordance therewith) and no other obligations remain outstanding pursuant to the terms of the Notes, this First Supplemental Indenture, the Indenture and/or the other Transaction Documents, as applicable, which have not been paid in full by the Company, and when the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of the Indenture and this First Supplemental Indenture with respect to the Notes have been complied with. Notwithstanding the satisfaction and discharge of the Indenture and this First Supplemental Indenture, the obligations of the Company to the Trustee under Section 7.07 of the Indenture shall survive.

Section 2.21. CONTROL BY SECURITYHOLDERS. The Required Holders (as defined in the Securities Purchase Agreement) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to the Notes; provided, however, that such direction shall not be in conflict with any rule of law. Subject to the provisions of Section 7.01 of the Indenture and this First Supplemental Indenture, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceeding so directed would involve the Trustee in personal liability. The Notes may be amended, modified or waived, as applicable, in accordance with Section 15 of the Notes. Upon any waiver of any term of the Notes, the default covered thereby shall be deemed to be cured for all purposes of the Indenture, this First Supplemental Indenture, the Notes and the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE III

EXPENSES

Section 3.1. PAYMENT OF EXPENSES. In connection with the offering, sale and issuance of the Notes, the Company, in its capacity as issuer of the Notes, shall pay all reasonable, documented out-of-pocket costs and expenses relating to the offering, sale and issuance of the Notes and compensation and expenses of the Trustee under the Indenture in accordance with the provisions of Section 7.07 of the Indenture.

Section 3.2. PAYMENT UPON RESIGNATION OR REMOVAL. Upon termination of this First Supplemental Indenture or the Indenture or the removal or resignation of

the Trustee, unless otherwise stated, the Company shall pay to the Trustee all reasonable, documented out-of-pocket amounts, fees and expenses (including reasonable attorney's fees and expenses) accrued to the date of such termination, removal or resignation.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1. TRUSTEE NOT RESPONSIBLE FOR RECITALS. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

Section 4.2. ADOPTION, RATIFICATION AND CONFIRMATION. The Indenture, as supplemented and amended by this First Supplemental Indenture, is in all respects hereby adopted, ratified and confirmed.

Section 4.3. CONFLICT WITH INDENTURE; TRUST INDENTURE ACT. Notwithstanding anything to the contrary in the Indenture, if any conflict arises between the terms and conditions of this First Supplemental Indenture (including, without limitation, the terms and conditions of the Notes) and the Indenture, the terms and conditions of this First Supplemental Indenture (including the Notes) shall control; provided, however, that if any provision of this First Supplemental Indenture or the Notes limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required thereunder to be a part of and govern this First Supplemental Indenture, the latter provisions shall control. If any provision of this First Supplemental Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provisions shall be deemed to apply to the Indenture as so modified or excluded, as the case may be.

Section 4.4. AMENDMENTS; WAIVER. This First Supplemental Indenture may be amended by the written consent of the Company and the Required Holders (as defined in the Notes); provided however, no amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent. Notwithstanding anything in any other Transaction Document to the contrary, no amendment to any Transaction Document that adversely impact the rights, duties, immunities or liabilities of the Trustee hereunder, pursuant to the Indenture and/or the Notes, as applicable, shall be effective without the Trustee's prior written consent. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

Section 4.5. SUCCESSORS. This First Supplemental Indenture shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes.

Section 4.6. SEVERABILITY; ENTIRE AGREEMENT. If any provision of this First Supplemental Indenture shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this

First Supplemental Indenture in that jurisdiction or the validity or enforceability of any provision of this First Supplemental Indenture in any other jurisdiction.

Section 4.7. The Indenture, this First Supplemental Indenture, the Transaction Documents and the exhibits hereto and thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 4.8. COUNTERPARTS. This First Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 4.9. GOVERNING LAW. This First Supplemental Indenture and the Indenture shall each be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 of the Notes, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The Borough of Manhattan, New York, 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 22 of the Notes. **THE COMPANY 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 FIRST SUPPLEMENTAL INDENTURE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

Section 4.10. U.S.A. PATRIOT ACT. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Supplemental Indenture agree that they shall provide the Trustee with such information as it may reasonably request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed on the date or dates indicated in the acknowledgments and as of the day and year first above written.

FISKER INC.

By: Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and
Chief Operating Officer

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By: Patrick J. Healy
Name: Patrick J. Healy
Title: Senior Vice President

EXHIBIT A

(FORM OF NOTE)

[FORM OF SERIES [A][B][C][-][1][2][3][4] SENIOR CONVERTIBLE NOTE]

THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), [ ], A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). THE COMPANY'S CHIEF FINANCIAL OFFICER MAY BE REACHED AT TELEPHONE NUMBER (833) 434-7537.

FISKER INC.

Series [A][B][C][-][1][2][3][4] SENIOR UNSECURED CONVERTIBLE NOTE

Issuance Date: [●] 20__ Original Principal Amount: U.S. $[●]

FOR VALUE RECEIVED, Fisker Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of [BUYER] or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date (each as defined below), or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and upon the occurrence and continuance of an Event of Default (as defined below) to pay interest ("**Interest**") on any outstanding Principal at the applicable Default Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date, or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Series [A][B][C][-][1][2][3][4] Senior Unsecured Convertible Note (including all Senior Unsecured Convertible Notes issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Unsecured Convertible Notes (collectively, the "**Notes**", and such other Senior Unsecured Convertible Notes, the "**Other Notes**") issued pursuant to (i) Section 1 of that certain Securities Purchase Agreement, dated as of July 10, 2023 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (the "**Securities Purchase Agreement**"), (ii) the Indenture, (iii) a Supplemental Indenture, and (iv) the Company's Registration Statement on Form S-3 (File number 333-261875) (the "**Registration Statement**"). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On each Installment Date, the Company shall pay to the Holder an amount equal to the Installment Amount due on such Installment Date in

accordance with Section 8. On the Maturity Date, the Company shall pay to the Holder an amount in cash (excluding any amounts paid in shares of Common Stock on the Maturity Date in accordance with Section 8) representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Other than as specifically permitted or required by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any. Notwithstanding anything herein to the contrary, with respect to any conversion or redemption hereunder, as applicable, the Company shall convert or redeem, as applicable, First, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document, Second, all accrued and unpaid Interest, if any, hereunder and under any Other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any Other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any Other Notes held by such Holder, in each case, allocated pro rata among this Note and such Other Notes held by such Holder.

2. INTEREST; DEFAULT RATE. No Interest shall accrue hereunder unless and until an Event of Default (as defined below) has occurred. From and after the occurrence and during the continuance of any Event of Default, Interest shall accrue hereunder at eighteen percent (18.0%) per annum (the "**Default Rate**") and shall be computed on the basis of a 360-day year and twelve 30-day months, shall compound each calendar month and shall be payable in arrears on the first Trading Day of each such calendar month in which Interest accrues hereunder (each, an "**Interest Date**"). Accrued and unpaid Interest, if any, shall also be payable by way of inclusion of such Interest in the Conversion Amount (as defined below) on each Conversion Date (as defined below) in accordance with in accordance with Section 3(b)(i) or upon any redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below). In the event that such Event of Default is subsequently cured (and no other Event of Default then exists (including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date, unless waived in writing by the Holder)), 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 or waiver; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of Default, unless waived in writing by the Holder.

3. CONVERSION OF NOTES. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(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 (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the sum of (x) portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made and (y) all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $[ ][1], subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall deliver (whether via electronic mail or as otherwise provided in Section 23(a)), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (each, a "**Conversion Notice**") to the Company and the Trustee. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 17(b)). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment, in the form attached hereto as Exhibit II, of confirmation of receipt of such Conversion Notice and representation that such shares of Common Stock may then be freely resold by the Holder without restriction (each, an "**Acknowledgement**") to the Holder, the Trustee and the Company's transfer agent (the "**Transfer Agent**") which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

[1] Insert 130% of (x) solely with respect to the Initial Closing (as defined in the Securities Purchase Agreement), the Closing Bid Price of the Common Stock on the Subscription Date, or (y) solely with respect to an applicable Additional Closing (as defined in the Securities Purchase Agreement), the quotient of (A) the sum of the VWAP of the Common Stock of each Trading Day during the five (5) Trading Day period ended, and including, the Trading Day ended immediately prior to the time of delivery of such Additional Optional Closing Notice to the Company or Additional Mandatory Closing Notice to the Holder, as applicable, with respect to such Additional Closing (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or similar events during such period), divided by (B) five (5).

On or before the second (2nd) Trading Day following the 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 shares of Common Stock 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's ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the 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, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 17(d)) representing the outstanding Principal (and accrued and unpaid Interest thereon) not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. In the event of a partial conversion of this Note pursuant hereto, the Principal amount converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining Installment Amount(s) relating to the Installment Date(s) as set forth in the applicable Conversion Notice.

(ii) 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, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock 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 shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to one percent (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 Share Delivery Deadline and to which the Holder is entitled, multiplied by (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 applicable Conversion Date and ending on the applicable Share Delivery Deadline and (2) the 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) any portion of this Note 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 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to 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 is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below, and if on or after such Share Delivery Deadline 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 conversion that the 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 the Holder, the Company shall, within two (2) Business Days after receipt of 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 (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 issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the 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) (the "**Buy-In Payment Amount**"). 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) upon the conversion of this Note as required pursuant to the terms hereof.

(iii) Registration; Book-Entry. The Trustee shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "**Registered Notes**") as provided in Section [ ] of the Indenture. The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the

holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Trustee shall record the information contained therein in the Register and issue one or more new Registered Notes (to be executed by the Company and authenticated and delivered by the Trustee) in the same aggregate principal amount as the principal amount of the surrendered Registered Note in the name of the designated assignee or transferee pursuant to Section 16, provided that if the Company or the Trustee does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note 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). Every Registered Note presented or surrendered for registration of transfer, or for exchange or redemption shall (if so required by the Company or the Registrar for such Notes presented) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the holder thereof or his attorney duly authorized in writing. Notwithstanding anything to the contrary set forth in this Section 3 or in the Indenture or in any applicable Supplemental Indenture, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder, the Trustee and the Company shall maintain records showing the Principal, Interest and Late Charges 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 the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3(d), shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the

Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22. If a Conversion Notice delivered to the Company would result in a breach of Section **Error! Reference source not found.** below, and the 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 **Error! Reference source not found.** below (with such calculations thereunder made as of the date such Conversion Notice was initially delivered to the Company).

(d) Limitations on Conversions.

(i) Beneficial Ownership. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d)(i). For purposes of this Section 3(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the 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 the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d)(i), to exceed the Maximum Percentage, the 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 (which may be an e-mail) or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes (each, an "**Other Holder**", and collectively, the "**Other Holders**") that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) Principal Market Regulation The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note 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 Notes or otherwise pursuant to the terms of the Notes without breaching 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 Section 312.03(c) of the NYSE Listed Company Manual, the "**Exchange Cap**"), except that

such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, no Buyer shall be issued in the aggregate, upon conversion of any Notes or otherwise pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the original principal amount of Notes issued to such Buyer pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) divided by (2) the aggregate original principal amount of all Notes issued to the Buyers pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each Buyer, the "**Exchange Cap Allocation**"). In the event that any Buyer shall sell or otherwise transfer any of such Buyer's Notes, the transferee shall be allocated a pro rata portion of such Buyer's Exchange Cap Allocation with respect to such portion of such Notes 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 Notes, 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 Notes shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the shares of Common Stock underlying the Notes then held by each such holder of Notes. At any time after the three month anniversary of the Initial Closing Date (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 3(d)(i) (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such portion of this Note 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 Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 3(d)(i) and (ii) to the extent of any Buy-In related thereto, any Buy-In Payment Amount, 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**").

(e) Right of Alternate Conversion Upon a Triggering Event.

(i) General. Upon the occurrence of a Triggering Event with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Triggering Event Notice**") to the Holder and the Trustee. At any time after the earlier of the Holder's receipt of an Triggering Event Notice and the Holder becoming aware of an Triggering Event (such earlier date, the "**Triggering Event Right Commencement Date**") and ending (such ending date, the "**Triggering Event Right**

Expiration Date", and each such period, an "**Triggering Event Redemption Right Period**") on the twentieth (20th) Trading Day after the later of (x) the date such Triggering Event is cured and (y) the Holder's receipt of an Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the 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 Triggering Event Right Expiration Date, but subject to Section 3(d), (regardless of whether such Triggering Event has been cured, or if the Company has delivered a Triggering Notice to the Holder or otherwise notified the Company that a Triggering Event has occurred), the Holder may, at the Holder's option, convert (each, an "**Alternate Conversion**", and the date of each such Alternate Conversion, an "**Alternate Conversion Date**") all, or any part of, the Conversion Amount (such portion of the Conversion Amount subject to such Alternate Conversion, 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 3(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and with "Redemption Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate above with respect to such Alternate Conversion) by designating in the Conversion Notice delivered pursuant to this Section 3(e) of this Note that the Holder is electing to use the Alternate Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), 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 3(c) without regard to this Section 3(e).

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) 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;

(ii) 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 the Notes, 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 Notes into shares of Common

Stock that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3(d);

(iii) except to the extent the Company is in compliance with Section 10(b) below, at any time following the tenth (10^{th}) consecutive day that the Holder's Authorized Share Allocation (as defined in Section 10(a) below) is less than the Required Reserve Amount (without regard to any limitations on conversion set forth in Section 3(d) or otherwise);

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least three (3) Trading Days;

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

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $25,000,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(vii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Significant Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(viii) the commencement by the Company or any Significant 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 Significant 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 Significant 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 Significant 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 against the assets of the Company or any Significant Subsidiary;

(ix) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Significant 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 Significant 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 Significant 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 Significant 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 forty-five (45) consecutive days;

(x) a final judgment or judgments for the payment of money aggregating in excess of $25,000,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within forty-five (45) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within forty-five (45) 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 $25,000,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the 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 forty-five (45) days of the issuance of such judgment;

(xi) 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 $25,000,000 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 $25,000,000, which breach or violation (i) results in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constitutes a failure to pay the principal or interest of any such debt when due and payable (after giving effect to any applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(xii) other than as specifically set forth in another clause of this Section 4(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 five (5) consecutive Trading Days;

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

(xiv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13(a)-(d), (f), (g) or (h) of this Note;

(xv) any Event of Default (as defined in the Other Notes) occurs and is continuing with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder and the Trustee. The obligation of the Company to deliver an Event of Default Notice is in addition to, and may not be substituted by, the Trustee's delivery of notice of the same Event of Default to the Holder in accordance with Section 10.02 of the Indenture. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the "**Event of Default Right Commencement Date**") and ending (such ending date, the "**Event of Default Right Expiration Date**", and each such period, an "**Event of Default Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of

Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company and the Trustee, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate (calculated assuming an Alternate Conversion as of the date of the Event of Default Redemption Notice) with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Event of Default Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the 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 the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to

payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders (as defined in the Securities Purchase Agreement) and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes reasonably satisfactory to the Required Holders, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking to the Notes and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note 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 6 and 14, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes 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 the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof

via electronic mail and overnight courier to the Holder and the Trustee (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the 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, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company and the Trustee, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the greatest of (i) the product of (w) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (A) the Conversion Amount being redeemed 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 the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (A) the Conversion Amount 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 the 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 (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 5(b), the 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 the Holder. Accordingly, any Redemption Premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Sections 7 or 14 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 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 Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date as of the applicable record date) 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Purchase Right shall be granted, issued or sold to the Holder, as applicable, with a limitation on conversion and/or exercise, as applicable, in the form of 3(d)(i) herein, *mutatis mutandis*; provided, that, if such Purchase Right (and/or on any subsequent Purchase Right held similarly) has an expiration date, maturity date or other similar provision, such term also shall be extended, on a day-by-day basis, by such aggregate number of days that the exercise or conversion (as applicable) of such Purchase Right (and/or any subsequent Purchase Right held similarly) (in each case, without regard to the limitation on conversion or exercise thereto, as applicable) would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage.

(b) 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 the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) 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 the Holder would have been entitled to receive had this Note 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. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. 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 7(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 7(a)), 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 7(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.

(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 7(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 7(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) upon the issue, conversion, exercise or exchange of any Options or Convertible Securities, or the rate at which any Convertible Securities or Options 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 7(b) 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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 7(a)(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 7(a) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right and/or any other security (as applicable) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right or any other security or instrument of the Company intended to convey value to any participant in such transaction, in any form whatsoever, 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 7(a)(i) or 7(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 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 and/or any other security or instrument (as applicable), if any, in each case, as determined on a per share basis in accordance with this Section 7(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 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, the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute. 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).

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) 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.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 7 or in the Securities Purchase Agreement, 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 (any such securities, "**Variable Price Securities**") regardless of whether securities have been sold pursuant to such agreement and whether such agreement has subsequently been terminated, prior to or after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock, in each case, 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 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 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 Note by designating in the Conversion Notice delivered upon any conversion of this Note 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 Note shall not obligate the Holder to rely on a Variable Price for any future conversion of this Note. In addition, from and after the date the Company enters into such agreement or issues any such Variable Price Securities, for purposes of calculating the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of any time of determination, the "Conversion Price" as used therein shall mean the lower of (x) the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of such time of determination and (y) the Variable Price as of such time of determination.

(d) 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 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock 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 7(d) will increase the Conversion Price as otherwise determined

pursuant to this Section 7, 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.

(e) Calculations. All calculations under this Section 7 shall be made by rounding to the nearest cent or the nearest $1/100^{th}$ 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.

(f) Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time during the term of this Note, 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 Notes to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. INSTALLMENT CONVERSION OR REDEMPTION.

(a) General. On each applicable Installment Date, provided there has been no Equity Conditions Failure, the Company shall pay to the Holder of this Note the applicable Installment Amount due on such date by converting such Installment Amount in accordance with this Section 8 (a "**Installment Conversion**"); provided, however, that the Company may, at its option following notice to the Holder (with a copy to the Trustee) as set forth below, pay the Installment Amount by redeeming such Installment Amount in cash (a "**Installment Redemption**") or by any combination of an Installment Conversion and an Installment Redemption so long as all of the outstanding applicable Installment Amount due on any Installment Date shall be converted and/or redeemed by the Company on the applicable Installment Date, subject to the provisions of this Section 8. On the date which is the sixth (6th) Trading Day prior to each Installment Date (each, an "**Installment Notice Due Date**"), the Company shall deliver written notice (each, a "**Installment Notice**" and the date all of the holders receive such notice is referred to as to the "**Installment Notice Date**"), to each holder of Notes (with a copy to the Trustee) and such Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of such holder's Note shall be converted in whole pursuant to an Installment Conversion or (B) (1) state that the Company elects to redeem for cash, or is required to redeem for cash in accordance with the provisions of the Notes, in whole or in part, the applicable Installment Amount pursuant to an Installment Redemption and (2) specify the portion of such Installment Amount which the Company elects or is required to redeem pursuant to an Installment Redemption (such amount to be redeemed in cash, the "**Installment Redemption Amount**") and the portion of the applicable Installment Amount, if any, with respect to which the Company will, and is permitted to, effect an Installment Conversion (such amount of the applicable Installment Amount so specified to be so converted pursuant to this Section 8 is referred to herein as the "**Installment Conversion Amount**"), which amounts when added together, must at least equal the entire applicable Installment

Amount and (ii) if the applicable Installment Amount is to be paid, in whole or in part, pursuant to an Installment Conversion, certify that there is not then an Equity Conditions Failure as of the applicable Installment Notice Date. Each Installment Notice shall be irrevocable. If the Company does not timely deliver an Installment Notice in accordance with this Section 8 with respect to a particular Installment Date, then the Company shall be deemed to have delivered an irrevocable Installment Notice confirming an Installment Conversion of the entire Installment Amount payable on such Installment Date and shall be deemed to have certified that there is not then an Equity Conditions Failure in connection with such Installment Conversion. Except as expressly provided in this Section 8(a), the Company shall convert and/or redeem the applicable Installment Amount of this Note pursuant to this Section 8 and the corresponding Installment Amounts of the Other Notes pursuant to the corresponding provisions of the Other Notes in the same ratio of the applicable Installment Amount being converted and/or redeemed hereunder. The applicable Installment Conversion Amount (whether set forth in the applicable Installment Notice or by operation of this Section 8) shall be converted in accordance with Section 8(b) and the applicable Installment Redemption Amount shall be redeemed in accordance with Section 8(c).

(b) Mechanics of Installment Conversion. Subject to Section 3(d), if the Company delivers an Installment Notice or is deemed to have delivered an Installment Notice certifying that such Installment Amount is being paid, in whole or in part, in an Installment Conversion in accordance with Section 8(a), then the remainder of this Section 8(b) shall apply. The applicable Installment Conversion Amount, if any, shall be converted on the applicable Installment Date at the applicable Installment Conversion Price and the Company shall, on such Installment Date, (A) deliver to the Holder's account with DTC such shares of Common Stock issued upon such conversion (subject to the reduction contemplated by the immediately following sentence and, if applicable, the penultimate sentence of this Section 8(b)), and (B) in the event of the Conversion Floor Price Condition, the Company shall deliver to the Holder the applicable Conversion Installment Floor Amount, provided that the Equity Conditions are then satisfied (or waived in writing by the Holder) on such Installment Date and an Installment Conversion is not otherwise prohibited under any other provision of this Note. If the Company confirmed (or is deemed to have confirmed by operation of Section 8(a)) the conversion of the applicable Installment Conversion Amount, in whole or in part, and there was no Equity Conditions Failure as of the applicable Installment Notice Date (or is deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied by operation of Section 8(a)) but an Equity Conditions Failure occurred between the applicable Installment Notice Date and any time through the applicable Installment Date (the "**Interim Installment Period**"), the Company shall provide the Holder a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Interim Installment Period or an Installment Conversion is not otherwise permitted under any other provision of this Note, then, at the option of the Holder designated in writing to the Company, the Holder may require the Company to do any one or more of the following: (i) the Company shall redeem all or any part designated by the Holder of the unconverted Installment Conversion Amount (such designated amount is referred to as the "**Designated Redemption Amount**") and the Company shall pay to the Holder within five (5) Trading Days of such Installment Date, by wire transfer of

immediately available funds, an amount in cash equal to 125% of such Designated Redemption Amount, and/or (ii) the Installment Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Installment Conversion Amount and the Holder shall be entitled to all the rights of a holder of this Note with respect to such designated part of the Installment Conversion Amount; provided, however, the Conversion Price for such designated part of such unconverted Installment Conversion Amount shall thereafter be adjusted to equal the lesser of (A) the Installment Conversion Price as in effect on the date on which the Holder voided the Installment Conversion and (B) the Installment Conversion Price that would be in effect on the date on which the Holder delivers a Conversion Notice relating thereto as if such date was an Installment Date. If the Company fails to redeem any Designated Redemption Amount by the second (2nd) day following the applicable Installment Date by payment of such amount by such date, then the Holder shall have the rights set forth in Section 11(a) as if the Company failed to pay the applicable Installment Redemption Price (as defined below) and all other rights under this Note (including, without limitation, such failure constituting an Event of Default described in Section 4(a)(iv)). Notwithstanding anything to the contrary in this Section 8(b), but subject to 3(d), until the Company delivers Common Stock representing the Installment Conversion Amount to the Holder, the Installment Conversion Amount may be converted by the Holder into Common Stock pursuant to Section 3. In the event that the Holder elects to convert the Installment Conversion Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Conversion Amount so converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of any shares of Common Stock in any Installment Conversion hereunder.

(c) Mechanics of Installment Redemption. If the Company elects or is required to effect an Installment Redemption, in whole or in part, in accordance with Section 8(a), then the Installment Redemption Amount, if any, shall be redeemed by the Company in cash on the applicable Installment Date by wire transfer to the Holder of immediately available funds in an amount equal to 103% of the applicable Installment Redemption Amount (the "**Installment Redemption Price**"). If the Company fails to redeem such Installment Redemption Amount on such Installment Date by payment of the Installment Redemption Price, then, at the option of the Holder designated in writing to the Company (any such designation shall be a "**Conversion Notice**" for purposes of this Note), the Holder may require the Company to convert all or any part of the Installment Redemption Amount at the Installment Conversion Price (determined as of the date of such designation as if such date were an Installment Date). Conversions required by this Section 8(c) shall be made in accordance with the provisions of Section 3(c). Notwithstanding anything to the contrary in this Section 8(c), but subject to Section 3(d), until the Installment Redemption Price (together with any Late Charges thereon) is paid in full, the Installment Redemption Amount (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event the Holder elects to convert all or any portion of the Installment Redemption Amount prior to the applicable Installment Date as set forth in the immediately preceding

sentence, the Installment Redemption Amount so converted shall be deducted from the Principal amount outstanding hereunder, including for purposes of determining the Installment Amounts relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. Redemptions required by this Section 8(c) shall be made in accordance with the provisions of Section 11.

(d) Deferred Installment Amount. Notwithstanding any provision of this Section 8(d) to the contrary, the Holder may, at its option and in its sole discretion, deliver a written notice to the Company no later than the Trading Day immediately prior to the applicable Installment Date electing to have the payment of all or any portion of an Installment Amount payable on such Installment Date deferred (such amount deferred, the "**Deferral Amount**", and such deferral, each a "**Deferral**") until any subsequent Installment Date selected by the Holder, in its sole discretion, in which case, the Deferral Amount shall be added to, and become part of, such subsequent Installment Amount and such Deferral Amount shall continue to accrue Interest hereunder. Any notice delivered by the Holder pursuant to this Section 8(d) shall set forth (i) the Deferral Amount and (ii) the date that such Deferral Amount shall now be payable.

(e) Acceleration of Installment Amounts. Notwithstanding any provision of this Section 8 to the contrary, but subject to Section 3(d), during the period commencing on an Installment Date (a "**Current Installment Date**") and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Installment Period**"), at the option of the Holder, at one or more times, the Holder may convert other Installment Amounts (each, an "**Acceleration**", and each such amount, an "**Acceleration Amount**", and the Conversion Date of any such Acceleration, each an "**Acceleration Date**"), in whole or in part, at the Acceleration Conversion Price of such Current Installment Date in accordance with the conversion procedures set forth in Section 3 hereunder (with "Acceleration Conversion Price" replacing "Conversion Price" for all purposes therein), *mutatis mutandis;* provided, that if a Conversion Floor Price Condition exists with respect to such Acceleration Date, with each Acceleration the Company shall also deliver to the Holder the Acceleration Floor Amount on the applicable Share Delivery Deadline. Notwithstanding anything to the contrary in this Section 8(e), with respect to each period commencing on an Installment Date and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Acceleration Measuring Period**"), the Holder may not elect to effect an Acceleration (the "**Current Acceleration**", and such date of determination, the "**Current Acceleration Determination Date**") during such Acceleration Measuring Period if the Holder shall have converted pursuant to this Section 8 either on such Current Installment Date and/or on any Acceleration Date during such Acceleration Measuring Period, as applicable, such portion of the Conversion Amount of this Note equal to the sum of (x) the Installment Amount for such Installment Date (whether on the Current Installment Date or, if subject to a Deferral, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date) and (y) an additional 200% of the Installment Amount for such Current Installment Date, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date (or such greater amount as the Company and the Holder shall mutually agree).

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, and (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 nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(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 permit such conversion into shares of Common Stock.

10. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as any Notes remain outstanding, the Company shall at all times reserve (I) if prior to Reserve Increase Deadline (as defined in the Securities Purchase Agreement), 275,000,000 shares of Common Stock for conversion (including without limitation, Installment Conversions, Alternate Conversions and Accelerations) of all of the Notes then outstanding (without regard to any limitations on conversions) or (ii) if on or after the Reserve Increase Deadline, at least 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion, including without limitation, Installment Conversions, Alternate Conversions and Accelerations, of all of the Notes then outstanding (without regard to any limitations on conversions and assuming such Notes remain outstanding until the Maturity Date) at the Floor Price then in effect (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 of the Notes based on the original principal amount of the Notes held by each holder on the Initial Closing 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 Notes, 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 Notes shall be allocated to the remaining holders of Notes, pro rata based on the principal amount of the Notes then held by such holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 10(a), and not in limitation thereof, at any time while any of the Notes 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 Notes 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 Notes then outstanding. 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 sixty (60) 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. 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 pursuant to the terms of this Note 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 the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount 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 the 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 10(a); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in Section 10(a) or this Section 10(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

11. REDEMPTIONS.

(a) Mechanics. The Company, or at the Company's written direction and at the Company's expense, the Trustee, shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company, or at the Company's direction, the Trustee, shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise. The Company shall deliver the applicable Installment Redemption Price to the Holder in cash on the applicable Installment Date. Notwithstanding anything herein to the

contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the 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. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of this Note or such new Notes (as the case may be) shall be automatically adjusted with respect to each conversion effected thereafter by the Holder to the lowest of (A) the Conversion Price as in effect on the date on which the applicable Redemption Notice is voided, (B) 75% of the Market Price of the Common Stock for the period ending on and including the date on which the applicable Redemption Notice is voided and (C) 75% of the Market Price of the Common Stock for the period ending as of the applicable Conversion Date (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by electronic mail a copy of such notice (with a copy to the Trustee). If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all

principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

13. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. The Company shall designate all payments due under this Note as senior unsecured Indebtedness, and (a) the Notes shall rank *pari passu* with all Other Notes and (b) shall be at least *pari passu* in right of payment with all other Indebtedness of the Company and its Subsidiaries (other than Permitted Indebtedness secured by Permitted Liens).

(b) 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 (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) 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; provided, however, that the Company shall be deemed to be in breach of this Section 13(c) only if such breach remains uncured for a period of five (5) Trading Days.

(d) 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 than the Notes) 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 an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) 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.

(f) 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 (including, without limitation, in connection with joint ventures) in the ordinary course of business consistent with its past practice and (ii) sales of inventory and product in the ordinary course of business; provided, however, that the Company shall be deemed to be in breach of this Section 13(f) if such breach was an involuntary sale, lease, license, assignment, transfer, spin-off, split-off, close, conveyance or otherwise disposal that remains uncured for a period of five (5) Trading Days.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date (except, solely from and after the Stockholder Approval Date (as defined in the Securities Purchase Agreement), up to $100 million of Permitted Indebtedness in any three month period).

(h) 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 Subscription 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 other than for tax or other general corporate purposes that are not meant to (and do not) change the nature of the business of the Company currently conducted as of the Issuance Date.

(i) 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.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its 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 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.

(k) 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 (as defined in the Securities Purchase Agreement) 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.

(l) 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 (including, without limitation, and for the avoidance of doubt, at least $5,000,000 in director's and officer's insurance).

(m) 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.

(n) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Financial Covenants; Announcement of Operating Results.

(i) The Company shall maintain, as of the end of each Fiscal Quarter (and/or Fiscal Year, as applicable) a balance of Available Cash in an aggregate amount equal to or greater than $340,000,000 (the "**Financial Test**").

(ii) Operating Results Announcement. Commencing on the Fiscal Quarter ending September 30, 2023, the Company shall publicly disclose and disseminate (such date, the "**Announcement Date**"), if the Financial Test has not been satisfied for such Fiscal Quarter or Fiscal Year, as applicable, a statement to that effect no later than (x) if prior to March 31, 2024, the fifteenth (15th) Trading Day or (y) if on or after March 31, 2024, the tenth (10^{th}) Trading Day, in either case, after the end of such Fiscal Quarter or Fiscal Year, as applicable, and such announcement shall include a statement to the effect that the Company is (or is not, as applicable) in breach of the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable. Notwithstanding the foregoing, in the event no

Financial Covenant Failure (as defined below) has occurred and the Company reasonably determines, with the advice of legal counsel, that the disclosure referred to in the immediately preceding sentence does not constitute material non-public information, the Company shall make a statement to that effect in the applicable certification required below and no disclosure with the SEC shall be required to be made by the Company. On the Announcement Date, the Company shall also provide to the Holder a certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Company satisfied the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable, if that is the case. If the Company has failed to meet the Financial Test for a Fiscal Quarter or Fiscal Year, as applicable, (each a "**Financial Covenant Failure**"), the Company shall provide to the Holder a written certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Financial Test has not been met for such Fiscal Quarter or Fiscal Year, as applicable (a "**Financial Covenant Failure Notice**"). Concurrently with the delivery of each Financial Covenant Failure Notice to the Holder, the Company shall also make publicly available (as part of a Quarterly Report on Form 10-Q, Annual Report on Form 10-K or on a Current Report on Form 8-K, or otherwise) the Financial Covenant Failure Notice and the fact that an Event of Default has occurred under the Notes.

(p) PCAOB Registered Auditor. At all times any Notes 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.

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

(r) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to 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.

(s) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note 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 (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

14. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Sections 6 or 7, 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 the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date 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 the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the 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 the extent of any such excess)) and in lieu of delivering to the Holder such portion of such Distribution in excess of the Maximum Percentage, the Holder shall receive

a right to receive such portion of such Distribution, exercisable into such Distribution at any time, in whole or in part, at the option of the Holder (or any successor thereto), without the payment of any additional consideration, but subject to a limitation on exercise in the form of 3(d)(i) herein, *mutatis mutandis*.

15. AMENDING THE TERMS OF THIS NOTE. Except for Section 3(d), which may not be amended, modified or waived by the parties hereto, the prior written consent of the Company and the Holder shall be required for any change, waiver or amendment to this Note; provided, however, no change, waiver or amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent.

16. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company; provided, that the Holder shall not transfer this Note to any competitor of the Company without the prior written consent of the Company (not to be unreasonably withheld).

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note. Upon compliance with Section 2.02 of the Indenture, the Company shall execute and, following authentication of such new Note, deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new

Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16(a) or Section 16(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, (v) shall be duly authenticated in accordance with the Indenture and (vi) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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 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 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 Note (including, without limitation, compliance with Section 7).

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note and/or any other Transaction Document or to enforce the provisions of this Note and/or any other Transaction Document or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such

bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note and/or any other Transaction Document, as applicable, shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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. Notwithstanding the foregoing, nothing contained in this Section 21 shall permit any waiver of any provision of Section 3(d).

22. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Installment Conversion Price, an Acceleration Conversion Price, an Alternate Conversion Price, a Black Scholes Consideration Value, 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 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 learning of the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder at any time after the Holder learned of the circumstances giving rise to such dispute. If the 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 Installment Conversion Price, such Acceleration Conversion Price, such Alternate Conversion Price, such Black Scholes Consideration Value, 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 fifth (5th) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The 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 22 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 the 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 the 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 the Holder or otherwise requested by such investment bank, neither the Company nor the 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).

(iii) The Company and the Holder shall use reasonable best efforts to cause such investment bank to determine the resolution of such dispute and notify the Company and the 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 solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 22 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 22, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 7(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the

terms of this Note 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 Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 22 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 22 and (v) nothing in this Section 22 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 22).

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement, or, with respect to the Trustee, in accordance with Section 10.02 of the Indenture. The Company shall provide the Holder and the Trustee with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder and the Trustee (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, (B) with respect to any grant, issuances, or sales of any Common Stock, Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock (including, without limitation, whether a Dilutive Issuance has occurred hereunder) or (C) 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 the Holder.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note 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 Note, 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).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such

payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note or any other Transaction Documents have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **THE COMPANY 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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

27. JUDGMENT CURRENCY.

(a) 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 Note, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) 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

(ii) 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**").

(b) 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.

(c) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

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

(c) "**Acceleration Conversion Price**" means, with respect to any given Acceleration Date, the lower of (i) the Installment Conversion Price for such Current Installment Date related to such Acceleration Date and (ii) the greater of (x) the Floor Price and (y) 93% of the Acceleration Market Price.

(d) "**Acceleration Market Price**" means, with respect to any given Acceleration Date, the lesser of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such Acceleration Date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock for each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such Acceleration Date, divided by (y) five (5). All such determinations to be appropriately adjusted for any share split, share dividend, share combination or other similar transaction during any such measuring period.

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

(f) "**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 7) of shares of Common Stock (other than rights of the type described in Section 6(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).

(g) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(h) "**Alternate Conversion Price**" means, with respect to any Alternate Conversion that price which shall be the lower of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) 80% of the Market Price as of the Trading Day of 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.

(i) "**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 Subscription Date pursuant to which shares of 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.

(j) "**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 Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the 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 the 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 the Holder and all other Attribution Parties to the Maximum Percentage.

(k) "**Available Cash**" means, with respect to any date of determination, an amount equal to the aggregate amount of the Cash of the Company and its Subsidiaries (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of its Subsidiaries for any reason) and Reclaimable Cash as of such date of determination held in bank accounts of financial banking institutions in the United States of America or in bank accounts of reputable financial banking institutions in such other country or countries as the Company has a bona fide business purpose to hold such Cash (other than with a purpose to circumvent or otherwise misrepresent the aggregate amount of Available Cash required pursuant to the terms and conditions of this Note).

(l) "**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 30 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).

(m) "**Bloomberg**" means Bloomberg, L.P.

(n) "**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.

(o) "**Cash**" of the Company and its Subsidiaries on any date shall be determined from such Persons' books maintained in accordance with GAAP, and means, without duplication, the cash, cash equivalents and Eligible Marketable Securities accrued by the Company and its wholly owned Subsidiaries on a consolidated basis on such date.

(p) "**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.

(q) "**Change of Control Redemption Premium**" means 125%.

(r) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(s) "**Common Stock**" means (i) the Company's shares of Class A common stock, $0.00001 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.

(t) "**Conversion Floor Price Condition**" means that the relevant Acceleration Conversion Price (including any Installment Conversion Price referred to therein) or Installment Conversion Price, as applicable, is being determined based on sub-clause (x) of such definitions.

(u) "**Conversion Installment Floor Amount**" means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) the higher of (I) the highest price that the shares of Common Stock trades at on the Trading Day immediately preceding the relevant Installment Date and (II) the applicable Installment Conversion Price and (B) the difference obtained by subtracting (I) the number of shares of Common Stock delivered (or to be delivered) to the Holder on the applicable Installment Date with respect to such Installment Conversion from (II) the quotient obtained by dividing (x) the applicable Installment Amount subject to such Installment Conversion, by (y) the applicable Installment Conversion Price without giving effect to clause (x) of such definition.

(v) "**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.

(w) "**Current Public Information Failure**" means the Company's failure 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 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).

(x) "**Eligible Market**" means the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the Principal Market.

(y) "**Eligible Marketable Securities**" as of any date means marketable securities which would be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared as of such date in accordance with GAAP, and which are permitted under the Company's investment policies as in effect on the Issuance Date or approved thereafter by the Company's Board of Directors.

(z) "**Equity Conditions**" means, with respect to any given date of determination: (i) 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 Underlying Securities (as defined in the Securities Purchase Agreement)) 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); (ii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of this Note on a timely basis as set forth in Section 3 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; (iii) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3(d) hereof; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) 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); (v) 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; (vi) no Current Public Information Failure then exists or is continuing; (vii) the Holder shall not be in (and no Other Holder 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; (viii) 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, in each case, which has not been waived; (ix) 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; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Alternate Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) (each, a "**Required Minimum Securities Amount**") are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default (as defined in the Notes) or an event that with the passage of time or giving of notice would constitute an Event of Default (regardless of whether the Holder has submitted an Event of Default Redemption Notice), in each case, which has not been waived; (xii) no bona fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document and (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.

(aa) "**Equity Conditions Failure**" means that on any day during the period commencing twenty (20) Trading Days prior to the applicable Installment Notice Date through the later of the applicable Installment Date and the date on which the applicable shares of Common Stock are actually delivered to the Holder, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(bb) "**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 Subscription Date 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 Subscription 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 of Notes; (ii) shares of Common Stock issued upon the conversion or exercise 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 Subscription Date, provided that the conversion price of any such Convertible Securities (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 of Notes; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; provided, that the terms of the Notes are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date); and (iv) shares of Common Stock issued and sold, in one or more transactions, pursuant to a Permitted ATM (as defined in the Securities Purchase Agreement), provided that the aggregate purchase price for such shares of Common Stock in such transaction or transactions shall not exceed $10,000,000. For the avoidance of doubt, any sales of shares of Common Stock pursuant to a Permitted ATM in excess of $10,000,000 shall not be included in this definition of "Excluded Securities".

(cc) "**Floor Price**" means $[ ][2], subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events; provided, that the Company may reduce the Floor Price to any amount set forth in a written notice to the Holder with at least five (5) Trading Day prior written notice (or such other time as the Company and the Holder shall mutually agree); provided, further, that any such reduction shall be irrevocable and shall not be subject to increase thereafter.

(dd) "**Fiscal Quarter**" means each of the fiscal quarters adopted by the Company for financial reporting purposes that correspond to the Company's fiscal year as of the date hereof that ends on December 31.

(ee) "**Fiscal Year**" means the fiscal year adopted by the Company for financial reporting purposes as of the date hereof that ends on December 31.

[2] Insert 20% of the Minimum Price (as defined in the NYSE Listed Company Manual) of the Common Stock on the Subscription Date.

(ff) "**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 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 Note 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.

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

(hh) "**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.

(ii) "**Holder Pro Rata Amount**" means a fraction (i) the numerator of which is the original Principal amount of this Note issued to the Holder on the Initial Closing Date and (ii) the denominator of which is the aggregate original principal amount of all Notes issued to the initial purchasers pursuant to the Securities Purchase Agreement on the Initial Closing Date.

(jj) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(kk) "**Initial Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(ll) "**Installment Amount**" means the sum of (A) (i) with respect to any Installment Date other than the Maturity Date, the lesser of (x) the Holder Pro Rata Amount of $[ ][3] and (y) the Principal amount then outstanding under this Note as of such Installment Date, and (ii) with respect to the Installment Date that is the Maturity Date, the Principal amount then outstanding under this Note as of such Installment Date (in each case, as any such Installment Amount may be reduced pursuant to the terms of this Note, whether upon conversion, redemption or Deferral), (B) any Deferral Amount deferred pursuant to Section 8(d) and included in such Installment Amount in accordance therewith, (C) any Acceleration Amount accelerated pursuant to Section 8(e) and included in such Installment Amount in accordance therewith and (D) in each case of clauses (A) through (C) above, the sum of any accrued and unpaid Interest as of such Installment Date under this Note, if any, and accrued and unpaid Late Charges, if any, under this Note as of such Installment Date. In the event the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of each unpaid Installment Amount hereunder.

(mm) "**Installment Conversion Price**" means, with respect to a particular date of determination, the lower of (i) the Conversion Price then in effect, and (ii) the greater of (x) the Floor Price and (y) 93% of the Market Price of the applicable Installment Date. All

[3] Insert the quotient of (x) the applicable initial Principal of this Note, divided by (y) nine (9)

such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

(nn) "**Installment Date**" means (i)[ ][4], (ii) then, each three month anniversary thereafter until the Maturity Date, and (iii) the Maturity Date; provided that if any such date is not a Business Day, the next Business Day.

(oo) "**Indenture**" means that certain Indenture for Debt Securities dated as of the Initial Closing Date, by and between the Company and the Trustee, as may be amended, modified or supplemented from time to time, including, without limitation, by any Supplemental Indenture (as defined below).

(pp) "**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.

(qq) "**Market Price**" shall mean, as of any given date, the lower of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock on each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such date, divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period).

(rr) "**Maturity Date**" shall mean [ ][5]; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

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

(tt) "**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

[4] Insert the Issuance Date

[5] Insert the second anniversary of the applicable Issuance Date

Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(uu) "**Permitted Convertible Securities**" means (a) any Convertible Securities of the Company issued after [ ][6] in exchange for Indebtedness of the Company outstanding as of the Subscription Date; provided, that (i) such Convertible Securities are *pari passu* or subordinate to the terms of the Notes, (ii) the terms of such Convertible Securities are not more favorable to such holders of Convertible Securities than the terms of the Notes, (iii) the amounts outstanding under such Convertible Securities do not increase as a result of such exchange and (iv) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes; and (b) any Convertible Securities issued after the 12-month anniversary of the Initial Closing Date; provided, that (i) such Convertible Securities are pari passu or subordinate to the terms of the Notes, and (ii) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(vv) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date, (iv) Permitted Convertible Securities, (v) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens, (vi) non-convertible Indebtedness to trade creditors incurred in the ordinary course of business (not otherwise excluded from the definition of Indebtedness), including non-convertible Indebtedness incurred in the ordinary course of business with corporate credit cards, (vii) non-convertible Indebtedness arising from letters of credit (or similar instruments) in the ordinary course of business, (viii) non-convertible Indebtedness arising from operating and financing leases in the ordinary course of business, (ix) non-convertible Indebtedness incurred under working capital facilities entered into in the ordinary course of business, provided such facilities do not exceed $200,000,000 in the aggregate (the "**Permitted WC Facility**"), (x) non-convertible intercompany Indebtedness owed between the Company and/or any Subsidiary (or between any Subsidiaries), as applicable, (xi) non-convertible Indebtedness consisting of subsidized loans made, or guaranteed, by a governmental entity, (xii) to the extent constituting non-convertible Indebtedness, obligations owed to an insurance company incurred in the ordinary course of business with respect to premiums payable for property, casualty, or other insurance, so long as such indebtedness shall not be in excess of the

[6] Insert Initial Closing Date

amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such indebtedness is incurred and such indebtedness shall be outstanding only during such year, (xiii) non-convertible Indebtedness in respect of surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantees and similar obligations incurred in the ordinary course of business, and (xiv) other non-convertible Indebtedness not to exceed $25,000,000; provided, that (A) all Permitted Indebtedness must be pari passu or subordinate to the terms of the Notes (other than Permitted Indebtedness secured by Permitted Liens), and (B) no Permitted Indebtedness shall prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(ww) "**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 $200,000,000, (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, (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, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 4(a)(x) and (viii) Liens with respect to any accounts receivables or inventory of the Company and its Subsidiaries securing the Permitted WC Facility.

(xx) "**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.

(yy) **"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 $[ ][7] (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription 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.

(zz) "**Principal Market**" means the New York Stock Exchange.

(aaa) "**Reclaimable Cash**" means, as of any given date of determination, (i) unavailable Cash as of such date of determination that is eligible to be returned to the Company or any of its Subsidiaries, as applicable, at the conclusion of any agreement where such Cash would otherwise not be considered cash and cash equivalents for purposes of GAAP, but which is reasonably expected to be released as unrestricted Cash of the Company or any of its Subsidiaries within 90 days of such date of determination (including, for the avoidance of doubt, any Cash amounts so restricted due to a letter of credit supporting supplier contractual obligations) and (ii) order deposits made through credit card transactions whereby Cash payments are held by financial institutions until the vehicle being purchased by any such applicable customer is delivered to such applicable customer (but solely with respect to such Cash payments that are reasonably expected to be released to the Company or any of its Subsidiaries, as applicable, within 90 days of such date of determination upon delivery of such applicable vehicle(s) to such applicable customer(s) and/or non-refundable payments that with the passage of time will become an asset of the Company (or such applicable Subsidiary) under GAAP)(regardless of whether the vehicle(s) is delivered)) at which time the Cash is deposited into the Company's (or such applicable Subsidiary's) bank account and available for the Company's (or such applicable Subsidiary's) unrestricted use.

(bbb) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices, the Installment Notices with respect to any Installment Redemption, and the Change of Control Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(ccc) "**Redemption Premium**" means 125%.

(ddd) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices, the Change of Control Redemption Prices, and the Installment Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

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

(fff) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended

[7] Insert Floor Price.

from time to time.

(ggg) "**Significant Subsidiaries**" or "**Significant Subsidiary**" means, as of any time of determination, any of the "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) of the Company as of such time of determination.

(hhh) "**Subscription Date**" means July 10, 2023.

(iii) "**Subsidiaries**" shall have the meaning as set forth in the Securities Purchase Agreement.

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

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

(lll) "**Supplemental Indenture**" shall have the meaning ascribed to such term in the Securities Purchase Agreement, as each such supplemental indenture may be amended, modified or supplemented from time to time.

(mmm)"**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 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.

(nnn) "**Triggering Event**" means the occurrence of any Event of Default (assuming for such purpose that "$10,000,000" replaces "$25,000,000", where applicable, in each clause of the definition of Event of Default).

(ooo) "**Trustee**" means Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Indenture, or any successor or any additional trustee appointed with respect to the Notes pursuant to the Indenture.

(ppp) "**Volume Failure**" means, with respect to a particular date of determination, if either (x) the aggregate daily dollar trading volume (as reported on Bloomberg) of the

Common Stock on the Principal Market on more than five (5) Trading Days during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination, or (y) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the five (5) Trading Day period ending on the Trading Day immediately preceding such date of determination, as applicable, is less than $25,000,000.

(qqq) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

31. DISCLOSURE. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries (it being understood that a Dilutive Issuance, which results in an adjustment of the Conversion Price, shall always be deemed material for the purpose of this Section 31), 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 Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in

this Section 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(l) of the Securities Purchase Agreement.

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

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture and the applicable Supplemental Indenture.

Dated: _____, 20__

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: _____
Name:
Title:

EXHIBIT I

FISKER INC.
CONVERSION NOTICE

Reference is made to the Series [A][B][C][-][1][2][3][4] Senior Convertible Note (the "**Note**") issued to the undersigned by Fisker Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Class A Common Stock, $0.00001 par value per share (the "**Common Stock**"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges 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: _____

Installment Amount(s) to be reduced (and corresponding Installment Date(s)) and amount of reduction: _____

☐ 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:_____

☐ If this Conversion Notice is being delivered with respect to an Acceleration, check here if Holder is electing to use _____ as the Installment Conversion Price (as

applicable) related to the following Installment Date:_____

Please issue the Common Stock into which the Note 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: _____

DTC Participant Phone Number: _____

Account Number: _____

The source for these shares of Common Stock is reserve account **[●]**, with an effective date of [●], 20[●].

Date: _____ __, _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____

E-mail Address:

Mailing Address:

Exhibit II

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock are eligible to be resold by the Holder without restriction and 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 _____.

FISKER INC.

By: _____
Name:
Title:

EXHIBIT D-2

EXECUTION VERSION

FISKER INC.

SECOND SUPPLEMENTAL INDENTURE TO
INDENTURE DATED JULY 11, 2023

Dated as of September 29, 2023

WILMINGTON SAVINGS FUND SOCIETY, FSB,

as Trustee

Series B-1 Senior Convertible Note Due 2025

FISKER INC.

SECOND SUPPLEMENTAL INDENTURE TO INDENTURE DATED JULY 11, 2023

Series B-1 Senior Convertible Note Due 2025

SECOND SUPPLEMENTAL INDENTURE, dated as of September 29, 2023 (this "**Second Supplemental Indenture**"), between **FISKER INC.**, a Delaware corporation (the "**Company**"), and **WILMINGTON SAVINGS FUND SOCIETY, FSB**, as Trustee (the "**Trustee**").

RECITALS

A. The Company filed a registration statement on Form S-3 on December 23, 2021 (File Number 333-261875) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**SEC**") pursuant to Rule 415 under the Securities Act of 1933, as amended (the "**Securities Act**") and the Registration Statement has been declared effective by the SEC on January 4, 2022.

B. The Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 11, 2023, substantially in the form filed as an exhibit to the Registration Statement (the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company. On July 11, 2023, the Company issued $340,000,000 in aggregate principal amount of series A-1 senior unsecured convertible notes due 2025 (the "Series A-1 Notes") pursuant to the First Supplemental Indenture, dated as of July 11, 2023. As of the date hereof $337,000,000 in aggregate principal amount of Series A-1 Notes remain outstanding.

C. The Indenture has been qualified under the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**").

D. Section 2 of the Indenture provides for various matters with respect to any series of Securities issued under the Indenture to be established in an indenture supplemental to the Indenture.

E. Section 9.01 of the Indenture provides that, without the consent of the Holders, for the Company and the Trustee may enter into an indenture supplemental to the Indenture to establish the form or terms of Securities of any series as provided by Section 2 of the Indenture.

F. In accordance with that certain Securities Purchase Agreement, dated July 10, 2023, as amended by that certain Amendment No. 1 to Securities Purchase Agreement dated as of September 29, 2023 (as so amended, the "**Securities Purchase Agreement**"), by and among the Company and the investors party thereto (the "**Investors**"), at the applicable Closing (as defined in the Securities Purchase Agreement) related to this Second Supplemental Indenture, the Company has agreed to sell to the Investors, and the Investors have agreed to purchase from the Company, up to $170,000,000 in aggregate principal amount of Notes (as defined below) (in one

or more tranches, in accordance with the terms of the Securities Purchase Agreement), subject to the satisfaction of certain terms and conditions set forth in the Securities Purchase Agreement, in each case, pursuant to (i) the Indenture, (ii) this Second Supplemental Indenture, (iii) the Securities Purchase Agreement and (iv) the Registration Statement.

G. The Company hereby desires to supplement the Indenture pursuant to this Second Supplemental Indenture to set forth the terms and conditions of the Notes to be issued in accordance herewith.

NOW, THEREFORE, THIS SECOND SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the issuance of the series of Securities provided for herein, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of such series, as follows:

ARTICLE I

RELATION TO INDENTURE; DEFINITIONS

Section 1.1. RELATION TO INDENTURE. This Second Supplemental Indenture constitutes an integral part of the Indenture.

Section 1.2. DEFINITIONS. For all purposes of this Second Supplemental Indenture:

(a) Capitalized terms used herein without definition shall have the meanings specified in the Indenture or in the Notes, as applicable;

(b) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Second Supplemental Indenture; and

(c) The terms “herein,” “hereof,” “hereunder” and other words of similar import refer to this Second Supplemental Indenture.

ARTICLE II

THE SERIES OF SECURITIES

Section 2.1. TITLE. There shall be a series of Securities designated the “Series B-1 Senior Convertible Notes Due 2025” (the “**Notes**”).

Section 2.2. LIMITATION ON AGGREGATE PRINCIPAL AMOUNT. The aggregate principal amount of the Notes to be sold pursuant to the Securities Purchase Agreement and to be issued pursuant to this Second Supplemental Indenture on the date hereof shall be $170,000,000.

Section 2.3. PRINCIPAL PAYMENT DATE. The principal amount of the Notes outstanding (together with any accrued and unpaid interest and other amounts) shall be payable in accordance with the terms and conditions set forth in the Notes on each Conversion

Date, Alternate Conversion Date, redemption date and on the Maturity Date, in each case as defined in the Notes.

Section 2.4. INTEREST AND INTEREST RATES. Interest shall accrue and shall be payable at such times and in the manner set forth in the Notes.

Section 2.5. PLACE OF PAYMENT. Except as otherwise provided by the Notes, the place of payment where the Notes may be presented or surrendered for payment, where the Notes may be surrendered for registration of transfer or exchange (to the extent required or permitted, as applicable, by the terms of the Notes) and where notices and demand to or upon the Trustee in respect of the Notes and the Indenture may be served shall be: 500 Delaware Avenue, Wilmington, DE 19801, Attn.: Corporate Trust - Fisker Inc.; Telephone: (302) 573-3269; Facsimile: (302) 421-9137; Email: PHealy@wsfsbank.com.

Section 2.6. REDEMPTION. The Company may redeem the Notes, in whole or in part, at such times and in the manner set forth in the Notes.

Section 2.7. DENOMINATION. The Notes shall be issuable only in registered form without coupons and in minimum denominations of $1,000 and integral multiples thereof.

Section 2.8. CURRENCY. Principal and interest and any other amounts payable, from time to time, on the Notes shall be payable in such coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts in accordance with Section 23(b) of the Notes.

Section 2.9. FORM OF SECURITIES. The Notes shall be issued in the form attached hereto as **Exhibit A**. **Exhibit A** also includes the form of Trustee's certificate of authentication for the Notes. The Company has elected to issue only definitive Securities and shall not issue any global Securities hereunder.

Section 2.10. CONVERTIBLE SECURITIES. The Notes are convertible into shares of Common Stock (as defined in the Notes) of the Company upon the terms and conditions set forth in the Notes and all references to "Common Stock" in the Indenture shall be deemed to be references to Common Stock for all purposes thereunder. In connection with any conversion of any given Note into Common Stock, the Trustee may rely conclusively, without any independent investigation, on any Conversion Notice (as defined in the Notes) executed by the applicable Holder of such Note and an Acknowledgement (as defined in the Notes) signed by the Company (in each case, in the forms attached as Exhibits I and II to the Note), in lieu of the Company's obligations to deliver an Officer's Certificate, Board Resolutions or an Opinion of Counsel pursuant to Article Two, Article Three or Section 7.02 of the Indenture in connection with any conversion of any Note. The applicable Conversion Notice and/or Acknowledgement (unless subsequently revoked or withdrawn) shall be deemed to be a joint instruction by the Company and such Holder to the Trustee to record on the register of the Notes such conversion and decrease in the principal amount of such Note by such aggregate principal amount of the Note converted, in each case, as set forth in such applicable Conversion Notice and/or Acknowledgement.

Section 2.11. REGISTRAR. The Trustee shall only serve initially as the Security Registrar and not as a paying agent and, in such capacity, shall maintain a register (the "**Security**

Register") in which the Trustee shall register the Notes and transfers of the Notes. The entries in the Security Register shall be conclusive and binding for all purposes absent manifest error. The initial Security Register shall be created by the Trustee in connection with the authentication of the initial Notes in the names and amounts detailed in the related Company Order. No Note may be transferred or exchanged except in compliance with the authentication procedures of the Trustee in accordance with this Second Supplemental Indenture. The Trustee shall not register a transfer, exchange, redemption, conversion, cancellation or any other action with respect to a Note unless instructed to do so in an Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable. Each Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable, given to the Trustee in accordance with this Section 2.11 shall constitute a representation and warranty to the Trustee that the Trustee shall be fully indemnified in connection with any liability arising out of or related to any action taken by the Trustee in good faith reliance on such Officer's Certificate, Conversion Notice and/or Acknowledgement, as applicable.

Section 2.12. SINKING FUND OBLIGATIONS. The Company has no obligation to redeem or purchase any Notes pursuant to any sinking fund or analogous requirement or upon the happening of a specified event or at the option of a Holder thereof.

Section 2.13. NO PAYING AGENT. Notwithstanding anything in Section 2.06 of the Indenture to the contrary, the Company shall not be required to appoint and has not appointed any Paying Agent in respect of the Notes pursuant to the Indenture or any Supplemental Indenture and all amounts payable, from time to time, pursuant to the Notes shall, for so long as so long as no Paying Agent has been appointed, be paid directly by the Company to the applicable Holder.

Section 2.14. EVENTS OF DEFAULT. The Company has elected that the provisions of Section 4 of the Notes shall govern all Events of Default in lieu of Section 6 of the Indenture.

Section 2.15. EXCLUDED DEFINITIONS. The Company has elected that none of the following definitions in the Indenture shall be applicable to the Notes and any analogous definitions set forth in the Notes shall govern in lieu thereof:

- Definition of "Affiliate" in Section 1.01;
- Definition of "Business Day" in Section 1.01;
- Definition of "Event of Default" in Section 6.01;
- Definition of "Person" in Section 1.01; and
- Definition of "Subsidiary" in Section 1.01.

Section 2.16. EXCLUDED PROVISIONS. The Company has elected that none of the following provisions of the Indenture shall be applicable to the Notes and any analogous provisions (including definitions related thereto) of this Second Supplemental Indenture and/or the Notes shall govern in lieu thereof:

- Section 2.03 (Form of Certificate of Authentication)

- Section 2.07 (Paying Agent to Hold Money in Trust)
- Section 2.08 (Transfer and Exchange)
- Section 2.09 (Replacement Securities)
- Section 2.10 (Outstanding Securities)
- Section 2.14 (Defaulted Interest)
- Article 3 (Redemption)
- Section 4.1 (Payment of Securities)
- Section 4.06 (Additional Amounts)
- Article 5 (Successor Corporation)
- Article 6 (Default and Remedies)
- Article 8 (Satisfaction, and Discharge of Indenture; Unclaimed Funds)
- Section 9.01 (Without Consent of Holders)
- Section 10.14 (Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability)
- Section 10.15 (Judgement Currency)

Section 2.17. COVENANTS. In addition to any covenants set forth in Article 4 of the Indenture, the Company shall comply with the additional covenants set forth in Section 13 of the Notes.

Section 2.18. IMMEDIATELY AVAILABLE FUNDS. All cash payments of principal and interest shall be made in U.S. dollars and immediately available funds.

Section 2.19. TRUSTEE MATTERS.

(a) Duties of Trustee. Notwithstanding anything in the Indenture to the contrary:

(i) the sole duty of the Trustee is to act as the Registrar unless otherwise agreed to by the Required Holders (as defined in the Notes), the Trustee and the Company in an additional supplemental Indenture (other than this Second Supplemental Indenture) or as separately agreed to in a writing by the Trustee and the Required Holders;

(ii) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and

shall be enforceable by, the Trustee in each of its capacities hereunder (including as Registrar), and to each agent, custodian, and any other such Persons employed to act hereunder;

(iii) the Trustee has no duty to make any calculations called for under the Notes, and shall be protected in conclusively relying without liability upon an Officer's Certificate with respect thereto without independent verification;

(iv) for the protection and enforcement of the provisions of the Indenture, this Second Supplemental Indenture and the Notes, the Trustee shall be entitled to such relief as can be given at either law or equity;

(v) in the event that the Holders of the Notes have waived any Event of Default with respect to this Second Supplemental Indenture or the Notes, the default covered thereby shall be deemed to be cured for all purposes hereunder and the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other default to impair any right consequent thereon;

(vi) the Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of the Notes, and the Trustee shall not be responsible for the failure by the Company to comply with any provisions of the Notes;

(vii) the Trustee will not at any time be under any duty or responsibility to any Holder to determine the Conversion Price (or any adjustment thereto) or whether any facts exist that may require any adjustment to the Conversion Price, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in the Indenture, this Second Supplemental Indenture, in any supplemental indenture or the Notes provided to be employed, in making the same;

(viii) the Trustee will not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, cash or other property that may at any time be issued or delivered upon the conversion of any Note; and the Trustee makes any representations with respect thereto; and

(ix) the Trustee will not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities, cash or other property upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company with respect thereto.

(b) Additional Indemnification. In addition to any indemnification rights set forth in the Indenture, the Company agrees the Trustee may retain one separate counsel on behalf of itself and the Holders (and in the case of an actual or perceived conflict of interest, one additional separate counsel on behalf of the Holders) and, if deemed advisable by such counsel, local counsel, and the Company shall pay the reasonable fees and expenses of such separate counsel and local counsel.

(c) Successor Trustee Petition Right. If an instrument of acceptance by a successor Trustee required by Section 7.08 or 7.09 of the Indenture has not been delivered to the Trustee within 30 days after the giving of a notice of removal, the Trustee being removed, at the expense of the Company, may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(d) Trustee as Creditor. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

(e) Reports by the Company. The parties hereto acknowledge and agree that delivery of such reports, information, and documents to the Trustee pursuant to the provisions of Section 4.05 of the Indenture is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no duty to monitor or confirm, on a continuing basis or otherwise, the Company's or any other Person's compliance with any of the covenants under the Indenture and this Second Supplemental Indenture, to determine whether such reports, information or documents are available on the SEC's website (including the EDGAR system or any successor system,) the Company's website or otherwise, to examine such reports, information, documents and other reports to ensure compliance with the provisions of this Indenture, or to ascertain the correctness or otherwise of the information or the statements contained therein.

(f) Statements by Officers as to Default. In addition to the Company's obligations pursuant to the Indenture, the Company agrees as follows:

(i) Annually, within 120 days after the close of each fiscal year beginning with the first fiscal year during which the Notes remain outstanding, the Company will deliver to the Trustee an Officer's Certificate (one of which Officers signatory thereto shall be the Chief Executive Officer, Chief Financial Officer or Chief Corporate and Strategy Officer of the Company) as to the knowledge of such Officers of the Company's compliance (without regard to any period of grace or requirement of notice provided herein) with all conditions and covenants under the Indenture, this First Supplemental Indenture and the Notes and, if any Event of Default has occurred and is continuing, specifying all such Events of Defaults and the nature and status thereof of which such Officers have knowledge.

(ii) The Company shall, so long as any of the Notes remain outstanding, deliver to the Trustee, as soon as practicable and in any event within 30 days after the Company becomes aware of any Event of Default, an Officer's Certificate specifying such Events of Default, its status and the actions that the Company is taking or proposes to take in respect thereof.

(g) Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and perform such further acts as may be

reasonably necessary or proper to carry out more effectively the purposes of the Indenture and this Second Supplemental Indenture.

(h) Expense. Notwithstanding anything in the Indenture to the contrary, any actions taken by the Trustee in any capacity shall be at the Company's reasonable expense.

Section 2.20. SATISFACTION; DISCHARGE. The Indenture and this Second Supplemental Indenture will be discharged and will cease to be of further effect with respect to the Notes (except as to any surviving rights expressly provided for herein and in the Transaction Documents (as defined in the Securities Purchase Agreement)), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of the Indenture and this Second Supplemental Indenture with respect to the Notes, when all outstanding amounts under the Notes shall have been paid in full (and/or converted into shares of Common Stock or other securities in accordance therewith) and no other obligations remain outstanding pursuant to the terms of the Notes, this Second Supplemental Indenture, the Indenture and/or the other Transaction Documents, as applicable, which have not been paid in full by the Company, and when the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of the Indenture and this Second Supplemental Indenture with respect to the Notes have been complied with. Notwithstanding the satisfaction and discharge of the Indenture and this Second Supplemental Indenture, the obligations of the Company to the Trustee under Section 7.07 of the Indenture shall survive.

Section 2.21. CONTROL BY SECURITYHOLDERS. The Required Holders (as defined in the Securities Purchase Agreement) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to the Notes; provided, however, that such direction shall not be in conflict with any rule of law. Subject to the provisions of Section 7.01 of the Indenture and this Second Supplemental Indenture, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceeding so directed would involve the Trustee in personal liability. The Notes may be amended, modified or waived, as applicable, in accordance with Section 15 of the Notes. Upon any waiver of any term of the Notes, the default covered thereby shall be deemed to be cured for all purposes of the Indenture, this Second Supplemental Indenture, the Notes and the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE III

EXPENSES

Section 3.1. PAYMENT OF EXPENSES. In connection with the offering, sale and issuance of the Notes, the Company, in its capacity as issuer of the Notes, shall pay all reasonable, documented out-of-pocket costs and expenses relating to the offering, sale and issuance of the Notes and compensation and expenses of the Trustee under the Indenture in accordance with the provisions of Section 7.07 of the Indenture.

Section 3.2. PAYMENT UPON RESIGNATION OR REMOVAL. Upon termination of this Second Supplemental Indenture or the Indenture or the removal or resignation of the Trustee, unless otherwise stated, the Company shall pay to the Trustee all reasonable, documented out-of-pocket amounts, fees and expenses (including reasonable attorney's fees and expenses) accrued to the date of such termination, removal or resignation.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1. TRUSTEE NOT RESPONSIBLE FOR RECITALS. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Second Supplemental Indenture.

Section 4.2. ADOPTION, RATIFICATION AND CONFIRMATION. The Indenture, as supplemented and amended by this Second Supplemental Indenture, is in all respects hereby adopted, ratified and confirmed.

Section 4.3. CONFLICT WITH INDENTURE; TRUST INDENTURE ACT. Notwithstanding anything to the contrary in the Indenture, if any conflict arises between the terms and conditions of this Second Supplemental Indenture (including, without limitation, the terms and conditions of the Notes) and the Indenture, the terms and conditions of this Second Supplemental Indenture (including the Notes) shall control; provided, however, that if any provision of this Second Supplemental Indenture or the Notes limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required thereunder to be a part of and govern this Second Supplemental Indenture, the latter provisions shall control. If any provision of this Second Supplemental Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provisions shall be deemed to apply to the Indenture as so modified or excluded, as the case may be.

Section 4.4. AMENDMENTS; WAIVER. This Second Supplemental Indenture may be amended by the written consent of the Company and the Required Holders (as defined in the Notes); provided however, no amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent. Notwithstanding anything in any other Transaction Document to the contrary, no amendment to any Transaction Document that adversely impact the rights, duties, immunities or liabilities of the Trustee hereunder, pursuant to the Indenture and/or the Notes, as applicable, shall be effective without the Trustee's prior written consent. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

Section 4.5. SUCCESSORS. This Second Supplemental Indenture shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes.

Section 4.6. SEVERABILITY; ENTIRE AGREEMENT. If any provision of this Second Supplemental Indenture shall be invalid or unenforceable in any jurisdiction, such

invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Second Supplemental Indenture in that jurisdiction or the validity or enforceability of any provision of this Second Supplemental Indenture in any other jurisdiction.

Section 4.7. The Indenture, this Second Supplemental Indenture, the Transaction Documents and the exhibits hereto and thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 4.8. COUNTERPARTS. This Second Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 4.9. GOVERNING LAW. This Second Supplemental Indenture and the Indenture shall each be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 of the Notes, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The Borough of Manhattan, New York, 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 22 of the Notes. **THE COMPANY 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 SECOND SUPPLEMENTAL INDENTURE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

Section 4.10. U.S.A. PATRIOT ACT. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Supplemental Indenture agree that they shall provide the Trustee with such information as it may reasonably request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed on the date or dates indicated in the acknowledgments and as of the day and year first above written.

FISKER INC.

By: Geeta Gupta-Fisker (Sep 28, 2023 07:23 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By:_____
Name: Patrick J. Healy
Title: Senior Vice President

EXHIBIT A

(FORM OF NOTE)

[FORM OF SERIES [A][B][C][-][1][2][3][4] SENIOR CONVERTIBLE NOTE]

THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), [ ], A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). THE COMPANY'S CHIEF FINANCIAL OFFICER MAY BE REACHED AT TELEPHONE NUMBER (833) 434-7537.

FISKER INC.

Series [A][B][C][-][1][2][3][4] SENIOR UNSECURED CONVERTIBLE NOTE

Issuance Date: [●] 20__ Original Principal Amount: U.S. $[●]

FOR VALUE RECEIVED, Fisker Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of [BUYER] or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date (each as defined below), or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and upon the occurrence and continuance of an Event of Default (as defined below) to pay interest ("**Interest**") on any outstanding Principal at the applicable Default Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date, on any Installment Date with respect to the Installment Amount due on such Installment Date, or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Series [A][B][C][-][1][2][3][4] Senior Unsecured Convertible Note (including all Senior Unsecured Convertible Notes issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Unsecured Convertible Notes (collectively, the "**Notes**", and such other Senior Unsecured Convertible Notes, the "**Other Notes**") issued pursuant to (i) Section 1 of that certain Securities Purchase Agreement, dated as of July 10, 2023 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (the "**Securities Purchase Agreement**"), (ii) the Indenture, (iii) a Supplemental Indenture, and (iv) the Company's Registration Statement on Form S-3 (File number 333-261875) (the "**Registration Statement**"). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On each Installment Date, the Company shall pay to the Holder an amount equal to the Installment Amount due on such Installment Date in

accordance with Section 8. On the Maturity Date, the Company shall pay to the Holder an amount in cash (excluding any amounts paid in shares of Common Stock on the Maturity Date in accordance with Section 8) representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Other than as specifically permitted or required by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any. Notwithstanding anything herein to the contrary, with respect to any conversion or redemption hereunder, as applicable, the Company shall convert or redeem, as applicable, First, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document, Second, all accrued and unpaid Interest, if any, hereunder and under any Other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any Other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any Other Notes held by such Holder, in each case, allocated pro rata among this Note and such Other Notes held by such Holder.

2. INTEREST; DEFAULT RATE. No Interest shall accrue hereunder unless and until an Event of Default (as defined below) has occurred. From and after the occurrence and during the continuance of any Event of Default, Interest shall accrue hereunder at eighteen percent (18.0%) per annum (the "**Default Rate**") and shall be computed on the basis of a 360-day year and twelve 30-day months, shall compound each calendar month and shall be payable in arrears on the first Trading Day of each such calendar month in which Interest accrues hereunder (each, an "**Interest Date**"). Accrued and unpaid Interest, if any, shall also be payable by way of inclusion of such Interest in the Conversion Amount (as defined below) on each Conversion Date (as defined below) in accordance with in accordance with Section 3(b)(i) or upon any redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below). In the event that such Event of Default is subsequently cured (and no other Event of Default then exists (including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date, unless waived in writing by the Holder)), 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 or waiver; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of Default, unless waived in writing by the Holder.

3. CONVERSION OF NOTES. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(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 (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the sum of (x) portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made and (y) all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, $[ ][1], subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall deliver (whether via electronic mail or as otherwise provided in Section 23(a)), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (each, a "**Conversion Notice**") to the Company and the Trustee. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 17(b)). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment, in the form attached hereto as Exhibit II, of confirmation of receipt of such Conversion Notice and representation that such shares of Common Stock may then be freely resold by the Holder without restriction (each, an "**Acknowledgement**") to the Holder, the Trustee and the Company's transfer agent (the "**Transfer Agent**") which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

[1] Insert 130% of (x) solely with respect to the Initial Closing (as defined in the Securities Purchase Agreement), the Closing Bid Price of the Common Stock on the Subscription Date, or (y) solely with respect to an applicable Additional Closing (as defined in the Securities Purchase Agreement), the quotient of (A) the sum of the VWAP of the Common Stock of each Trading Day during the five (5) Trading Day period ended, and including, the Trading Day ended immediately prior to the time of delivery of such Additional Optional Closing Notice to the Company or Additional Mandatory Closing Notice to the Holder, as applicable, with respect to such Additional Closing (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or similar events during such period), divided by (B) five (5).

On or before the second (2nd) Trading Day following the 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 shares of Common Stock 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's ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the 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, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 17(d)) representing the outstanding Principal (and accrued and unpaid Interest thereon) not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. In the event of a partial conversion of this Note pursuant hereto, the Principal amount converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining Installment Amount(s) relating to the Installment Date(s) as set forth in the applicable Conversion Notice.

(ii) 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, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock 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 shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to one percent (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 Share Delivery Deadline and to which the Holder is entitled, multiplied by (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 applicable Conversion Date and ending on the applicable Share Delivery Deadline and (2) the 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) any portion of this Note 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 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to 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 is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below, and if on or after such Share Delivery Deadline 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 conversion that the 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 the Holder, the Company shall, within two (2) Business Days after receipt of 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 (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 issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the 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) (the "**Buy-In Payment Amount**"). 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) upon the conversion of this Note as required pursuant to the terms hereof.

(iii) Registration; Book-Entry. The Trustee shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "**Registered Notes**") as provided in Section [ ] of the Indenture. The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the

holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Trustee shall record the information contained therein in the Register and issue one or more new Registered Notes (to be executed by the Company and authenticated and delivered by the Trustee) in the same aggregate principal amount as the principal amount of the surrendered Registered Note in the name of the designated assignee or transferee pursuant to Section 16, provided that if the Company or the Trustee does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note 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). Every Registered Note presented or surrendered for registration of transfer, or for exchange or redemption shall (if so required by the Company or the Registrar for such Notes presented) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the holder thereof or his attorney duly authorized in writing. Notwithstanding anything to the contrary set forth in this Section 3 or in the Indenture or in any applicable Supplemental Indenture, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder, the Trustee and the Company shall maintain records showing the Principal, Interest and Late Charges 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 the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3(d), shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the

Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22. If a Conversion Notice delivered to the Company would result in a breach of Section 3(d) below, and the 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 3(d) below (with such calculations thereunder made as of the date such Conversion Notice was initially delivered to the Company).

(d) Limitations on Conversions.

(i) Beneficial Ownership. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d)(i). For purposes of this Section 3(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the 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 the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d)(i), to exceed the Maximum Percentage, the 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 (which may be an e-mail) or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes (each, an "**Other Holder**", and collectively, the "**Other Holders**") that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) Principal Market Regulation The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note 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 Notes or otherwise pursuant to the terms of the Notes without breaching 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 Section 312.03(c) of the NYSE Listed Company Manual, the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains the approval

of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, no Buyer shall be issued in the aggregate, upon conversion of any Notes or otherwise pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the original principal amount of Notes issued to such Buyer pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) divided by (2) the aggregate original principal amount of all Notes issued to the Buyers pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each Buyer, the "**Exchange Cap Allocation**"). In the event that any Buyer shall sell or otherwise transfer any of such Buyer's Notes, the transferee shall be allocated a pro rata portion of such Buyer's Exchange Cap Allocation with respect to such portion of such Notes 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 Notes, 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 Notes shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the shares of Common Stock underlying the Notes then held by each such holder of Notes. At any time after the three month anniversary of the Initial Closing Date (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 3(d)(i) (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such portion of this Note 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 Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 3(d)(i) and (ii) to the extent of any Buy-In related thereto, any Buy-In Payment Amount, 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**").

(e) Right of Alternate Conversion Upon a Triggering Event.

(i) General. Upon the occurrence of a Triggering Event with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Triggering Event Notice**") to the Holder and the Trustee. At any time after the earlier of the Holder's receipt of an Triggering Event Notice and the Holder becoming aware of an Triggering Event (such earlier date, the "**Triggering Event Right Commencement Date**") and ending (such ending date, the "**Triggering Event Right Expiration Date**", and each such period, an "**Triggering Event Redemption Right**

Period") on the twentieth (20th) Trading Day after the later of (x) the date such Triggering Event is cured and (y) the Holder's receipt of an Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the 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 Triggering Event Right Expiration Date, but subject to Section 3(d), (regardless of whether such Triggering Event has been cured, or if the Company has delivered a Triggering Notice to the Holder or otherwise notified the Company that a Triggering Event has occurred), the Holder may, at the Holder's option, convert (each, an "**Alternate Conversion**", and the date of each such Alternate Conversion, an "**Alternate Conversion Date**") all, or any part of, the Conversion Amount (such portion of the Conversion Amount subject to such Alternate Conversion, 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 3(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and with "Redemption Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate above with respect to such Alternate Conversion) by designating in the Conversion Notice delivered pursuant to this Section 3(e) of this Note that the Holder is electing to use the Alternate Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), 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 3(c) without regard to this Section 3(e).

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) 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;

(ii) 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 the Notes, 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 Notes into shares of Common Stock that is requested in accordance with the provisions of the Notes, other than

pursuant to Section 3(d);

(iii) except to the extent the Company is in compliance with Section 10(b) below, at any time following the tenth (10^{th}) consecutive day that the Holder's Authorized Share Allocation (as defined in Section 10(a) below) is less than the Required Reserve Amount (without regard to any limitations on conversion set forth in Section 3(d) or otherwise);

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least three (3) Trading Days;

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

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $25,000,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(vii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Significant Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(viii) the commencement by the Company or any Significant 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 Significant 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 Significant 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 Significant 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 against the assets of the Company or any Significant Subsidiary;

(ix) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Significant 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 Significant 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 Significant 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 Significant 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 forty-five (45) consecutive days;

(x) a final judgment or judgments for the payment of money aggregating in excess of $25,000,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within forty-five (45) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within forty-five (45) 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 $25,000,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the 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 forty-five (45) days of the issuance of such judgment;

(xi) 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 $25,000,000 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 $25,000,000, which

breach or violation (i) results in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constitutes a failure to pay the principal or interest of any such debt when due and payable (after giving effect to any applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(xii) other than as specifically set forth in another clause of this Section 4(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 five (5) consecutive Trading Days;

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

(xiv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13(a)-(d), (f), (g) or (h) of this Note;

(xv) any Event of Default (as defined in the Other Notes) occurs and is continuing with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder and the Trustee. The obligation of the Company to deliver an Event of Default Notice is in addition to, and may not be substituted by, the Trustee's delivery of notice of the same Event of Default to the Holder in accordance with Section 10.02 of the Indenture. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the "**Event of Default Right Commencement Date**") and ending (such ending date, the "**Event of Default Right Expiration Date**", and each such period, an "**Event of Default Redemption Right Period**") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice

thereof (the "**Event of Default Redemption Notice**") to the Company and the Trustee, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate (calculated assuming an Alternate Conversion as of the date of the Event of Default Redemption Notice) with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Event of Default Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the 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 the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as

applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders (as defined in the Securities Purchase Agreement) and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes reasonably satisfactory to the Required Holders, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking to the Notes and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note 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 6 and 14, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes 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 the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder and the Trustee (a "**Change of**

Control Notice"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the 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, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company and the Trustee, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the greatest of (i) the product of (w) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (A) the Conversion Amount being redeemed 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 the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (A) the Conversion Amount 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 the 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 (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 5(b), the 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 the Holder. Accordingly, any Redemption Premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Sections 7 or 14 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 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 Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date as of the applicable record date) 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Purchase Right shall be granted, issued or sold to the Holder, as applicable, with a limitation on conversion and/or exercise, as applicable, in the form of 3(d)(i) herein, *mutatis mutandis*; provided, that, if such Purchase Right (and/or on any subsequent Purchase Right held similarly) has an expiration date, maturity date or other similar provision, such term also shall be extended, on a day-by-day basis, by such aggregate number of days that the exercise or conversion (as applicable) of such Purchase Right (and/or any subsequent Purchase Right held similarly) (in each case, without regard to the limitation on conversion or exercise thereto, as applicable) would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage.

(b) 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 the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) 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 the Holder would have been entitled to receive had this Note 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. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. 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 7(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 7(a)), 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 7(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.

(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 7(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 7(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(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

(whether payable by the Company to such Person or from such Person to the Company, as applicable) upon the issue, conversion, exercise or exchange of any Options or Convertible Securities, or the rate at which any Convertible Securities or Options 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 7(b) 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 (whether payable by the Company to such Person or from such Person to the Company, as applicable) or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 7(a)(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 7(a) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right and/or any other security (as applicable) 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 Common Stock, Option and/or Convertible Security and/or Adjustment Right or any other security or instrument of the Company intended to convey value to any participant in such transaction, in any form whatsoever, 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 7(a)(i) or 7(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 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 and/or any other security or instrument (as applicable), if any, in each case, as determined on a per share basis in accordance with this Section 7(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 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, the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute. 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).

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 6, Section 14 or Section 7(a), if the Company at any time on or after the Subscription 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 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) 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.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 7 or in the Securities Purchase Agreement, 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 (any such securities, "**Variable Price Securities**") regardless of whether securities have been sold pursuant to such agreement and whether such agreement has subsequently been terminated, prior to or after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock, in each case, 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 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 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 Note by designating in the Conversion Notice delivered upon any conversion of this Note 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 Note shall not obligate the Holder to rely on a Variable Price for any future conversion of this Note. In addition, from and after the date the Company enters into such agreement or issues any such Variable Price Securities, for purposes of calculating the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of any time of determination, the "Conversion Price" as used therein shall mean the lower of (x) the Installment Conversion Price, Acceleration Conversion Price and/or Alternate Conversion Price, as applicable, as of such time of determination and (y) the Variable Price as of such time of determination.

(d) 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 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock 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 7(d) will increase the Conversion Price as otherwise determined pursuant to this Section 7, 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.

(e) Calculations. All calculations under this Section 7 shall be made by rounding to the nearest cent or the nearest $1/100^{th}$ 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.

(f) Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time during the term of this Note, 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 Notes to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. INSTALLMENT CONVERSION OR REDEMPTION.

(a) General. On each applicable Installment Date, provided there has been no Equity Conditions Failure, the Company shall pay to the Holder of this Note the applicable Installment Amount due on such date by converting such Installment Amount in accordance with this Section 8 (a "**Installment Conversion**"); provided, however, that the Company may, at its option following notice to the Holder (with a copy to the Trustee) as set forth below, pay the Installment Amount by redeeming such Installment Amount in cash (a "**Installment Redemption**") or by any combination of an Installment Conversion and an Installment Redemption so long as all of the outstanding applicable Installment Amount due on any Installment Date shall be converted and/or redeemed by the Company on the applicable Installment Date, subject to the provisions of this Section 8. On the date which is the sixth (6th) Trading Day prior to each Installment Date (each, an "**Installment Notice Due Date**"), the Company shall deliver written notice (each, a "**Installment Notice**" and the date all of the holders receive such notice is referred to as to the "**Installment Notice Date**"), to each holder of Notes (with a copy to the Trustee) and such Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of such holder's Note shall be converted in whole pursuant to an Installment Conversion or (B) (1) state that the Company elects to redeem for cash, or is required to redeem for cash in accordance with the provisions of the Notes, in whole or in part, the applicable Installment Amount pursuant to an Installment Redemption and (2) specify the portion of such Installment Amount which the Company elects or is required to redeem pursuant to an Installment Redemption (such amount to be redeemed in cash, the "**Installment Redemption Amount**") and the portion of the applicable Installment Amount, if any, with respect to which the Company will, and is permitted to, effect an Installment Conversion (such amount of the applicable Installment Amount so specified to be so converted pursuant to this Section 8 is referred to herein as the "**Installment Conversion Amount**"), which amounts when added together, must at least equal the entire applicable Installment Amount and (ii) if the applicable Installment Amount is to be paid, in whole or in part,

pursuant to an Installment Conversion, certify that there is not then an Equity Conditions Failure as of the applicable Installment Notice Date. Each Installment Notice shall be irrevocable. If the Company does not timely deliver an Installment Notice in accordance with this Section 8 with respect to a particular Installment Date, then the Company shall be deemed to have delivered an irrevocable Installment Notice confirming an Installment Conversion of the entire Installment Amount payable on such Installment Date and shall be deemed to have certified that there is not then an Equity Conditions Failure in connection with such Installment Conversion. Except as expressly provided in this Section 8(a), the Company shall convert and/or redeem the applicable Installment Amount of this Note pursuant to this Section 8 and the corresponding Installment Amounts of the Other Notes pursuant to the corresponding provisions of the Other Notes in the same ratio of the applicable Installment Amount being converted and/or redeemed hereunder. The applicable Installment Conversion Amount (whether set forth in the applicable Installment Notice or by operation of this Section 8) shall be converted in accordance with Section 8(b) and the applicable Installment Redemption Amount shall be redeemed in accordance with Section 8(c).

(b) Mechanics of Installment Conversion. Subject to Section 3(d), if the Company delivers an Installment Notice or is deemed to have delivered an Installment Notice certifying that such Installment Amount is being paid, in whole or in part, in an Installment Conversion in accordance with Section 8(a), then the remainder of this Section 8(b) shall apply. The applicable Installment Conversion Amount, if any, shall be converted on the applicable Installment Date at the applicable Installment Conversion Price and the Company shall, on such Installment Date, (A) deliver to the Holder's account with DTC such shares of Common Stock issued upon such conversion (subject to the reduction contemplated by the immediately following sentence and, if applicable, the penultimate sentence of this Section 8(b)), and (B) in the event of the Conversion Floor Price Condition, the Company shall deliver to the Holder the applicable Conversion Installment Floor Amount, provided that the Equity Conditions are then satisfied (or waived in writing by the Holder) on such Installment Date and an Installment Conversion is not otherwise prohibited under any other provision of this Note. If the Company confirmed (or is deemed to have confirmed by operation of Section 8(a)) the conversion of the applicable Installment Conversion Amount, in whole or in part, and there was no Equity Conditions Failure as of the applicable Installment Notice Date (or is deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied by operation of Section 8(a)) but an Equity Conditions Failure occurred between the applicable Installment Notice Date and any time through the applicable Installment Date (the "**Interim Installment Period**"), the Company shall provide the Holder a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Interim Installment Period or an Installment Conversion is not otherwise permitted under any other provision of this Note, then, at the option of the Holder designated in writing to the Company, the Holder may require the Company to do any one or more of the following: (i) the Company shall redeem all or any part designated by the Holder of the unconverted Installment Conversion Amount (such designated amount is referred to as the "**Designated Redemption Amount**") and the Company shall pay to the Holder within five (5) Trading Days of such Installment Date, by wire transfer of immediately available funds, an amount in cash equal to 125% of such Designated

Redemption Amount, and/or (ii) the Installment Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Installment Conversion Amount and the Holder shall be entitled to all the rights of a holder of this Note with respect to such designated part of the Installment Conversion Amount; provided, however, the Conversion Price for such designated part of such unconverted Installment Conversion Amount shall thereafter be adjusted to equal the lesser of (A) the Installment Conversion Price as in effect on the date on which the Holder voided the Installment Conversion and (B) the Installment Conversion Price that would be in effect on the date on which the Holder delivers a Conversion Notice relating thereto as if such date was an Installment Date. If the Company fails to redeem any Designated Redemption Amount by the second (2nd) day following the applicable Installment Date by payment of such amount by such date, then the Holder shall have the rights set forth in Section 11(a) as if the Company failed to pay the applicable Installment Redemption Price (as defined below) and all other rights under this Note (including, without limitation, such failure constituting an Event of Default described in Section 4(a)(iv)). Notwithstanding anything to the contrary in this Section 8(b), but subject to 3(d), until the Company delivers Common Stock representing the Installment Conversion Amount to the Holder, the Installment Conversion Amount may be converted by the Holder into Common Stock pursuant to Section 3. In the event that the Holder elects to convert the Installment Conversion Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Conversion Amount so converted shall be deducted from the Principal outstanding hereunder, including for purposes of determining the Installment Amount(s) relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of any shares of Common Stock in any Installment Conversion hereunder.

(c) Mechanics of Installment Redemption. If the Company elects or is required to effect an Installment Redemption, in whole or in part, in accordance with Section 8(a), then the Installment Redemption Amount, if any, shall be redeemed by the Company in cash on the applicable Installment Date by wire transfer to the Holder of immediately available funds in an amount equal to 103% of the applicable Installment Redemption Amount (the "**Installment Redemption Price**"). If the Company fails to redeem such Installment Redemption Amount on such Installment Date by payment of the Installment Redemption Price, then, at the option of the Holder designated in writing to the Company (any such designation shall be a "**Conversion Notice**" for purposes of this Note), the Holder may require the Company to convert all or any part of the Installment Redemption Amount at the Installment Conversion Price (determined as of the date of such designation as if such date were an Installment Date). Conversions required by this Section 8(c) shall be made in accordance with the provisions of Section 3(c). Notwithstanding anything to the contrary in this Section 8(c), but subject to Section 3(d), until the Installment Redemption Price (together with any Late Charges thereon) is paid in full, the Installment Redemption Amount (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event the Holder elects to convert all or any portion of the Installment Redemption Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Redemption Amount so converted shall be deducted from the

Principal amount outstanding hereunder, including for purposes of determining the Installment Amounts relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. Redemptions required by this Section 8(c) shall be made in accordance with the provisions of Section 11.

(d) Deferred Installment Amount. Notwithstanding any provision of this Section 8(d) to the contrary, the Holder may, at its option and in its sole discretion, deliver a written notice to the Company no later than the Trading Day immediately prior to the applicable Installment Date electing to have the payment of all or any portion of an Installment Amount payable on such Installment Date deferred (such amount deferred, the "**Deferral Amount**", and such deferral, each a "**Deferral**") until any subsequent Installment Date selected by the Holder, in its sole discretion, in which case, the Deferral Amount shall be added to, and become part of, such subsequent Installment Amount and such Deferral Amount shall continue to accrue Interest hereunder. Any notice delivered by the Holder pursuant to this Section 8(d) shall set forth (i) the Deferral Amount and (ii) the date that such Deferral Amount shall now be payable.

(e) Acceleration of Installment Amounts. Notwithstanding any provision of this Section 8 to the contrary, but subject to Section 3(d), during the period commencing on an Installment Date (a "**Current Installment Date**") and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Installment Period**"), at the option of the Holder, at one or more times, the Holder may convert other Installment Amounts (each, an "**Acceleration**", and each such amount, an "**Acceleration Amount**", and the Conversion Date of any such Acceleration, each an "**Acceleration Date**"), in whole or in part, at the Acceleration Conversion Price of such Current Installment Date in accordance with the conversion procedures set forth in Section 3 hereunder (with "Acceleration Conversion Price" replacing "Conversion Price" for all purposes therein), *mutatis mutandis;* provided, that if a Conversion Floor Price Condition exists with respect to such Acceleration Date, with each Acceleration the Company shall also deliver to the Holder the Acceleration Floor Amount on the applicable Share Delivery Deadline. Notwithstanding anything to the contrary in this Section 8(e), with respect to each period commencing on an Installment Date and ending on the Trading Day immediately prior to the next Installment Date (each, an "**Acceleration Measuring Period**"), the Holder may not elect to effect an Acceleration (the "**Current Acceleration**", and such date of determination, the "**Current Acceleration Determination Date**") during such Acceleration Measuring Period if the Holder shall have converted pursuant to this Section 8 either on such Current Installment Date and/or on any Acceleration Date during such Acceleration Measuring Period, as applicable, such portion of the Conversion Amount of this Note equal to the sum of (x) the Installment Amount for such Installment Date (whether on the Current Installment Date or, if subject to a Deferral, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date) and (y) an additional 200% of the Installment Amount for such Current Installment Date, in whole or in part, on any one or more Acceleration Dates during such Acceleration Measuring Period and prior to such applicable Current Acceleration Determination Date (or such greater amount as the Company and the Holder shall mutually agree).

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, and (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 nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(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 permit such conversion into shares of Common Stock.

10. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as any Notes remain outstanding, the Company shall at all times reserve (I) if prior to Reserve Increase Deadline (as defined in the Securities Purchase Agreement), 275,000,000 shares of Common Stock for conversion (including without limitation, Installment Conversions, Alternate Conversions and Accelerations) of all of the Notes then outstanding (without regard to any limitations on conversions) or (ii) if on or after the Reserve Increase Deadline, at least 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion, including without limitation, Installment Conversions, Alternate Conversions and Accelerations, of all of the Notes then outstanding (without regard to any limitations on conversions and assuming such Notes remain outstanding until the Maturity Date) at the Floor Price then in effect (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 of the Notes based on the original principal amount of the Notes held by each holder on the Initial Closing 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 Notes, 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 Notes shall be allocated to the remaining holders of Notes, pro rata based on the principal amount of the Notes then held by such holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 10(a), and not in limitation thereof, at any time while any of the Notes 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 Notes 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 Notes then outstanding. 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 sixty (60) 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. 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 pursuant to the terms of this Note 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 the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount 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 the 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 10(a); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in Section 10(a) or this Section 10(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

11. REDEMPTIONS.

(a) Mechanics. The Company, or at the Company's written direction and at the Company's expense, the Trustee, shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company, or at the Company's direction, the Trustee, shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise. The Company shall deliver the applicable Installment Redemption Price to the Holder in cash on the applicable Installment Date. Notwithstanding anything herein to the

contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the 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. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of this Note or such new Notes (as the case may be) shall be automatically adjusted with respect to each conversion effected thereafter by the Holder to the lowest of (A) the Conversion Price as in effect on the date on which the applicable Redemption Notice is voided, (B) 75% of the Market Price of the Common Stock for the period ending on and including the date on which the applicable Redemption Notice is voided and (C) 75% of the Market Price of the Common Stock for the period ending as of the applicable Conversion Date (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by electronic mail a copy of such notice (with a copy to the Trustee). If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all

principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

13. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. The Company shall designate all payments due under this Note as senior unsecured Indebtedness, and (a) the Notes shall rank *pari passu* with all Other Notes and (b) shall be at least *pari passu* in right of payment with all other Indebtedness of the Company and its Subsidiaries (other than Permitted Indebtedness secured by Permitted Liens).

(b) 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 (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) 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; provided, however, that the Company shall be deemed to be in breach of this Section 13(c) only if such breach remains uncured for a period of five (5) Trading Days.

(d) 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 than the Notes) 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 an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) 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.

(f) 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 (including, without limitation, in connection with joint ventures) in the ordinary course of business consistent with its past practice and (ii) sales of inventory and product in the ordinary course of business; provided, however, that the Company shall be deemed to be in breach of this Section 13(f) if such breach was an involuntary sale, lease, license, assignment, transfer, spin-off, split-off, close, conveyance or otherwise disposal that remains uncured for a period of five (5) Trading Days.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date (except, solely from and after the Stockholder Approval Date (as defined in the Securities Purchase Agreement), up to $100 million of Permitted Indebtedness in any three month period).

(h) 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 Subscription 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 other than for tax or other general corporate purposes that are not meant to (and do not) change the nature of the business of the Company currently conducted as of the Issuance Date.

(i) 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.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its 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 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.

(k) 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 (as defined in the Securities Purchase Agreement) 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.

(l) 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 (including, without limitation, and for the avoidance of doubt, at least $5,000,000 in director's and officer's insurance).

(m) 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.

(n) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Financial Covenants; Announcement of Operating Results.

(i) The Company shall maintain, as of the end of each Fiscal Quarter (and/or Fiscal Year, as applicable) a balance of Available Cash in an aggregate amount equal to or greater than $340,000,000 (the "**Financial Test**").

(ii) Operating Results Announcement. Commencing on the Fiscal Quarter ending September 30, 2023, the Company shall publicly disclose and disseminate (such date, the "**Announcement Date**"), if the Financial Test has not been satisfied for such Fiscal Quarter or Fiscal Year, as applicable, a statement to that effect no later than (x) if prior to March 31, 2024, the fifteenth (15th) Trading Day or (y) if on or after March 31, 2024, the tenth (10^{th}) Trading Day, in either case, after the end of such Fiscal Quarter or Fiscal Year, as applicable, and such announcement shall include a statement to the effect that the Company is (or is not, as applicable) in breach of the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable. Notwithstanding the foregoing, in the event no

Financial Covenant Failure (as defined below) has occurred and the Company reasonably determines, with the advice of legal counsel, that the disclosure referred to in the immediately preceding sentence does not constitute material non-public information, the Company shall make a statement to that effect in the applicable certification required below and no disclosure with the SEC shall be required to be made by the Company. On the Announcement Date, the Company shall also provide to the Holder a certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Company satisfied the Financial Test for such Fiscal Quarter or Fiscal Year, as applicable, if that is the case. If the Company has failed to meet the Financial Test for a Fiscal Quarter or Fiscal Year, as applicable, (each a "**Financial Covenant Failure**"), the Company shall provide to the Holder a written certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying that the Financial Test has not been met for such Fiscal Quarter or Fiscal Year, as applicable (a "**Financial Covenant Failure Notice**"). Concurrently with the delivery of each Financial Covenant Failure Notice to the Holder, the Company shall also make publicly available (as part of a Quarterly Report on Form 10-Q, Annual Report on Form 10-K or on a Current Report on Form 8-K, or otherwise) the Financial Covenant Failure Notice and the fact that an Event of Default has occurred under the Notes.

(p) PCAOB Registered Auditor. At all times any Notes 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.

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

(r) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to 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.

(s) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note 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 (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

14. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Sections 6 or 7, 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 the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Installment Conversion Price assuming an Installment Date 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 the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the 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 the extent of any such excess)) and in lieu of delivering to the Holder such portion of such Distribution in excess of the Maximum Percentage, the Holder shall receive

a right to receive such portion of such Distribution, exercisable into such Distribution at any time, in whole or in part, at the option of the Holder (or any successor thereto), without the payment of any additional consideration, but subject to a limitation on exercise in the form of 3(d)(i) herein, *mutatis mutandis*.

15. AMENDING THE TERMS OF THIS NOTE. Except for Section 3(d), which may not be amended, modified or waived by the parties hereto, the prior written consent of the Company and the Holder shall be required for any change, waiver or amendment to this Note; provided, however, no change, waiver or amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent.

16. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company; provided, that the Holder shall not transfer this Note to any competitor of the Company without the prior written consent of the Company (not to be unreasonably withheld).

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note. Upon compliance with Section 2.02 of the Indenture, the Company shall execute and, following authentication of such new Note, deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new

Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16(a) or Section 16(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, (v) shall be duly authenticated in accordance with the Indenture and (vi) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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 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 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 Note (including, without limitation, compliance with Section 7).

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note and/or any other Transaction Document or to enforce the provisions of this Note and/or any other Transaction Document or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such

bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note and/or any other Transaction Document, as applicable, shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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. Notwithstanding the foregoing, nothing contained in this Section 21 shall permit any waiver of any provision of Section 3(d).

22. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Installment Conversion Price, an Acceleration Conversion Price, an Alternate Conversion Price, a Black Scholes Consideration Value, 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 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 learning of the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder at any time after the Holder learned of the circumstances giving rise to such dispute. If the 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 Installment Conversion Price, such Acceleration Conversion Price, such Alternate Conversion Price, such Black Scholes Consideration Value, 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 fifth (5th) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The 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 22 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 the 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 the 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 the Holder or otherwise requested by such investment bank, neither the Company nor the 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).

(iii) The Company and the Holder shall use reasonable best efforts to cause such investment bank to determine the resolution of such dispute and notify the Company and the 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 solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 22 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 22, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 7(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the

terms of this Note 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 Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 22 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 22 and (v) nothing in this Section 22 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 22).

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement, or, with respect to the Trustee, in accordance with Section 10.02 of the Indenture. The Company shall provide the Holder and the Trustee with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder and the Trustee (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, (B) with respect to any grant, issuances, or sales of any Common Stock, Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock (including, without limitation, whether a Dilutive Issuance has occurred hereunder) or (C) 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 the Holder.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note 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 Note, 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).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such

payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note or any other Transaction Documents have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **THE COMPANY 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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

27. JUDGMENT CURRENCY.

(a) 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 Note, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) 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

(ii) 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**").

(b) 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.

(c) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

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

(c) "**Acceleration Conversion Price**" means, with respect to any given Acceleration Date, the lower of (i) the Installment Conversion Price for such Current Installment Date related to such Acceleration Date and (ii) the greater of (x) the Floor Price and (y) 93% of the Acceleration Market Price.

(d) "**Acceleration Market Price**" means, with respect to any given Acceleration Date, the lesser of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such Acceleration Date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock for each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such Acceleration Date, divided by (y) five (5). All such determinations to be appropriately adjusted for any share split, share dividend, share combination or other similar transaction during any such measuring period.

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

(f) "**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 7) of shares of Common Stock (other than rights of the type described in Section 6(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).

(g) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(h) "**Alternate Conversion Price**" means, with respect to any Alternate Conversion that price which shall be the lower of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) 80% of the Market Price as of the Trading Day of 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.

(i) "**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 Subscription Date pursuant to which shares of 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.

(j) "**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 Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the 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 the 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 the Holder and all other Attribution Parties to the Maximum Percentage.

(k) "**Available Cash**" means, with respect to any date of determination, an amount equal to the aggregate amount of the Cash of the Company and its Subsidiaries (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of its Subsidiaries for any reason) and Reclaimable Cash as of such date of determination held in bank accounts of financial banking institutions in the United States of America or in bank accounts of reputable financial banking institutions in such other country or countries as the Company has a bona fide business purpose to hold such Cash (other than with a purpose to circumvent or otherwise misrepresent the aggregate amount of Available Cash required pursuant to the terms and conditions of this Note).

(l) "**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 30 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).

(m) "**Bloomberg**" means Bloomberg, L.P.

(n) "**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.

(o) "**Cash**" of the Company and its Subsidiaries on any date shall be determined from such Persons' books maintained in accordance with GAAP, and means, without duplication, the cash, cash equivalents and Eligible Marketable Securities accrued by the Company and its wholly owned Subsidiaries on a consolidated basis on such date.

(p) "**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.

(q) "**Change of Control Redemption Premium**" means 125%.

(r) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(s) "**Common Stock**" means (i) the Company's shares of Class A common stock, $0.00001 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.

(t) "**Conversion Floor Price Condition**" means that the relevant Acceleration Conversion Price (including any Installment Conversion Price referred to therein) or Installment Conversion Price, as applicable, is being determined based on sub-clause (x) of such definitions.

(u) "**Conversion Installment Floor Amount**" means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) the higher of (I) the highest price that the shares of Common Stock trades at on the Trading Day immediately preceding the relevant Installment Date and (II) the applicable Installment Conversion Price and (B) the difference obtained by subtracting (I) the number of shares of Common Stock delivered (or to be delivered) to the Holder on the applicable Installment Date with respect to such Installment Conversion from (II) the quotient obtained by dividing (x) the applicable Installment Amount subject to such Installment Conversion, by (y) the applicable Installment Conversion Price without giving effect to clause (x) of such definition.

(v) "**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.

(w) "**Current Public Information Failure**" means the Company's failure 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 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).

(x) "**Eligible Market**" means the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the Principal Market.

(y) "**Eligible Marketable Securities**" as of any date means marketable securities which would be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared as of such date in accordance with GAAP, and which are permitted under the Company's investment policies as in effect on the Issuance Date or approved thereafter by the Company's Board of Directors.

(z) "**Equity Conditions**" means, with respect to any given date of determination: (i) 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 Underlying Securities (as defined in the Securities Purchase Agreement)) 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); (ii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of this Note on a timely basis as set forth in Section 3 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; (iii) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3(d) hereof; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) 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); (v) 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; (vi) no Current Public Information Failure then exists or is continuing; (vii) the Holder shall not be in (and no Other Holder 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; (viii) 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, in each case, which has not been waived; (ix) 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; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Alternate Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) (each, a "**Required Minimum Securities Amount**") are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default (as defined in the Notes) or an event that with the passage of time or giving of notice would constitute an Event of Default (regardless of whether the Holder has submitted an Event of Default Redemption Notice), in each case, which has not been waived; (xii) no bona fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document and (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.

(aa) "**Equity Conditions Failure**" means that on any day during the period commencing twenty (20) Trading Days prior to the applicable Installment Notice Date through the later of the applicable Installment Date and the date on which the applicable shares of Common Stock are actually delivered to the Holder, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(bb) "**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 Subscription Date 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 Subscription 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 of Notes; (ii) shares of Common Stock issued upon the conversion or exercise 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 Subscription Date, provided that the conversion price of any such Convertible Securities (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 of Notes; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; provided, that the terms of the Notes are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date); and (iv) shares of Common Stock issued and sold, in one or more transactions, pursuant to a Permitted ATM (as defined in the Securities Purchase Agreement), provided that the aggregate purchase price for such shares of Common Stock in such transaction or transactions shall not exceed $10,000,000. For the avoidance of doubt, any sales of shares of Common Stock pursuant to a Permitted ATM in excess of $10,000,000 shall not be included in this definition of "Excluded Securities".

(cc) "**Floor Price**" means $[ ][2], subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events; provided, that the Company may reduce the Floor Price to any amount set forth in a written notice to the Holder with at least five (5) Trading Day prior written notice (or such other time as the Company and the Holder shall mutually agree); provided, further, that any such reduction shall be irrevocable and shall not be subject to increase thereafter.

(dd) "**Fiscal Quarter**" means each of the fiscal quarters adopted by the Company for financial reporting purposes that correspond to the Company's fiscal year as of the date hereof that ends on December 31.

(ee) "**Fiscal Year**" means the fiscal year adopted by the Company for financial reporting purposes as of the date hereof that ends on December 31.

[2] Insert 20% of the Minimum Price (as defined in the NYSE Listed Company Manual) of the Common Stock on the Subscription Date.

(ff) "**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 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 Note 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.

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

(hh) "**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.

(ii) "**Holder Pro Rata Amount**" means a fraction (i) the numerator of which is the original Principal amount of this Note issued to the Holder on the Initial Closing Date and (ii) the denominator of which is the aggregate original principal amount of all Notes issued to the initial purchasers pursuant to the Securities Purchase Agreement on the Initial Closing Date.

(jj) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(kk) "**Initial Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(ll) "**Installment Amount**" means the sum of (A) (i) with respect to any Installment Date other than the Maturity Date, the lesser of (x) the Holder Pro Rata Amount of $[ ][3] and (y) the Principal amount then outstanding under this Note as of such Installment Date, and (ii) with respect to the Installment Date that is the Maturity Date, the Principal amount then outstanding under this Note as of such Installment Date (in each case, as any such Installment Amount may be reduced pursuant to the terms of this Note, whether upon conversion, redemption or Deferral), (B) any Deferral Amount deferred pursuant to Section 8(d) and included in such Installment Amount in accordance therewith, (C) any Acceleration Amount accelerated pursuant to Section 8(e) and included in such Installment Amount in accordance therewith and (D) in each case of clauses (A) through (C) above, the sum of any accrued and unpaid Interest as of such Installment Date under this Note, if any, and accrued and unpaid Late Charges, if any, under this Note as of such Installment Date. In the event the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of each unpaid Installment Amount hereunder.

(mm) "**Installment Conversion Price**" means, with respect to a particular date of determination, the lower of (i) the Conversion Price then in effect, and (ii) the greater of (x) the Floor Price and (y) 93% of the Market Price of the applicable Installment Date. All

[3] Insert the quotient of (x) the applicable initial Principal of this Note, divided by (y) nine (9)

such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

(nn) "**Installment Date**" means (i)[ ][4], (ii) then, each three month anniversary thereafter until the Maturity Date, and (iii) the Maturity Date; provided that if any such date is not a Business Day, the next Business Day.

(oo) "**Indenture**" means that certain Indenture for Debt Securities dated as of the Initial Closing Date, by and between the Company and the Trustee, as may be amended, modified or supplemented from time to time, including, without limitation, by any Supplemental Indenture (as defined below).

(pp) "**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.

(qq) "**Market Price**" shall mean, as of any given date, the lower of (i) the VWAP of the Common Stock on the Trading Day immediately prior to such date and (ii) the quotient of (x) the sum of the VWAP of the Common Stock on each Trading Day during the five (5) consecutive Trading Day period ending, and including, the Trading Day immediately prior to such date, divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period).

(rr) "**Maturity Date**" shall mean [ ][5]; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

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

(tt) "**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

[4] Insert the Issuance Date

[5] Insert the second anniversary of the applicable Issuance Date

Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(uu) "**Permitted Convertible Securities**" means (a) any Convertible Securities of the Company issued after [ ][6] in exchange for Indebtedness of the Company outstanding as of the Subscription Date; provided, that (i) such Convertible Securities are *pari passu* or subordinate to the terms of the Notes, (ii) the terms of such Convertible Securities are not more favorable to such holders of Convertible Securities than the terms of the Notes, (iii) the amounts outstanding under such Convertible Securities do not increase as a result of such exchange and (iv) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes; and (b) any Convertible Securities issued after the 12-month anniversary of the Initial Closing Date; provided, that (i) such Convertible Securities are pari passu or subordinate to the terms of the Notes, and (ii) such Convertible Securities shall not prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(vv) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date, (iv) Permitted Convertible Securities, (v) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens, (vi) non-convertible Indebtedness to trade creditors incurred in the ordinary course of business (not otherwise excluded from the definition of Indebtedness), including non-convertible Indebtedness incurred in the ordinary course of business with corporate credit cards, (vii) non-convertible Indebtedness arising from letters of credit (or similar instruments) in the ordinary course of business, (viii) non-convertible Indebtedness arising from operating and financing leases in the ordinary course of business, (ix) non-convertible Indebtedness incurred under working capital facilities entered into in the ordinary course of business, provided such facilities do not exceed $200,000,000 in the aggregate (the "**Permitted WC Facility**"), (x) non-convertible intercompany Indebtedness owed between the Company and/or any Subsidiary (or between any Subsidiaries), as applicable, (xi) non-convertible Indebtedness consisting of subsidized loans made, or guaranteed, by a governmental entity, (xii) to the extent constituting non-convertible Indebtedness, obligations owed to an insurance company incurred in the ordinary course of business with respect to premiums payable for property, casualty, or other insurance, so long as such indebtedness shall not be in excess of the

[6] Insert Initial Closing Date

amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such indebtedness is incurred and such indebtedness shall be outstanding only during such year, (xiii) non-convertible Indebtedness in respect of surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantees and similar obligations incurred in the ordinary course of business, and (xiv) other non-convertible Indebtedness not to exceed $25,000,000; provided, that (A) all Permitted Indebtedness must be pari passu or subordinate to the terms of the Notes (other than Permitted Indebtedness secured by Permitted Liens), and (B) no Permitted Indebtedness shall prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to (x) any prohibition on any payment of cash by the Company in respect of any obligation under the Notes and (y) any limitation on conversion or the payment of any amounts by the Company in shares of Common Stock, in accordance with the terms of the Notes.

(ww) "**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 $200,000,000, (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, (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, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 4(a)(x) and (viii) Liens with respect to any accounts receivables or inventory of the Company and its Subsidiaries securing the Permitted WC Facility.

(xx) "**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.

(yy) **"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 $[ ][7] (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription 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.

(zz) "**Principal Market**" means the New York Stock Exchange.

(aaa) "**Reclaimable Cash**" means, as of any given date of determination, (i) unavailable Cash as of such date of determination that is eligible to be returned to the Company or any of its Subsidiaries, as applicable, at the conclusion of any agreement where such Cash would otherwise not be considered cash and cash equivalents for purposes of GAAP, but which is reasonably expected to be released as unrestricted Cash of the Company or any of its Subsidiaries within 90 days of such date of determination (including, for the avoidance of doubt, any Cash amounts so restricted due to a letter of credit supporting supplier contractual obligations) and (ii) order deposits made through credit card transactions whereby Cash payments are held by financial institutions until the vehicle being purchased by any such applicable customer is delivered to such applicable customer (but solely with respect to such Cash payments that are reasonably expected to be released to the Company or any of its Subsidiaries, as applicable, within 90 days of such date of determination upon delivery of such applicable vehicle(s) to such applicable customer(s) and/or non-refundable payments that with the passage of time will become an asset of the Company (or such applicable Subsidiary) under GAAP)(regardless of whether the vehicle(s) is delivered)) at which time the Cash is deposited into the Company's (or such applicable Subsidiary's) bank account and available for the Company's (or such applicable Subsidiary's) unrestricted use.

(bbb) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices, the Installment Notices with respect to any Installment Redemption, and the Change of Control Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(ccc) "**Redemption Premium**" means 125%.

(ddd) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices, the Change of Control Redemption Prices, and the Installment Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

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

(fff) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended

[7] Insert Floor Price.

from time to time.

(ggg) "**Significant Subsidiaries**" or "**Significant Subsidiary**" means, as of any time of determination, any of the "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) of the Company as of such time of determination.

(hhh) "**Subscription Date**" means July 10, 2023.

(iii) "**Subsidiaries**" shall have the meaning as set forth in the Securities Purchase Agreement.

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

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

(lll) "**Supplemental Indenture**" shall have the meaning ascribed to such term in the Securities Purchase Agreement, as each such supplemental indenture may be amended, modified or supplemented from time to time.

(mmm)"**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 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.

(nnn) "**Triggering Event**" means the occurrence of any Event of Default (assuming for such purpose that "$10,000,000" replaces "$25,000,000", where applicable, in each clause of the definition of Event of Default).

(ooo) "**Trustee**" means Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Indenture, or any successor or any additional trustee appointed with respect to the Notes pursuant to the Indenture.

(ppp) "**Volume Failure**" means, with respect to a particular date of determination, if either (x) the aggregate daily dollar trading volume (as reported on Bloomberg) of the

Common Stock on the Principal Market on more than five (5) Trading Days during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination, or (y) the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the five (5) Trading Day period ending on the Trading Day immediately preceding such date of determination, as applicable, is less than $25,000,000.

(qqq) "**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 Holder. If the Company and the Holder 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 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

31. DISCLOSURE. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries (it being understood that a Dilutive Issuance, which results in an adjustment of the Conversion Price, shall always be deemed material for the purpose of this Section 31), 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 Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in

this Section 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(l) of the Securities Purchase Agreement.

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

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture and the applicable Supplemental Indenture.

Dated: _____, 20__

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: _____
Name:
Title:

EXHIBIT I

FISKER INC.
CONVERSION NOTICE

Reference is made to the Series [A][B][C][-][1][2][3][4] Senior Convertible Note (the "**Note**") issued to the undersigned by Fisker Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Class A Common Stock, $0.00001 par value per share (the "**Common Stock**"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges 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: _____

Installment Amount(s) to be reduced (and corresponding Installment Date(s)) and amount of reduction: _____

☐ 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:_____

☐ If this Conversion Notice is being delivered with respect to an Acceleration, check here if Holder is electing to use _____ as the Installment Conversion Price (as

applicable) related to the following Installment Date:_____

Please issue the Common Stock into which the Note 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: _____

DTC Participant Phone Number: _____

Account Number: _____

The source for these shares of Common Stock is reserve account **[●]**, with an effective date of [●], 20[●].

Date: _____ __, _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____

E-mail Address:

Mailing Address:

Exhibit II

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock are eligible to be resold by the Holder without restriction and 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 _____.

FISKER INC.

By: _____
Name:
Title:

EXHIBIT D-3

Execution Version

THIRD SUPPLEMENTAL INDENTURE TO INDENTURE

Dated as of November 22, 2023

WILMINGTON SAVINGS FUND SOCIETY, FSB,

as Trustee,

CVI INVESTMENTS, INC.,

as Collateral Agent, and

The Guarantors (as defined herein) signatory hereto

Series A-1 Senior Convertible Note Due 2025
Series B-1 Senior Convertible Note Due 2025

FISKER INC.

THIRD SUPPLEMENTAL INDENTURE TO
INDENTURE DATED JULY 11, 2023

Series A-1 Senior Convertible Note Due 2025
Series B-1 Senior Convertible Note Due 2025

THIRD SUPPLEMENTAL INDENTURE, dated as of November 22, 2023 (this "Third Supplemental Indenture"), by and among FISKER INC., a Delaware corporation (the "Company"), CVI INVESTMENTS, INC. ("Collateral Agent"), the Guarantors (as defined below), and WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee (the "Trustee").

RECITALS

A. The Company filed a registration statement on Form S-3 on December 23, 2021 (File Number 333-261875) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act") and the Registration Statement has been declared effective by the SEC on January 4, 2022.

B. The Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 11, 2023 (the "Base Indenture"), the First Supplemental Indenture dated July 11, 2023 (the "First Supplemental Indenture") and the Second Supplemental Indenture dated September 29, 2023 (the "Second Supplemental Indenture" and, collectively with the Base Indenture and the First Supplemental Indenture, the "Indenture"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company.

C. The Indenture has been qualified under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

D. Section 2 of the Indenture provides for various matters with respect to any series of Securities issued under the Indenture to be established in an indenture supplemental to the Indenture.

E. Section 9.01 of the Indenture provides that, without the consent of the Holders, for the Company and the Trustee may enter into an indenture supplemental to the Indenture to establish the form or terms of Securities of any series as provided by Section 2 of the Indenture.

F. In accordance with that certain Securities Purchase Agreement, dated July 10, 2023, as amended by that certain Amendment No. 1 to Securities Purchase Agreement dated as of September 29, 2023 (as so amended, the "Securities Purchase Agreement"), by and among the Company and the investors party thereto, at the applicable Closing (as defined in the Securities

Purchase Agreement) the Company sold $510,000,000 in original aggregate principal amount of Notes.

G. The parties hereby desire to supplement the Indenture pursuant to this Third Supplemental Indenture to set forth the terms and conditions of the Security Documents (defined below).

NOW, THEREFORE, THIS THIRD SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the issuance of the series of Securities provided for herein, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of such series, as follows:

ARTICLE I

RELATION TO INDENTURE; DEFINITIONS

Section 1.1. RELATION TO INDENTURE. This Third Supplemental Indenture constitutes an integral part of the Indenture.

Section 1.2. DEFINITIONS. For all purposes of this Third Supplemental Indenture:

(a) Capitalized terms used herein without definition shall have the meanings specified in the Indenture or in the Notes, as applicable;

(b) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Third Supplemental Indenture; and

(c) The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Third Supplemental Indenture.

ARTICLE II

GUARANTY; PLEDGE AND GRANT OF SECURITY INTERESTS

Section 2.1. GUARANTY. The obligations under the Transaction Documents will be guaranteed by the direct and indirect subsidiaries of the Company set forth on Schedule 2.1 hereto (collectively, the "Guarantors"), as evidenced by a guaranty to be entered into by the Guarantors in favor of the Collateral Agent (the "Guaranty").

Section 2.2. SECURITY. The Notes shall be secured by a first priority perfected security interest in substantially all of the existing and future assets of the Company and the Guarantors, including a pledge of all of the share capital in each of the Guarantors, as evidenced by a pledge agreement in the form attached hereto as Exhibit A (the "Pledge Agreement" and together with a security agreement by and among the Company, the Collateral Agent and the Guarantors, this Third Supplemental Indenture and such other security documents and agreements from time to time entered into by the Company or its Subsidiaries in favor of the Collateral Agent

to secure the obligations under the Transaction Documents, as each may be amended, restated, supplemented or otherwise modified from time to time, collectively, the "Security Documents").

Section 2.3. COLLATERAL AGENT. CVI Investments, Inc. shall initially be the collateral agent hereunder and under the other Security Documents (in such capacity, the "Collateral Agent"), and (ii) each holder of Notes (each, an "Investor"), by accepting such Notes, shall be deemed to have authorized the Collateral Agent (and its officers, directors, employees and agents) to take such action on such Investor's behalf in accordance with the terms of the Transaction Documents. The Collateral Agent shall not have, by reason hereof or any of the other Security Documents, a fiduciary relationship in respect of any Investor. Neither the Collateral Agent nor any of its officers, directors, employees or agents shall have any liability to any Investor 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 the Investor 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.

Section 2.4. SUCCESSOR COLLATERAL AGENT.

(a) 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 holders of a majority in aggregate principal amount of the Notes then outstanding may, by written consent, remove the Collateral Agent from all its functions and duties hereunder and under the other Transaction Documents.

(b) 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 collateral 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 Section 2.3 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.

(c) 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.

(d) In the event that a successor Collateral Agent is appointed pursuant to the provisions of this Section 2.4 that is not an Investor or an affiliate of any Investor (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 2.4), 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.

Section 2.5. PERFECTION. To the extent required by the Security Documents, the Company shall deliver 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.

Section 2.6. COVENANTS. In addition to any covenants set forth in Article 4 of the Indenture, the Company shall comply with the additional covenants set forth in Security Agreement and the Guaranty.

Section 2.7. TRUSTEE MATTERS.

(a) Duties. The Trustee has no obligation to undertake any of the duties of the Collateral Agent as set forth is this Third Supplemental Indenture.

(b) Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and perform such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the Indenture and this Third Supplemental Indenture.

(c) Expense. Notwithstanding anything in the Indenture to the contrary, any actions taken by the Trustee in any capacity shall be at the Company's reasonable expense.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1. PAYMENT OF EXPENSES. The Company shall pay all reasonable, documented out-of-pocket costs and expenses of the Trustee relating to the execution and delivery of this Third Supplemental Indenture, the Security Documents and the Guaranty, as applicable, and all compensation and expenses of the Trustee under the Indenture in accordance with the provisions of Section 7.07 of the Indenture.

Section 3.2. TRUSTEE AND COLLATERAL AGENT NOT RESPONSIBLE FOR RECITALS. The recitals herein contained are made by the Company and not by the Trustee or the Collateral Agent, and the Trustee and the Collateral Agent assume no responsibility for the correctness thereof. The Trustee and the Collateral Agent make no representation as to the validity or sufficiency of this Third Supplemental Indenture.

Section 3.3. ADOPTION, RATIFICATION AND CONFIRMATION. Except as expressly amended, supplemented and modified by this Third Supplemental Indenture, the Base Indenture, the First Supplemental Indenture and the Second Supplemental Indenture are in all respects ratified and confirmed and the Base Indenture, the First Supplemental Indenture and the Second Supplemental Indenture as so amended hereby shall be read, taken and construed as one and the same instrument.

Section 3.4. CONFLICT WITH INDENTURE; TRUST INDENTURE ACT. Notwithstanding anything to the contrary in the Indenture, if any conflict arises between the terms and conditions of this Third Supplemental Indenture (including, without limitation, the terms and conditions of the Notes) and the Indenture, the terms and conditions of this Third Supplemental Indenture (including the Notes) shall control; provided, however, that if any provision of this Third Supplemental Indenture or the Notes limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required thereunder to be a part of and govern this Third Supplemental Indenture, the latter provisions shall control. If any provision of this Third Supplemental Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded,

the latter provisions shall be deemed to apply to the Indenture as so modified or excluded, as the case may be.

Section 3.5. AMENDMENTS; WAIVER. This Third Supplemental Indenture may be amended by the written consent of the Company and the Required Holders (as defined in the Notes); provided however, no amendment shall adversely impact the rights, duties, immunities or liabilities of the Trustee without its prior written consent. Notwithstanding anything in any other Transaction Document to the contrary, no amendment to any Transaction Document that adversely impact the rights, duties, immunities or liabilities of the Trustee hereunder, pursuant to the Indenture and/or the Notes, as applicable, shall be effective without the Trustee's prior written consent. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

Section 3.6. SUCCESSORS. This Third Supplemental Indenture shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes.

Section 3.7. SEVERABILITY; ENTIRE AGREEMENT. If any provision of this Third Supplemental Indenture shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Third Supplemental Indenture in that jurisdiction or the validity or enforceability of any provision of this Third Supplemental Indenture in any other jurisdiction.

Section 3.8. The Indenture, this Third Supplemental Indenture, the Transaction Documents and the exhibits hereto and thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 3.9. COUNTERPARTS. This Third Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 3.10. GOVERNING LAW. This Third Supplemental Indenture and the Indenture shall each be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 22 of the Notes, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The Borough of Manhattan, New York, 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 22 of the Notes. THE COMPANY 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 THIRD SUPPLEMENTAL INDENTURE OR ANY TRANSACTION CONTEMPLATED HEREBY.

Section 3.11. U.S.A. PATRIOT ACT. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Supplemental Indenture agree that they shall provide the Trustee with such information as it may reasonably request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed on the date or dates indicated in the acknowledgments and as of the day and year first above written.

FISKER INC.

By: /s/ Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GROUP INC.

By: /s/ Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GMBH

By: /s/ Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Director

CVI INVESTMENTS, INC.,
as Collateral Agent
C/O Heights Capital Management, Inc., its
authorized agent

By: /s/ Martin Kobinger
Name: Martin Kobinger
Title: President

WILMINGTON SAVINGS
FUND SOCIETY, FSB, as Trustee

By: /s/ Patrick J. Healy
Name: Patrick J. Healy
Title: Senior Vice President

Schedule 2.1

Fisker Group Inc.

Fisker GmbH [Austrian Subsidiary]

Exhibit A

Form of Pledge Agreement

EXHIBIT E

PLEDGE AGREEMENT

PLEDGE AGREEMENT, dated as of November 22, 2023 (this "**Agreement**"), made by Fisker Inc., a company organized under the laws of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**"), and each of the undersigned Subsidiaries (as defined below) of the Company from time to time, if any (each a "**Grantor**" and together with the Company, collectively, the "**Grantors**"), in favor of CVI Investments, Inc. with offices located at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, in its capacity as collateral agent (together with its successors and assignees, in such capacity, the "**Collateral Agent**") for the Noteholders (as defined below).

W I T N E S S E T H:

WHEREAS, the Company is party to that certain Securities Purchase Agreement, dated as of July 10, 2023, (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**") by and among the Company and each party listed as an "Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company shall be required to sell, and the Investor shall purchase or have the right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**") providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, under the terms of the Indenture, the Investor shall have executed and delivered to the Collateral Agent this Agreement providing for the grant to the Collateral Agent, for the ratable benefit of itself and the Noteholders, of a valid, enforceable, and perfected security interest in certain assets of each Grantor to secure all of the Company's obligations under the Transaction Documents; and

WHEREAS, the Grantors are Affiliates that are part of a common enterprise such that each Grantor will derive substantial direct and indirect financial and other benefits from the consummation of the transactions contemplated under the Transaction Documents and, accordingly, the consummation of such transactions are in the best interests of each Grantor;

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Investor to perform under the Securities Purchase Agreement, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows:

SECTION 1. Definitions.

(a) Reference is hereby made to the Securities Purchase Agreement, the Indenture and the Notes for a statement of the terms thereof. All terms used in this Agreement and the recitals hereto which are defined in the Securities Purchase Agreement, the Notes or in the Code, and which are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Code on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of the Code except as the Collateral Agent may otherwise determine in its sole and absolute discretion.

(b) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"**Affiliate**" of any Person means any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person and any officer or director of such Person. Without limiting the generality of the foregoing, a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"**Bankruptcy Code**" means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

"**Bankruptcy Event of Default**" shall have the meaning set forth in the Note.

"**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.

"**Investor**" or "**Investors**" shall have the meaning set forth in the recitals hereto.

"**Capital Stock**" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not an individual or a corporation, any and all partnership, membership, trust or other equity interests of such Person.

"**Code**" means Articles 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes

of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Collateral**" shall have the meaning set forth in Section 3(a) of this Agreement.

"**Collateral Agent**" shall have the meaning set forth in the preamble hereto.

"**Company**" shall have the meaning set forth in the preamble hereto.

"**Domestic Subsidiary**" means any Subsidiary other than a Foreign Subsidiary.

"**Event of Default**" shall have the meaning set forth in Section 4(a) of the Notes.

"**Excluded Accounts**" means any deposit accounts or securities accounts that are maintained exclusively by any Grantor for one or more of the purposes described in the following clauses: (a) payroll, healthcare and other employee wage and benefit accounts and (b) tax accounts, including, without limitation, sales tax accounts and payroll or withholding tax accounts.

"**Excluded Property**" means (a)(i) any governmental licenses or state or local franchises, charters and authorizations to the extent the grant of a security interest is prohibited or restricted thereby (except to the extent such prohibition or restriction is ineffective under the Code or other applicable law) other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (ii) any property or assets as to which pledges thereof or security interests therein are prohibited or restricted by applicable law (including any requirement to obtain the consent of any (x) governmental authority or (y) similar regulatory third party, in each case, except to the extent such consent has been obtained) after giving effect to the applicable anti-assignment provisions of the Code and other applicable law (provided that such property shall be Excluded Property only to the extent and for so long as such prohibition is in effect); (iii) any lease, license or other contract or agreement or any property or assets subject to an agreement binding on and relating to such property at the time of acquisition thereof (and not entered into in contemplation of such acquisition), to the extent that a grant of a Lien therein would violate or invalidate, such lease, license or other contract or agreement or create a right of termination or right of acceleration in favor of any party (other than the Company or any of its Subsidiaries) thereto or otherwise require consent (other than the Company or any of its Subsidiaries) thereunder (after giving effect to the applicable anti-assignment provisions of the Code or other applicable law) other than proceeds and receivables thereof; (iv) any Excluded Accounts; (v) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto; (iv) any property subject to a purchase money arrangement or finance lease to the extent that a grant of a security interest therein would violate or invalidate such purchase money arrangement or finance lease or create a right of termination in favor of any other party thereto (other than the Company or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law, other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (vii) the portion of the voting Capital Stock of any Foreign Subsidiary in excess of 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary to the extent that at any time the pledging of more than 65% of the total outstanding voting Capital Stock of such Foreign Subsidiary would result in a material adverse tax consequence to a Grantor; (viii)

any "margin stock", as such term is defined in Regulation U promulgated by the Board of Governors of the Federal Reserve System of the United States of America.

Notwithstanding anything to the contrary, "Excluded Property" shall not include any proceeds, products, substitutions or replacements of any "Excluded Property" referred to in clauses (i) through (viii) (unless such proceeds, substitutions or replacements would constitute "Excluded Property" referred to in any of clauses (i) through (viii)).

"**Foreign Subsidiary**" means any Subsidiary of a Grantor organized under the laws of a jurisdiction other than the United States, any of the states thereof, Puerto Rico or the District of Columbia.

"**Governmental Authority**" means any nation or government, any Federal, state, city, town, municipality, county, local, foreign or other political subdivision thereof or thereto and any department, commission, board, bureau, court, tribunal, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guaranty**" mean any guarantee in form and substance acceptable to and in favor of the Collateral Agent, for the ratable benefit of itself and the Noteholders, with respect to the Company's obligations under the Securities Purchase Agreement, the Notes and the other Transaction Documents (as defined in the Securities Purchase Agreement).

"**Insolvency Proceeding**" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law or law for the relief of debtors, any proceeding relating to assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or any proceeding seeking reorganization, arrangement, or other similar relief.

"**Lien**" means any mortgage, lien, pledge, charge, security interest, adverse claim or other encumbrance upon or in any property or assets.

"Noteholders" means, at any time, the holders of the Notes at such time.

"**Notes**" shall have the meaning set forth in the recitals hereto.

"**Obligations**" shall have the meaning set forth in Section 4 of this Agreement.

"**Paid in Full"** or "**Payment in Full"** means the indefeasible payment in full in cash of all of the Obligations.

"**Perfection Requirement" or "Perfection Requirements**" shall have the meaning set forth in Section 5(j) of this Agreement.

"**Permitted Liens**" shall have the meaning set forth in the Notes.

"**Person**" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"**Pledged Collateral**" shall have the meaning set forth in Section 2(a).

"**Pledged Entity**" means, each Person listed from time to time on Schedule I hereto as a "Pledged Entity," together with each other Person, any right in or interest in or to all or a portion of whose Securities or Capital Stock is acquired or otherwise owned by a Grantor after the date hereof.

"**Pledged Equity**" means all of each Grantor's right, title and interest in and to all of the Securities and Capital Stock now or hereafter owned by such Grantor (including, without limitation, those interests listed opposite the name of such Grantor on Schedule I), regardless of class or designation, including all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including, without limitation, any certificates representing such Securities and/or Capital Stock, the right to receive any certificates representing any of such Securities and/or Capital Stock, all warrants, options, subscription, share appreciation rights and other rights, contractual or otherwise, in respect thereof, and the right to receive dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and 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 foregoing.

"**Securities Purchase Agreement**" shall have the meaning set forth in the recitals hereto.

"Subsidiary" means any Person in which a Grantor 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 all of the foregoing, collectively, "**Subsidiaries**".

SECTION 2. Pledge of Pledged Collateral.

(a) As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby assigns and pledges to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under all of the following, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired: (i) the Pledged Equity; (ii) subject to all payments of principal or interest, dividends, distributions, cash, Securities, Instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the Pledged Equity; (iii) all rights and privileges of such Grantor with respect to the Securities and other property referred to in clauses (i) and (ii) and above; (iv) all Proceeds of, and Security Entitlements in respect of, any of the foregoing and (v) all books and records pertaining to the items described in clauses (i) through (iv) above (the items referred to in clauses (i) through (v) above being collectively referred to as the "**Pledged Collateral**"); provided that the Pledged Collateral shall not include Excluded Property.

(b) All of the Pledged Equity is presently owned by the applicable Grantor as set forth in Schedule I free and clear of all Liens other than Permitted Liens, and is presently represented by the certificates listed on Schedule I hereto (if applicable). As of the date hereof,

there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Pledged Equity other than as contemplated and permitted by the Transaction Documents. Each Grantor is the sole holder of record and the sole beneficial owner of the Pledged Equity, as applicable. All of the Pledged Equity has been duly and validly authorized and issued by the issuer thereof and (i) in the case of Pledged Equity (other than Pledged Equity consisting of limited liability company interests or partnership interests which, pursuant to the relevant organizational or formation documents, cannot be fully paid and non-assessable), is fully paid and non-assessable.

(c) The assignment, pledge, Lien and security interest granted in Section 2(a) of this Agreement are granted as security only and shall not subject the Collateral Agent or any Investor to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Pledged Collateral.

SECTION 3. Grant of Security Interest

(a) As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under all personal property and assets of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible (together with the Pledged Collateral, the "**Collateral**"), including, without limitation, the following: all Accounts; all Chattel Paper (whether tangible or Electronic Chattel Paper); all Commercial Tort Claims, including, without limitation, those specified on Schedule II hereto; all Documents; all Equipment; all Fixtures; all General Intangibles (including, without limitation, all Payment Intangibles); all Goods; all Instruments; all Inventory; all Investment Property (and, regardless of whether classified as Investment Property under the Code, all Pledged Equity); all Intellectual Property and all Licenses; all Letter-of-Credit Rights; all cash and other property from time to time deposited therein, and all monies and property in the possession or under the control of the Collateral Agent or any Noteholder or any Affiliate, representative, agent or correspondent of the Collateral Agent or any such Noteholder; all other tangible and intangible personal property of each Grantor (whether or not subject to the Code), including, without limitation, all Deposit Accounts and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of any Grantor described in the preceding clauses of this Section 3(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by each Grantor in respect of any of the items listed above), and all books and other Records, in each case, to the extent of such Grantor's rights therein, that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 3(a) or are otherwise necessary or helpful in the collection or realization thereof; and all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever any Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

(b) Notwithstanding anything herein to the contrary, the term "**Collateral**" shall not include any Excluded Property.

SECTION 4. Security for Obligations. The Lien and security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether direct or indirect, absolute or contingent, and whether now existing or hereafter incurred (collectively, the "**Obligations**"):

(a) the payment by the Company and each other Grantor, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of the Securities Purchase Agreement, this Agreement, the Notes and the other Transaction Documents; and

(b) the due and punctual performance and observance by each Grantor of all of its other obligations from time to time existing in respect of any of the Transaction Documents, including without limitation, with respect to any conversion or redemption rights of the Noteholders under the Notes.

SECTION 5. Representations and Warranties. Each Grantor represents and warrants as follows:

(a) Schedule III hereto sets forth (i) the exact legal name of each Grantor, and (ii) the state of incorporation, organization or formation and the organizational identification number of each Grantor in such state. The information set forth in Schedule III hereto with respect to such Grantor is true and accurate in all respects. Such Grantor has not previously changed its name (or operated under any other name), jurisdiction of organization or organizational identification number from those set forth in Schedule III hereto except as disclosed in Schedule III hereto.

(b) There is no pending or, to its knowledge, written notice threatening any action, suit, proceeding or claim affecting any Grantor before any Governmental Authority or any arbitrator, or any order, judgment or award issued by any Governmental Authority or arbitrator, in each case, that may adversely affect the grant by any Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Collateral, or the exercise by the Collateral Agent of any of its rights or remedies hereunder.

(c) The exercise by the Collateral Agent of any of its rights and remedies hereunder will not contravene any law or any contractual restriction binding on or otherwise affecting any Grantor or any of its properties and will not result in or require the creation of any Lien, upon or with respect to any of its properties other than as granted pursuant to this Agreement.

(d) Subject to Section 6, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority, is required for (i) the grant by each Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Pledged Collateral, or (ii) the exercise by the Collateral Agent of any of its rights and remedies hereunder, except for the filing under the Code as in effect in the applicable jurisdiction of the financing statements to be filed on the date of this Agreement (a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**").

(e) Subject to Section 6, this Agreement creates in favor of the Collateral Agent a legal, valid and enforceable Lien on and security interest in the Collateral, as security for the

Obligations. The performance of the Perfection Requirements results in (and when performed in accordance with Sections 2, 3 and 6 shall result in) the perfection of such Lien on and security interest in the Collateral, to the extent that such Lien and security interest can be perfected by filing a financing statement under the Code. Such Lien and security interest is (or in the case of Collateral in which any Grantor obtains any right, title or interest after the date hereof, will be), subject only to Permitted Liens and the Perfection Requirements, a first priority, valid, enforceable and perfected Lien on and security interest in all personal property of each Grantor (other than Excluded Property).

(f) Such Grantor (i) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation and (ii) has all requisite corporate, limited liability company or limited partnership power and authority to conduct its business as now conducted and as presently contemplated and to execute and deliver this Agreement and each other Transaction Document to which such Grantor is a party, and to consummate the transactions contemplated hereby and thereby.

(g) The execution, delivery and performance by each Grantor of this Agreement and each other Transaction Document to which such Grantor is a party (i) have been duly authorized by all necessary corporate, limited liability company or limited partnership action, (ii) do not and will not contravene its charter or by-laws, limited liability company or operating agreement, certificate of partnership or partnership agreement, as applicable, or any applicable law or any contractual restriction binding on such Grantor or its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Transaction Document) upon or with respect to any of its assets or properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to it or its operations or any of its assets or properties.

(h) This Agreement has been duly executed and delivered by each Grantor and is the legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law). Each of the other Transaction Documents to which any Grantor is or will be a party, when delivered, duly executed and delivered by such Grantor and the legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

(i) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

SECTION 6. Covenants as to the Collateral. Until all of the Obligations shall have been fully performed and Paid in Full, unless the Collateral Agent shall otherwise consent in writing (in its sole and absolute discretion):

(a) Covenant to Perfect: Guaranty.

(i) No later than the fifth Business Day following the date of this Agreement (or such later date as the Collateral Agent may agree), the Grantors shall (A) execute and deliver to the Collateral Agent, for recording with the United States Patent and Trademark Office and United States Copyright Office, as applicable, a short-form grant of security interest, in form and substance reasonably acceptable to the Collateral Agent, with respect to certain Intellectual Property included in the Collateral; and (B) deliver, or caused to the Collateral Agent the originals of any certificates evidencing any Pledged Equity, together with customary indorsements in blank.

(ii) Each Grantor agrees that in furtherance of Section 3, this Agreement shall be supplemented by a security agreement or other similar agreements or instruments in form and substance satisfactory to the Collateral Agent which shall be executed and delivered by such Grantor in favor of the Collateral Agent no later than December 8, 2023 (or such later date as the Collateral Agent may agree).

(iii) Each Grantor (other than the Company) shall execute and deliver a Guaranty no later than December 8, 2023 (or such later date as the Collateral Agent may agree).

Further Assurances. Each Grantor will, at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that the Collateral Agent may reasonably request in order to: (i) perfect and protect the Lien and security interest of the Collateral Agent created hereby; (ii) enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) otherwise effect the purposes of this Agreement.

(c) Transfers and Other Liens.

(i) Except as otherwise expressly permitted in the other Transaction Documents, no Grantor shall, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any Collateral whether in a single transaction or a series of related transactions, other than (A) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by such Grantor for fair value in the ordinary course of business consistent with past practices and (B) sales of Inventory and product in the ordinary course of business.

(ii) Except as expressly permitted in the other Transaction Documents, no Grantor shall, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its Capital Stock.

(iii) No Grantor shall, directly or indirectly, without the prior written consent of the Required Holders, (A) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (B) issue any other Securities that would cause a breach or default under the Notes.

(iv) Except as expressly permitted in the other Transaction Documents, no Grantor shall enter into, renew, extend or be a party to, any transaction or series of related

transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except 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 than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof.

(v) No Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral other than a Permitted Lien.

(d) Future Subsidiaries. If any Grantor hereafter creates or acquires any Domestic Subsidiary, simultaneously with the creation or acquisition of such Subsidiary, such Grantor shall cause such Subsidiary to become a party to this Agreement as an additional "Grantor" hereunder and deliver to the Collateral Agent such additional documents and instruments required to perfect the pledge and granting of security interests hereunder.

SECTION 7. Additional Provisions Concerning the Collateral.

(a) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Collateral Agent to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office, (ii) authorizes the Collateral Agent at any time and from time to time to file, one or more financing or continuation statements, and amendments thereto, relating to the Collateral (including, without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Collateral Agent may determine regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the Code or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing or continuation statements, or amendments thereto, prior to the date hereof.

(b) Each Grantor hereby irrevocably appoints the Collateral Agent as its attorney-in-fact and proxy, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Collateral Agent's discretion, to take any action and to execute any instrument which the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement. This power is coupled with an interest and is irrevocable until all of the Obligations are fully performed and Paid in Full.

(c) As long as no Event of Default shall have occurred and be continuing and, other than in the case of a Bankruptcy Event of Default, the Collateral Agent shall have given written notice to the Grantors of the suspension of the Grantors' rights under this Section 7(c), Grantor shall have the right, from time to time, to vote and give consents with respect to the

Pledged Equity, or any part thereof for all purposes not inconsistent with the provisions of this Agreement, the Securities Purchase Agreement or any other Transaction Document; provided, however, that no vote shall be cast, and no consent shall be given or action taken, which would have the effect of impairing the position or interest of the Collateral Agent in respect of the Pledged Equity or which would authorize, effect or consent to (unless and to the extent expressly permitted by the Securities Purchase Agreement) the dissolution or liquidation, in whole or in part, of a Pledged Entity; the consolidation or merger of a Pledged Entity with any other Person; the sale, disposition or encumbrance of all or substantially all of the assets of a Pledged Entity, except for Liens in favor of the Collateral Agent; any change in the authorized number of shares, the stated capital or the authorized share capital of a Pledged Entity or the issuance of any additional shares of its Capital Stock; or the alteration of the voting rights with respect to the Capital Stock of a Pledged Entity.

(d) Each Grantor shall be entitled, from time to time, to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Equity to the extent not in violation of the Securities Purchase Agreement other than any and all: (A) dividends and interest paid or payable other than in cash in respect of any Pledged Equity, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Pledged Equity; (B) dividends and other distributions paid or payable in cash in respect of any Pledged Equity in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in capital of a Pledged Entity; and (C) cash paid, payable or otherwise distributed, in respect of principal of, or in redemption of, or in exchange for, any Pledged Equity; provided, however, that until actually paid all rights to such distributions shall remain subject to the Lien created by this Agreement; and

(e) all dividends and interest (other than such cash dividends and interest as are permitted to be paid to any Grantor in accordance with clause (i) above) and all other distributions in respect of any of the Pledged Equity, whenever paid or made, shall be delivered to the Collateral Agent to hold as Pledged Equity and shall, if received by any Grantor, be received in trust for the benefit of the Collateral Agent (for the ratable benefit of the Collateral Agent and the Noteholders), be segregated from the other property or funds of such Grantor, and be forthwith delivered to the Collateral Agent as Pledged Equity in the same form as so received (with any necessary endorsement).

SECTION 8. Amendments to Notes

(a) Section 4(a) of the Notes (including the form of Note attached to the Securities Purchase Agreement) are hereby amended to add the following:

> "(xvi) any provision of any Transaction Document (including, without limitation) the Security Documents or the Guaranty 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 parties thereto, or the validity or enforceability thereof shall be contested 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 Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including, without limitation, the Security Documents and the Guaranty);
>
> (xvii) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (as defined in the Securities Purchase Agreement) on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent (as defined in the Securities Purchase Agreement) or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;"

(b) Each of the Notes (including the form of Note attached to the Securities Purchase Agreement) are hereby amended to add the following as a new Section 33:

> 33. SECURITY. This Note and the Other Notes are secured and guaranteed to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement, the other Security Documents and the Guaranty).

(c) The last sentence of Section 20 of each of the Notes (including the form of Note attached to the Securities Purchase Agreement) is hereby amend and restated as follows:

> Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms in such other Transaction Documents unless otherwise consented to in writing by the Holder.

SECTION 9. Remedies Upon Event of Default; Application of Proceeds. If any Event of Default shall have occurred and be continuing:

(a) The Collateral Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein, in any other Transaction Document or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Collateral Agent's name or into the name of its nominee or nominees (to the extent the Collateral Agent has not theretofore done so) and thereafter receive, for the ratable benefit of itself and the Noteholders, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith,

assemble all or part of its respective Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place or places to be designated by the Collateral Agent that is reasonably convenient to both parties, and the Collateral Agent may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Collateral Agent's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale (including, without limitation, by credit bid), at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable and/or (B) lease, license or dispose of the Collateral or any part thereof upon such terms as the Collateral Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least ten (10) days' notice to any Grantor of the time and place of any public sale or the time after which any private sale or other disposition of its respective Collateral is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Collateral Agent and the Noteholders arising by reason of the fact that the price at which its respective Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree, and waives all rights that any Grantor may have to require that all or any part of such Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of its respective Collateral by the Collateral Agent shall be made without warranty, (ii) the Collateral Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (iii) such actions set forth in clauses (i) and (ii) above shall not adversely affect the commercial reasonableness of any such sale of Collateral.

(b) Without limiting the generality of the foregoing, if any Event of Default shall have occurred be continuing, Secured Party, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are, to the extent permitted by applicable law, hereby waived), may in such circumstances forthwith vote, collect, receive, appropriate and realize upon any Collateral. To the extent permitted by applicable law, Grantor waives all claims, damages and demands it may acquire against Secured Party arising out of the exercise by Secured Party of any rights hereunder, except for Secured Party's gross negligence, willful misconduct or breach of this Agreement.

SECTION 10. Indemnity; Expenses.

(a) Each Grantor, jointly and severally, agrees to indemnify and hold harmless the Collateral Agent and each other Indemnitee (as defined in the Securities Purchase Agreement) to the same extent and subject to the same terms that the Company has agreed to indemnify the

Indemnitees under Section 9(k) of the Securities Purchase Agreement, which Section 9(k) is hereby incorporated by reference, *mutatis mutandis*.

(b) Each Grantor agrees, jointly and severally, to pay to the Collateral Agent upon demand the amount of any and all costs and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for the Collateral Agent and of any experts and agents (including, without limitation, any collateral trustee which may act as agent of the Collateral Agent), which the Collateral Agent may incur in connection with (i) the preparation, negotiation, execution, delivery, recordation, administration, amendment, waiver or other modification or termination of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any Collateral, (iii) the exercise or enforcement of any of the rights or remedies of the Collateral Agent hereunder, or (iv) the failure by any Grantor to perform or observe any of the provisions hereof.

SECTION 11. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, first-class postage prepaid and return receipt requested), telecopied, e-mailed or delivered, if to any Grantor, to the Company's address, or if to the Collateral Agent or any Noteholder, to it at its respective address, each as set forth in Section 9(f) of the Securities Purchase Agreement.

SECTION 12. Miscellaneous.

(a) No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and no waiver of any provision of this Agreement, and no consent to any departure by each Grantor therefrom, shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) This Agreement shall create a continuing Lien on and security interest in the Collateral and shall (i) remain in full force and effect until the full performance and Payment in Full of the Obligations, and (ii) be binding on each Grantor and all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the Code and shall inure, together with all rights and remedies of the Collateral Agent and the Noteholders hereunder, to the ratable benefit of the Collateral Agent and the Noteholders and their respective permitted successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, without notice to any Grantor, the Collateral Agent and the Noteholders may assign or otherwise transfer their rights and obligations under this Agreement and any of the other Transaction Documents, to any other Person and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Collateral Agent and the Noteholders herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to the Collateral Agent or any such Noteholder shall mean the assignee of the Collateral Agent or such Noteholder. None of the rights or obligations of any Grantor hereunder may be assigned, delegated or otherwise transferred without the prior written consent of the Collateral Agent in its sole and absolute discretion, and any such assignment, delegation or transfer without such consent of the Collateral Agent shall be null and void.

(c) Upon the full performance and Payment in Full of the Obligations, (i) this Agreement and the security interests created hereby shall terminate and all rights to the Collateral shall revert to the respective Grantor that granted such security interests hereunder, and (ii) the Collateral Agent will, upon any Grantor's request and at such Grantor's expense, (A) return to such Grantor such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

(d) All security interests granted or contemplated hereby shall be for the benefit of the Collateral Agent and the Noteholders.

(e) Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

(f) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(g) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same Agreement. Delivery of any executed counterpart of a signature page of this Agreement by pdf, facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(h) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Collateral Agent, any Noteholder or any other Person upon (i) the occurrence of any Insolvency Proceeding of any of the Company or any Grantor or (ii) otherwise, in all cases as though such payment had not

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

FISKER INC.

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GROUP INC.

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GMBH

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Director

ACCEPTED BY:

CVI INVESTMENTS INC.,
as Collateral Agent

By: _____
Name:
Title:

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

FISKER INC.

By: _____
Name:
Title:

FISKER GROUP INC.

By: _____
Name:
Title:

FISKER GMBH

By: _____
Name:
Title:

ACCEPTED BY:

CVI INVESTMENTS, INC.,
as Collateral Agent
C/O Heights Capital Management, Inc., its authorized agent

By: _____
Name: Martin Kobinger
Title: President

SCHEDULE I

Pledged Equity

Securities

Grantor	Name of Issuer / Pledged Entity	Number of Shares	Class	Certificate No.(s)
Fisker Inc.	Fisker Group Inc.	1000	Common Stock	N/A
Fisker Group Inc.	Fisker GmbH	3500	Common Stock	N/A

SCHEDULE II
Commercial Tort Claims

None.

SCHEDULE III

Persons

Transaction Party Name	Jurisdiction of Organization	Federal Employer I.D.	Organizational I.D.
Fisker Inc.	Delaware	82-3100340	6577789
Fisker Group Inc.	Delaware	81-3883342	6136073
Fisker GmbH	Austria	N/A	N/A

EXHIBIT E-1

THIS DOCUMENT WAS EXECUTED OUTSIDE OF AUSTRIA. THE TAKING OF THIS DOCUMENT OR ANY CERTIFIED COPY OF IT OR ANY DOCUMENT WHICH CONSTITUTES SUBSTITUTE DOCUMENTATION FOR IT, OR ANY DOCUMENT WHICH INCLUDES WRITTEN CONFIRMATIONS OR REFERENCES TO IT, INTO AUSTRIA AS WELL AS PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO THIS DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO ANY TRANSACTION DOCUMENT TO AN AUSTRIAN ADDRESSEE MAY CAUSE THE IMPOSITION OF AUSTRIAN STAMP DUTY. ACCORDINGLY, KEEP THE ORIGINAL DOCUMENT AS WELL AS ALL CERTIFIED COPIES THEREOF AND WRITTEN AND SIGNED REFERENCES TO IT OUTSIDE OF AUSTRIA AND AVOID PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO ANY TRANSACTION DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO THIS DOCUMENT TO AN AUSTRIAN ADDRESSEE.

AMENDED AND RESTATED SECURITY AND PLEDGE AGREEMENT

AMENDED AND RESTATED SECURITY AND PLEDGE AGREEMENT, dated as of December 28, 2023 (this "**Agreement**"), made by Fisker Inc., a company organized under the laws of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**"), and each of the undersigned Subsidiaries (as defined below) of the Company from time to time, if any (each a "**Grantor**" and together with the Company, collectively, the "**Grantors**"), in favor of CVI Investment, Inc. with offices located at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111 in its capacity as collateral agent (together with its successors and assignees, in such capacity, the "**Collateral Agent**") for the Noteholders (as defined below).

W I T N E S S E T H:

WHEREAS, the Company is party to that certain Securities Purchase Agreement, dated as of July 10, 2023 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as an "Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, the Grantors, other than the Company, (each a "**Guarantor**" and collectively, the "**Guarantors**") have executed and delivered that certain Guaranty, dated as of the

date hereof (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Guaranty**") with respect to the Company's Obligations (as defined below);

WHEREAS, under the terms of the Third Supplemental Indenture, the Grantors have executed and delivered to the Collateral Agent that certain Pledge Agreement, dated as of November 22, 2023 (as heretofore amended, the "**Pledge Agreement**"), providing for the grant to the Collateral Agent, for the ratable benefit of the Noteholders, of a security interest in substantially all personal property of each Grantor (excluding certain Excluded Property) to secure all of the Company's obligations under the Transaction Documents;

WHEREAS, the Grantors are Affiliates that are part of a common enterprise such that each Grantor will derive substantial direct and indirect financial and other benefits from the consummation of the transactions contemplated under the Transaction Documents and, accordingly, the consummation of such transactions are in the best interests of each Grantor; and

WHEREAS, the parties now desire to amend and restate in its entirety the Pledge Agreement as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows:

SECTION 1. Restatement; Foreign Currency Amounts; Definitions.

(a) This Agreement amends and restates in its entirety the Pledge Agreement, it being understood that it is the intent of the parties hereto that this Agreement does not constitute a novation of rights, obligations and liabilities of the respective parties existing under the Pledge Agreement and such rights, obligations and liabilities shall continue and remain outstanding, and that this Agreement amends, restates and replaces in its entirety the Pledge Agreement.

(b) Amounts expressed herein in dollars or $ shall mean, with respect to any amounts denominated in a currency other than United States dollars, the equivalent of such dollar amount in such other currency, as reasonably determined by the Company using a widely available foreign exchange rate.

(c) All terms used in this Agreement and the recitals hereto which are defined in the Securities Purchase Agreement, the Notes or in the Code, and which are not otherwise defined herein, shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Code on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of the Code except as the Collateral Agent may otherwise determine in its sole and absolute discretion.

(d) Without limiting the generality of, and subject to the proviso at the end of, Section 1(c), the following terms shall have the respective meanings provided for in the Code: "Accounts", "Account Debtor", "Cash Proceeds", "Certificate of Title", "Chattel Paper", "Commercial Tort Claim", "Commodity Account", "Commodity Contracts", "Deposit Account", "Documents", "Electronic Chattel Paper", "Equipment", "Financial Asset", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-Credit

Rights", "Noncash Proceeds", "Payment Intangibles", "Proceeds", "Promissory Notes", "Security Entitlement", "Security", "Record", "Securities Account", "Software", "Supporting Obligations" and "Uncertificated Securities".

(e) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"**Bankruptcy Code**" means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

"**Bankruptcy Event of Default**" shall have the meaning set forth in the Note.

"**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.

"**Capital Stock**" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not an individual or a corporation, any and all partnership, membership, trust or other equity interests of such Person.

"**Code**" means Articles 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Collateral**" shall have the meaning set forth in Section 3(a) of this Agreement.

"**Collateral Agent**" shall have the meaning set forth in the preamble hereto.

"**Collateral Reporting Date**" means the last Business Day of each January, March, May, July, September and November, commencing January 31, 2024.

"**Company**" shall have the meaning set forth in the preamble hereto.

"**Controlled Account**" means any Pledged Account that is subject to a Controlled Account Agreement.

"**Controlled Account Agreement**" means (a) in the case of any Pledged Account maintained at a financial institution in the United States, a deposit account control agreement or securities account control agreement with respect to such Pledged Account, pursuant to which the Collateral Agent is granted control over such Pledged Account in a manner that perfects its security interest in such Pledged Account under the Code or (b) in the case of any other Pledged Account maintained at a financial institution outside of the United States, an agreement with respect to such Pledged Account that is necessary under the laws of the jurisdiction where such Pledged Account is maintained to perfect the Collateral Agent's security interest in such Pledged Account and to permit the Collateral Agent to control the disposition of funds or other assets deposited in or credited to such Pledged Account at such time that an Event of Default has occurred and is continuing, in each case in form and substance reasonably satisfactory to the Collateral Agent, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

"**Controlled Account Bank**" shall have the meaning set forth in Section 6(i).

"**Copyright Licenses**" means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensee or licensor and providing for the grant of any right to use or sell any works covered by any Copyright.

"**Copyrights**" means all domestic and foreign copyrights, whether registered or not, including, without limitation, all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship fixed in any tangible medium of expression, acquired or used by any Grantor, all applications, registrations and recordings thereof (including, without limitation, the applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of any other country described in Schedule II, as updated by the Grantors from time to time), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

"**Domestic Subsidiary**" means any Subsidiary other than a Foreign Subsidiary.

"**Enforcement Restrictions**" shall have the meaning set forth in Section 5(i).

"**Event of Default**" shall have the meaning set forth in Section 4(a) of the Notes.

"**Excluded Accounts**" means (a) any deposit accounts or securities accounts that are maintained by any Grantor exclusively for one or more of the purposes described in the following clauses: (i) disbursements and payments for payroll, healthcare and other employee wage and benefit accounts in the ordinary course of business, (ii) tax accounts related to Taxes required to be collected, remitted or withheld (including, federal and state withholding taxes) (with respect to clauses (a)(i) and (a)(ii), the aggregate balance in such accounts shall not exceed the total amount estimated by the Grantors in good faith to be payable in the following thirty (30) days from such accounts), (iii) fiduciary, trust or escrow accounts held for another Person (other than a Grantor or Affiliate) in the ordinary course of business; (iv) accounts holding deposits made by customers to secure orders placed with any Grantor pursuant to a written agreement; (v) accounts holding cash or cash equivalents required to be restricted in favor of any of the Company's financing partners pending the perfection of such financing partners' liens on vehicles financed for the benefit of third party purchasers by such financing partners; and (vi) accounts maintained to satisfy minimum

capital requirements imposed by Governmental Authorities in countries other than the United States only to the extent and for so long as such requirement is in effect and (b) deposit accounts or securities accounts holding Cash or cash equivalents pledged to secure or that are otherwise restricted to support reimbursement obligations of a Grantor with respect to letters of credit, bank guaranties, surety bonds and similar instruments.

"**Excluded Property**" means (a) any governmental licenses or state or local franchises, charters and authorizations to the extent the grant of a security interest is prohibited or restricted thereby (except to the extent such prohibition or restriction is ineffective under the Code or other applicable law) other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (b) any property or assets as to which pledges thereof or security interests therein are prohibited or restricted by applicable law (including any requirement to obtain the consent of any (x) Governmental Authority or (y) similar regulatory third party, in each case, except to the extent such consent has been obtained) after giving effect to the applicable anti-assignment provisions of the Code and other applicable law (provided that such property shall be Excluded Property only to the extent and for so long as such prohibition is in effect); (c) any lease, license or other contract or agreement or any property or assets subject to an agreement binding on and relating to such property at the time of acquisition thereof (and not entered into in contemplation of such acquisition), to the extent that a grant of a Lien therein would violate or invalidate, such lease, license or other contract or agreement or create a right of termination or right of acceleration in favor of any party (other than the Company or any of its Subsidiaries) thereto or otherwise require consent (other than the Company or any of its Subsidiaries) thereunder (after giving effect to the applicable anti-assignment provisions of the Code or other applicable law) other than proceeds and receivables thereof; (d) any Excluded Accounts; (e) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, solely during the period, if any, in which the grant of a security interest therein may impair the validity or enforceability of such intent-to-use trademark application under applicable federal law; (f) any property subject to a purchase money arrangement or finance lease that is permitted or not otherwise prohibited by the terms of any Transaction Document to the extent that a grant of a security interest therein would violate or invalidate such purchase money arrangement or finance lease or create a right of termination in favor of any other party thereto (other than the Company or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law, other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (g) the portion of the voting Capital Stock of any Foreign Subsidiary (other than a Grantor) in excess of 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary to the extent that at any time the pledging of more than 65% of the total outstanding voting Capital Stock of such Foreign Subsidiary would result in a material adverse tax consequence to the Company and its Subsidiaries, taken as a whole; and (h) any "margin stock", as such term is defined in Regulation U promulgated by the Board of Governors of the Federal Reserve System of the United States of America.

Notwithstanding anything to the contrary, "Excluded Property" shall not include any proceeds, products, substitutions or replacements of any "Excluded Property" (unless such proceeds, substitutions or replacements would constitute "Excluded Property"). Immediately upon the ineffectiveness, lapse or termination of each restriction or condition set forth in the definition of "Excluded Property" that prevented the grant of a security interest in any right, interest or other

asset that would have, but for such restriction or condition, constituted Collateral, the Collateral shall include, and the relevant Grantor shall be deemed to have automatically granted a security interest in, such previously restricted or conditioned right, interest or other asset, as the case may be, as if such restriction or condition had never been in effect.

"**Excluded Subsidiary**" means (a) as of the date of this Agreement, each Foreign Subsidiary listed on Annex A for so long as such Subsidiary meets the definition set forth in clause (b) of this definition and (b) subsequent to the date of this Agreement, any Foreign Subsidiary that (i) has total assets of less than 5.0% of the total assets of the Company and its Subsidiaries on a consolidated basis as set forth in most recent balance sheet of the Company filed with the SEC on form 10-K or 10-Q prior to such date or (ii) generated less than 5.0% of the total revenue of the Company and its Subsidiaries on a consolidated basis for the most recent fiscal quarter as set forth in the most recent income statement of the Company filed with the SEC on form 10-K or 10-Q prior to such date.

"**Foreign Collateral Actions**" shall have the meaning set forth in Section 6(m).

"**Foreign Subsidiary**" means any Subsidiary of a Grantor organized under the laws of a jurisdiction other than the United States, any of the states thereof, Puerto Rico or the District of Columbia.

"**Free Cash Amount**" shall have the meaning set forth in Section 6(i)(ii).

"**Free Cash Excess Period**" shall have the meaning set forth in Section 6(i)(ii).

"**GAAP**" means U.S. generally accepted accounting principles consistently applied.

"**Governmental Authority**" means any nation or government, any Federal, state, city, town, municipality, county, local, foreign or other political subdivision thereof or thereto and any department, commission, board, bureau, court, tribunal, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guaranteed Obligations**" shall have the meaning set forth in Section 2 of the Guaranty.

"**Guarantor**" or "**Guarantors**" shall have the meaning set forth in the recitals hereto.

"**Guaranty**" shall have the meaning set forth in the recitals hereto.

"**Insolvency Proceeding**" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law or law for the relief of debtors, any proceeding relating to assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or any proceeding seeking reorganization, arrangement, or other similar relief.

"**Intellectual Property**" means, collectively, all intellectual property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, under the applicable laws of any jurisdiction throughout the world, whether registered or unregistered, including, without limitation, any and all: (a) Trademarks; (b) internet domain names, whether or not trademarks, registered in any top-level

domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content; (c) accounts with YouTube, LinkedIn, Twitter, Instagram, Facebook and other social media companies and the content found thereon (to the extent that such accounts and content are transferable pursuant to the terms, conditions, and policies of each applicable social media platform); (d) Copyrights; (e) Patents; and (f) business and technical information, databases, data collections and other confidential and proprietary information and all rights therein.

"**Intellectual Property Security Agreement**" means the Intellectual Property Security Agreement required to be delivered pursuant to Section 6(h)(i) of this Agreement, substantially in the form attached hereto as Exhibit A.

"**Investor**" or "**Investors**" shall have the meaning set forth in the recitals hereto.

"**Joinder Agreement**" means an agreement substantially in the form attached hereto as Exhibit B.

"**Licenses**" means, collectively, the Copyright Licenses, the Trademark Licenses and the Patent Licenses.

"**Lien**" means any mortgage, lien, pledge, charge, security interest, adverse claim or other encumbrance upon or in any property or assets.

"**Limited Waiver**" means the Amendment and Waiver Agreement, dated November 22, 2023, by and between the Company and CVI Investments, Inc.

"**Non-Grantor Subsidiary**" means any Subsidiary of the Company that is not a Grantor.

"**Noteholders**" means, at any time, the holders of the Notes at such time.

"**Notes**" shall have the meaning set forth in the recitals hereto.

"**Obligations**" shall have the meaning set forth in Section 4 of this Agreement.

"**Paid in Full"** or "**Payment in Full"** means the indefeasible payment in full in cash of all of the Obligations.

"**Patent Licenses**" means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensee or licensor and providing for the grant of any right to manufacture, use or sell any invention covered by any Patent.

"**Patents**" means all domestic and foreign letters patent, design patents, utility patents, industrial designs, inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how, formulae, rights of publicity and other general intangibles of like nature, now existing or hereafter acquired (including, without limitation, all domestic and foreign letters patent, design patents, utility patents, industrial designs, inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how and formulae), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office, or in any similar office or agency of the United States or any other country or any political subdivision thereof described in Schedule II hereto, as updated by the Grantors

from time to time), and all reissues, reexaminations, divisions, continuations, continuations in part and extensions or renewals thereof.

"**Perfection Requirements**" means: (a) the filing under the Code in the applicable jurisdiction of the financing statements described in Schedule V hereto, (b) with respect to any Collateral constituting Registered Intellectual Property, the recording in the United States Patent and Trademark Office or the United States Copyright Office of the appropriate Intellectual Property Security Agreement, (c) with respect to all Pledged Accounts (other than Excluded Accounts), and all cash and other property from time to time deposited or carried therein or credited thereto, the execution of a Controlled Account Agreement with the depository, securities intermediary or commodity intermediary with which the applicable Pledged Accounts are maintained, as provided in Section 6(h)(i), (d) with respect to any Collateral constituting Letter-of-Credit Rights, the consent of the issuer of the applicable letter of credit to the assignment of proceeds of such letter of credit, (e) with respect to any Collateral constituting uncertificated securities, the applicable Grantor causing the issuer thereof either (i) to register the Collateral Agent as the registered owner of such securities or (ii) to agree in an authenticated record with such Grantor and the Collateral Agent that such issuer will comply with instructions with respect to such securities originated by the Collateral Agent without further consent of such Grantor, such authenticated record to be in form and substance reasonably satisfactory to the Collateral Agent, (f) with respect to any Collateral constituting certificated securities, the acquisition by the Collateral Agent, or by another person on behalf of the Collateral Agent, of the security certificates evidencing such certificated securities, indorsed to such Person in blank or by an effective indorsement, (g) with respect to any Collateral constituting Electronic Chattel Paper, the Collateral Agent obtaining "control" of such Electronic Chattel Paper within the meaning of Section 9-105 of the Code; (h) with respect to any Collateral constituting Documents, Chattel Paper (other than Electronic Chattel Paper), or Instruments, the Collateral Agent obtaining possession of such Collateral and (i) with respect to the assets or Capital Stock of any Foreign Subsidiary, the Foreign Collateral Actions.

"**Permitted Liens**" shall have the meaning set forth in the Notes.

"**Person**" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"**Pledged Accounts**" means (a) all of each Grantor's right, title and interest in all of its Deposit Accounts, Commodity Accounts and Securities Accounts and all Security Entitlements with respect thereto; and (b) all right, title and interest of each Non-Grantor Subsidiary in any Deposit Accounts and Securities Accounts and all Security Entitlements with respect thereto that have been or will be pledged by such Non-Grantor Subsidiary to the Collateral Agent to secure the Obligations (including those listed on Schedule IV attached hereto), but in each case excluding any Excluded Accounts.

"**Pledged Collateral**" shall have the meaning set forth in Section 2(a).

"**Pledged Debt**" shall have the meaning set forth in Section 2(a).

"**Pledged Entity**" means, each Person listed from time to time on Schedule IV hereto as a "Pledged Entity," together with each other Person, any right in or interest in or to all or a portion

of whose Securities or Capital Stock is acquired or otherwise owned by a Grantor after the date hereof.

"**Pledged Equity**" means all of each Grantor's right, title and interest in and to all of the Capital Stock now or hereafter owned by such Grantor (including, without limitation, those interests listed opposite the name of such Grantor on Schedule IV, but excluding Financial Assets credited to any Securities Account and any Security Entitlements with respect thereto), regardless of class or designation, including all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, all certificates representing such Capital Stock, the right to receive any certificates representing any of such Capital Stock, all warrants, options, subscription, share appreciation rights and other rights, contractual or otherwise, in respect thereof, and the right to receive dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and 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 foregoing; provided, that "Pledged Equity" shall not include any Excluded Property.

"**Pledged Operating Agreements**" means all of each Grantor's rights, powers and remedies under the limited liability company operating agreements of each of the Pledged Entities that is a limited liability company, as may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

"**Pledged Partnership Agreements**" means all of each Grantor's rights, powers, and remedies under the general or limited partnership agreements of each of the Pledged Entities that is a general or limited partnership, as may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

"**Pledged Securities**" means any Promissory Notes, stock certificates, limited liability membership interests or other Securities, certificates or Instruments now or hereafter included in the Pledged Collateral, including all Pledged Equity, Pledged Debt and all other certificates, instruments or other documents representing or evidencing any Pledged Collateral.

"**Registered Copyrights**" means all Copyrights registered with or recorded in the United States Copyright Office or in any similar office or agency of any other country.

"**Registered Intellectual Property**" means, collectively, the Registered Copyrights, the Registered Patents and the Registered Trademarks.

"**Registered Patents**" means all Patents registered with or recorded in the United States Copyright Office or in any similar office or agency of any other country.

"**Registered Trademarks**" means all Trademarks registered with or recorded in the United States Copyright Office or in any similar office or agency of any other country.

"**Securities Purchase Agreement**" shall have the meaning set forth in the recitals hereto.

"Subsidiary" means any Person in which a Grantor directly or indirectly, (i) owns a majority of the outstanding Capital Stock of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person, and all of the foregoing, collectively, "**Subsidiaries**".

"**Taxes**" means all present and future taxes, levies, deductions, withholdings, assessments, fees and other charges imposed by any Governmental Authority, including any interest applicable thereto.

"**Trademark Licenses**" means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensor or licensee and providing for the grant of any right concerning any Trademark, together with any goodwill connected with and symbolized by any such licenses, contracts or agreements and the right to prepare for sale or lease and sell or lease any and all Inventory now or hereafter owned by any Grantor and now or hereafter covered by such licenses, contracts or agreements.

"**Trademarks**" means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a's, assumed names, Internet domain names, trade styles, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, acquired or used by any Grantor (including, without limitation, all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a's, assumed names, Internet domain names, trade styles, designs, logos and other source or business identifiers), all applications, registrations and recordings thereof (including, without limitation, the applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of any other country described in Schedule II, as updated by the Grantors from time to time), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by such marks and all customer lists, formulae and other Records of any Grantor relating to the distribution of products and services in connection with which any of such marks are used.

"**Transaction Documents**" means, collectively, this Agreement, the Notes, the Custodian Agreements, the Indenture, the Supplemental Indentures, the Irrevocable Transfer Agent Instructions, the Voting Agreement, the Limited Waiver, the Guaranty, the Security Documents 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 including in connection with any Foreign Collateral Action, as may be amended from time to time.

"**Transfer Cut-Off Time**" means, on any Business Day, the latest time on which a transfer of cash or Cash Equivalents may be made by wire, book-entry transfer, automated clearing house or other electronic means from one Controlled Account to another Controlled Account may be made in order for such cash or Cash Equivalents to be shown by the applicable Controlled Account Bank as available in or credited to the receiving Controlled Account on such Business Day.

SECTION 2. Pledge of Pledged Collateral.

(a) As collateral security for due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby assigns and pledges to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in all of such Grantor's right, title and interest in, to and under all of the following, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired: (i) the Pledged Equity; (ii) all Promissory Notes, and other Instruments evidencing debt now owned or at any time hereafter acquired by it (including, without limitation, those listed opposite the name of such Grantor on Schedule IV, but excluding any Excluded Property) (the "Pledged Debt"); (iii) subject to Section 2(g) and 2(h), all

payments of principal or interest, dividends, distributions, cash, Securities, Instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the Pledged Equity and the Pledged Debt; (iv) all rights and privileges of such Grantor with respect to the Securities and other property referred to in clauses (i), (ii), and (iii) above; and (v) all Proceeds of any of the foregoing (the items referred to in clauses (i) through (v) above being collectively referred to as the "**Pledged Collateral**"); provided that the Pledged Collateral shall not include any item referred to in clauses (i) through (v) above if, for so long as and to the extent such item constitutes Excluded Property.

(b) No later than the fifth (5^{th}) Business Day following (x) the date of this Agreement (in the case of any Grantor that party to this Agreement on the date hereof) or (y) the date on which it becomes a party to this Agreement pursuant to Section 6(m) (in the case of any other Grantor), each Grantor shall deliver or cause to be delivered to the Collateral Agent any and all Pledged Securities (other than any Uncertificated Securities, but only for so long as such Securities remain uncertificated) to the extent such Pledged Securities, in the case of Promissory Notes and other Instruments evidencing debt, are required to be delivered pursuant to Section 2(c). Thereafter, whenever such Grantor acquires any other Pledged Security (other than any Uncertificated Securities, but only for so long as such Uncertificated Securities remain uncertificated), such Grantor shall promptly, and in any event within 30 days (or such longer period as the Collateral Agent may agree to in writing), deliver or cause to be delivered to the Collateral Agent such Pledged Security as Collateral hereunder to the extent such Pledged Securities, in the case of Promissory Notes and Instruments evidencing debt, are required to be delivered pursuant to Section 2(c).

(c) Each Grantor will cause each Promissory Note or Instrument constituting Collateral with a face amount in excess of $500,000 to be pledged and delivered to the Collateral Agent (i) no later than the fifth (5^{th}) Business Day following (x) the date of this Agreement (in the case of any Grantor that party to this Agreement on the date hereof) or (y) the date on which it becomes a party to this Agreement pursuant to Section 6(m) (in the case of any other Grantor), in the case of any such debt existing on such date or (ii) on the next Collateral Reporting Date that is at least 30 days after the acquisition thereof, in the case of any such Promissory Note or Instrument acquired by a Grantor after the date hereof (or after the date such Grantor becomes party to this Agreement), in each case pursuant to the terms hereof.

(d) Upon delivery to the Collateral Agent, any Pledged Securities required to be delivered pursuant to Section 2(b) and/or 2(c) shall be accompanied by undated stock or note powers duly executed by the applicable Grantor in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request in order to effect the transfer of such Pledged Securities. Each delivery of Pledged Securities or other Pledged Collateral shall be accompanied by a schedule describing such Pledged Securities or Pledged Collateral, as the case may be, which schedule shall be deemed to supplement Schedule IV and be made a part hereof; provided that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.

(e) The assignment, pledge, Lien and security interest granted in Section 2(a) are granted as security only and shall not subject the Collateral Agent or any Noteholder to, or in

any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Pledged Collateral.

(f) If an Event of Default shall occur and be continuing and, other than in the case of a Bankruptcy Event of Default, the Collateral Agent shall have notified the Borrower in writing of its intent to exercise such rights, (a) the Collateral Agent, shall have the right (in its sole and absolute discretion) to cause each of the Pledged Securities to be transferred of record into the name of the Collateral Agent or into the name of its nominee (as pledgee or as sub-agent) or the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent and (b) to the extent permitted by the documentation governing such Pledged Securities and applicable law, the Collateral Agent shall have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement. Each Grantor will take any and all actions reasonably requested by the Collateral Agent to facilitate compliance with this Section 2(f).

(g) Unless and until an Event of Default shall have occurred and be continuing and, other than in the case of a Bankruptcy Event of Default, the Collateral Agent shall have notified the Grantors in writing that the rights of the Grantors under this Section 2(g) are being suspended:

(i) Each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with or not otherwise prohibited by the terms of this Agreement and the other Transaction Documents.

(ii) The Collateral Agent shall promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request in writing for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to Section 2(g)(i), in each case as shall be specified in such request.

(iii) Each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral, to the extent (and only to the extent) that such dividends, interest, principal and other distributions are permitted by, the other Transaction Documents and applicable laws; provided that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity or Pledged Debt, whether resulting from a subdivision, combination or reclassification of the outstanding equity interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral, and, if received by any Grantor, shall be held in trust for the benefit of the Collateral Agent and shall, to the extent required by Section 2(b) and/or 2(c) be forthwith delivered to the Collateral Agent in the same form as so received (with any necessary endorsement or documents set forth in Section 2(d) or as otherwise reasonably requested by the Collateral Agent). So long as no Event of Default has occurred and is continuing, the Collateral Agent shall promptly deliver to each Grantor any Pledged

Securities in its possession if requested to be delivered to the issuer thereof in connection with any exchange or redemption of such Pledged Securities.

(h) Upon the occurrence and during the continuance of an Event of Default and, other than in the case of a Bankruptcy Event of Default, after the Collateral Agent shall have notified the Grantors in writing of the suspension of the rights of the Grantors under Section 2(g)(iii), all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to Section 2(g)(iii) shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions as part of the Pledged Collateral, subject to Section 2(k) and the last sentence of this Section 2(h). All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of Section 2(g) or this Section 2(h) shall be held in trust for the benefit of the Collateral Agent and shall be forthwith delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of Section 2(g) and/or this Section 2(h) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property, shall be held as security for the payment and performance of the Obligations and shall be applied in accordance with the provisions of Section 8. After all Events of Default have been cured or waived, and the Grantors have delivered to the Collateral Agent a certificate of an executive officer to such effect, the Collateral Agent shall promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of Section 2(g)(iii) in the absence of an Event of Default and that remain in such account.

(i) Upon the occurrence and during the continuance of an Event of Default and, other than in the case of a Bankruptcy Event of Default, after the Collateral Agent shall have notified the Grantors in writing of the suspension of the rights of the Grantors under Section 2(g)(i), all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to Section 2(g)(i), and the obligations of the Collateral Agent under Section 2(g)(ii), shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers subject to Section 2(k) and the last sentence of this Section 2(i); provided that, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all Events of Default have been cured or waived, and the Grantors have delivered to the Collateral Agent a certificate of an executive officer to such effect, each Grantor shall have the exclusive right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of Section 2(g)(i), and the obligations of the Collateral Agent under Section 2(g)(ii) shall be reinstated.

(j) Any notice given by the Collateral Agent to the Grantors under Section 2(f) or Section 2(g) (i) may be given by telephone if promptly confirmed in writing, (ii) may be given with respect to one or more of the Grantors at the same or different times and (iii) may suspend the rights of the Grantors under Section 2(g)(i) or 2(g)(iii) in part without suspending all such rights (as specified by the Collateral Agent in its sole and absolute discretion) and without waiving

or otherwise affecting the Collateral Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing.

(k) Nothing contained in this Agreement shall be construed to make the Collateral Agent or any Noteholder liable as a member of any limited liability company or as a partner of any partnership, and neither the Collateral Agent nor any Noteholder by virtue of this Agreement or otherwise (except as referred to in the following sentence) shall have any of the duties, obligations or liabilities of a member of any limited liability company or as a partner in any partnership. The parties hereto expressly agree that, unless the Collateral Agent shall become the absolute owner of Pledged Equity consisting of a limited liability company interest or a partnership interest pursuant hereto, this Agreement shall not be construed as creating a partnership or joint venture among the Collateral Agent, any Noteholder, any Grantor and/or any other Person.

SECTION 3. Grant of Security Interest

(a) As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under all personal property and assets of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible (together with the Pledged Collateral, the "**Collateral**"), including, without limitation, the following:

(i) all Accounts;

(ii) all Chattel Paper (whether tangible or Electronic Chattel Paper);

(iii) all Commercial Tort Claims, including, without limitation, those specified on Schedule VI hereto;

(iv) all Documents;

(v) all Equipment;

(vi) all Fixtures;

(vii) all General Intangibles (including, without limitation, all Payment Intangibles);

(viii) all Goods;

(ix) all Instruments;

(x) all Inventory;

(xi) all Investment Property (and, regardless of whether classified as Investment Property under the Code, all Pledged Equity, Pledged Operating Agreements and Pledged Partnership Agreements);

(xii) all Intellectual Property and all Licenses;

(xiii) all Letter-of-Credit Rights;

(xiv) all Pledged Accounts, all cash and other property from time to time deposited therein, including without limitation all Financial Assets and all Security Entitlements with respect thereto and all monies and property in the possession or under the control of the Collateral Agent or any Noteholder or any Affiliate, representative, agent or correspondent of the Collateral Agent or any such Noteholder;

(xv) all Supporting Obligations;

(xvi) all other tangible and intangible personal property of each Grantor (whether or not subject to the Code), including, without limitation, all Deposit Accounts and other accounts and all cash and all investments therein, all proceeds, products, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of any Grantor described in the preceding clauses of this Section 3(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by each Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, desks, cards, Software, data and computer programs in the possession or under the control of any Grantor or any other Person from time to time acting for any Grantor, in each case, to the extent of such Grantor's rights therein, that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 3(a) or are otherwise necessary or helpful in the collection or realization thereof; and

(xvii) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever any Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

(b) Notwithstanding anything herein to the contrary, the term "**Collateral**" shall not include any Excluded Property.

SECTION 4. Security for Obligations. The Lien and security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether direct or indirect, absolute or contingent, and whether now existing or hereafter incurred (collectively, the "**Obligations**"):

(a) (i) the payment by the Company and each other Grantor, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of the Securities Purchase Agreement, this Agreement, the Notes and the other Transaction Documents, and (ii) in the case of the Guarantors, the payment by such Guarantors, as and when due and payable of all Guaranteed Obligations under the Guaranties, including, without limitation, in both cases, (A) all principal of, interest, make-whole and other amounts on the Notes (including, without limitation, all interest, make-whole and other amounts that accrues after the commencement of any Insolvency Proceeding of any Grantor, whether or not the payment of such interest is enforceable or is allowable in such Insolvency

Proceeding), and (B) all fees, interest, premiums, penalties, contract causes of action, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under this Agreement or any of the Transaction Documents; and

(b) the due and punctual performance and observance by each Grantor of all of its other obligations from time to time existing in respect of any of the Transaction Documents, including without limitation, with respect to any conversion or redemption rights of the Noteholders under the Notes.

SECTION 5. Representations and Warranties. Each Grantor represents and warrants as follows:

(a) Schedule I hereto sets forth (i) the exact legal name of each Grantor, and (ii) the jurisdiction of incorporation, organization or formation and the organizational identification number (if any) of each Grantor in such jurisdiction. The information set forth in Schedule I hereto with respect to such Grantor is true and accurate in all respects. Such Grantor has not changed its name (or operated under any other name), jurisdiction of organization or organizational identification number prior to the date of this Agreement from those set forth in Schedule I hereto except as disclosed in Schedule I hereto.

(b) There is no pending or, to its knowledge, written notice threatening any action, suit, proceeding or claim affecting any Grantor before any Governmental Authority or any arbitrator, or any order, judgment or award issued by any Governmental Authority or arbitrator, in each case, that may adversely affect the grant by any Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Collateral, or the exercise by the Collateral Agent of any of its rights or remedies hereunder.

(c) All Federal, state and material local tax returns and other material reports required by applicable law to be filed by any Grantor have been filed, or extensions have been obtained, and all taxes, assessments and other governmental charges or levies imposed upon any Grantor or any property of any Grantor (including, without limitation, all federal income and social security taxes on employees' wages) that are material in amount and which have become due and payable on or prior to the date hereof have been paid, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) All Equipment, Fixtures, Inventory and other Goods of each Grantor are located at the addresses specified therefor in Schedule III hereto, excluding (i) Collateral with a book value of less than $500,000 in the aggregate at any single location, (ii) Equipment that in the ordinary course of business is in the possession or control of third-party suppliers (other than the Company or any of its Subsidiaries) of parts or components to the Company or any of its Subsidiaries, and (iii) assets that are in transit to (x) any of the locations described on Schedule III, (y) any location described in clause (ii), or (z) any customer of the Company or any of its Subsidiaries; provided, that Schedule III shall reflect finished Inventory located at any warehouses or distribution centers pending delivery to customers. Each Grantor's principal place of business and chief executive office, the place where each Grantor keeps its Records concerning the Collateral and all originals of all Chattel Paper evidencing obligations greater than $500,000 in the

aggregate in which any Grantor has any right, title or interest are located at the addresses specified therefor in Schedule III hereto.

(e) Set forth in Schedule IV hereto is a complete and accurate list, as of the date of this Agreement, of (i) all Pledged Debt, specifying the debtor thereof and the outstanding principal amount thereof as of the date of this Agreement, in which any Grantor has any right, title or interest, (ii) each Deposit Account and Securities Account of each Grantor and each Pledged Account of each applicable Non-Grantor Subsidiary, together with the name and country of each institution at which each such account is maintained, the account number for each such account, a description of the purpose of each such account and, in the case of each Deposit Account and Securities Account of a Grantor, whether such account is an Excluded Account (and, in the case of any such account that is an Excluded Account, the relevant clause(s) in the definition of "Excluded Account" that are applicable to such account). Set forth in Schedule II hereto is a complete and correct list of each trade name used by each Grantor. All of the Pledged Debt, to the best of the Grantors' knowledge (provided that no such knowledge qualification applies to Pledged Debt issued by a Grantor or a Subsidiary), is the legal, valid and binding obligation of the issuer thereof, enforceable against such issuer in accordance with its 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.

(f) [Reserved]

(g) Each Grantor owns and controls, or otherwise possesses adequate rights to use, all of its Intellectual Property and Licenses necessary to conduct its business in substantially the same manner as conducted as of the date hereof. Schedule II hereto sets forth a true and complete list of all Registered Intellectual Property owned or used by each Grantor as of the date hereof. To the knowledge of each Grantor, except as would not have a Material Adverse Effect, all Intellectual Property of such Grantor is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, is valid and enforceable and has not been abandoned in whole or in part. Except as would not have a Material Adverse Effect (i) to the knowledge of each Grantor, each Grantor is not now infringing or in conflict with any Patent, Trademark, Copyright, trade secret or similar rights of others, and (ii) to the knowledge of each Grantor, no other Person is now infringing or in conflict in any material respect with any such properties, assets and rights owned or used by each Grantor. No Grantor has received any written, or the knowledge of the Grantor, oral notice that it is violating or has violated the Trademarks, Patents, Copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or other intellectual property rights of any third party.

(h) Each Grantor is and will be at all times the sole and exclusive owner of, or will otherwise have rights to, the Collateral in which such Grantor has granted a Lien and security interest hereunder free and clear of any Liens, except for (i) Permitted Liens thereon and (ii) certain Intellectual Property rights of the Company which is jointly owned by the Company with certain third parties. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording or filing office except such as (i) may have been filed in favor of the Collateral Agent and/or the Noteholders relating to this Agreement or the other Transaction Documents, or (ii) are intended to perfect Permitted Liens disclosed on Schedule VII hereto.

(i) The exercise by the Collateral Agent of any of its rights and remedies hereunder will not contravene any law or contractual restriction binding on or otherwise affecting any Grantor or any of its properties other than restrictions arising under (x) any governmental license or state or local franchise, charter or authorizations, (y) any law or (y) any contract, in each case, to the extent described in clauses (a) through (c) of the definition of "Excluded Property" (disregarding for purposes of this subsection (i) any anti-assignment or override provision under the Code or other applicable law) (any such restrictions, "**Enforcement Restrictions**") and will not result in or require the creation of any Lien upon or with respect to any of its properties other than as granted pursuant to this Agreement.

(j) No authorization or approval or other action by or with, and no notice to or filing with (except as provided in Section 6(n)), any Governmental Authority or any other Person, is required under the Code for (i) the grant by each Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Collateral, or (ii) the exercise by the Collateral Agent of any of its rights and remedies hereunder, except for (x) the filing under the Code in the applicable jurisdiction of the financing statements described in Schedule V hereto, (y) the performance of the Perfection Requirements and (z) the waiver of any applicable Enforcement Restrictions.

(k) This Agreement creates in favor of the Collateral Agent a legal, valid and enforceable Lien on and security interest in the Collateral, as security for the Obligations. The performance of the Perfection Requirements results in (and when performed in accordance with Section 6(n) shall result in) the perfection of such Lien on and security interest in the Collateral, to the extent that the Code governs perfection of such Lien and security interest. Such Lien and security interest is (or in the case of Collateral in which any Grantor obtains any right, title or interest after the date hereof, will be), subject only to Permitted Liens and the Perfection Requirements, a first priority, valid, enforceable and perfected Lien on and security interest in the Collateral, to the extent that the Code governs the creation and perfection of such Lien and security interest.

(l) As of the date of this Agreement, no Grantor holds any Commercial Tort Claims with a value in excess of $500,000, or has knowledge of any pending Commercial Tort Claims with a value in excess of $500,000, except for the Commercial Tort Claims described in Schedule VI.

(m) As of the date of this Agreement (i) all of the Pledged Equity is presently owned by the applicable Grantor as set forth in Schedule IV free and clear of all Liens other than Permitted Liens and, in the case of certificated securities, is presently represented by the certificates listed on Schedule IV hereto (if applicable); (ii) there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Pledged Equity other than as contemplated and permitted by the Transaction Documents; (iii) each Grantor is the sole holder of record or the sole beneficial owner of the Pledged Equity, as applicable; (iv) none of the Pledged Equity has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject; (v) the Pledged Equity constitutes 100% or such other percentage as set forth on Schedule IV of the issued and outstanding shares of Capital Stock of the applicable Pledged Entity; (vi) all of the Pledged Equity has been duly and validly authorized and issued by the issuer thereof and (vii) in the case of Pledged Equity constituting Capital Stock (other than Capital Stock consisting of limited

liability company interests or partnership interests which, pursuant to the relevant organizational or formation documents, cannot be fully paid and non-assessable), is fully paid and non-assessable.

(n) Such Grantor (i) is a corporation, limited liability company, limited partnership or other legal entity, as applicable, duly organized, validly existing and in good standing (to the extent that the concept of good standing exists) under the laws of the jurisdiction of its incorporation, organization or formation, (ii) has all requisite corporate, limited liability company, limited partnership or other legal entity power and authority to conduct its business as now conducted and as presently contemplated and to execute and deliver this Agreement and each other Transaction Document to which such Grantor is a party, and to consummate the transactions contemplated hereby and thereby and (iii) is duly qualified to do business and is in good standing (to the extent that the concept of good standing exists) 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 be so qualified would not result in a Material Adverse Effect.

(o) The execution, delivery and performance by each Grantor of this Agreement and each other Transaction Document to which such Grantor is a party (i) have been duly authorized by all necessary corporate, limited liability company, limited partnership or other legal entity action, (ii) do not and will not contravene its charter or by-laws, limited liability company or operating agreement, certificate of partnership or partnership agreement, or similar formation and organizational documents, as applicable, or any applicable law or any contractual restriction binding on such Grantor or its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Transaction Document) upon or with respect to any of its assets or properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to it or its operations or any of its assets or properties, except any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal that would not result in a Material Adverse Effect.

(p) This Agreement has been duly executed and delivered by each Grantor and is the legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

SECTION 6. Covenants as to the Collateral. Until all of the Obligations shall have been Paid in Full, unless the Collateral Agent shall otherwise consent in writing (in its sole and absolute discretion):

(a) Further Assurances. Each Grantor will, at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that the Collateral Agent may reasonably request in order to: (i) perfect and protect the Lien and security interest of the Collateral Agent created hereby; (ii) enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral, including, without limitation, the Pledged Accounts; or (iii) otherwise effect the purposes of this Agreement; provided, however, that unless an Event of Default has occurred and is continuing, no Grantor shall be required to take any action under this Section 6(a) to (A) obtain the consent or acknowledgment of any Person that is not a Subsidiary of the Company or a Controlled Account

Bank, (B) comply with the Federal Assignment of Claims Act, (C) perfect the Collateral Agent's Lien on any Collateral consisting of Goods covered by a Certificate of Title (except to the extent perfection can be attained by the filing of a financing statement under the Code), (D) perfect by possession the Collateral Agent's Lien on any Collateral consisting of Goods or (E) perfect or register the pledge of shares of Capital Stock in any Excluded Subsidiary in accordance with the laws of the applicable foreign jurisdiction.

(b) Location of Collateral. Each Grantor will keep the Collateral constituting Equipment, Fixtures, Inventory and other Goods of such Grantor at the locations specified therefor on Schedule III hereto (as such Schedule III will be updated in accordance with this Section 6(b)), excluding (i) Collateral with an aggregate book value of less than $500,000 at any single location, (ii) Equipment that in the ordinary course of business is in the possession or control of third-party suppliers (other than the Company or any of its Subsidiaries) of parts or components to the Company or any of its Subsidiaries, (iii) assets that are in transit to (x) any of the locations described on Schedule III (as such Schedule III will be updated in accordance with this Section 6(b)), (y) any location described in clause (ii), or (z) any customer of the Company or any of its Subsidiaries; provided that Schedule III shall reflect the finished Inventory located at any warehouses or distribution centers pending delivery to customers. On each Collateral Reporting Date, each Grantor shall deliver to the Collateral Agent an updated Schedule III setting forth where any Collateral constituting Equipment, Fixtures, Inventory and other Goods of such Grantor (other than Collateral described in the exclusions to the immediately preceding sentence) is located as of a date that is no earlier than five (5) Business Days prior to such Collateral Reporting Date.

(c) Condition of Equipment. Each Grantor will maintain or cause to be maintained and preserved in good condition, repair and working order, ordinary wear and tear excepted, the Equipment necessary or useful to its business.

(d) Taxes, Etc. Each Grantor agrees to pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent the validity thereof is being contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves in accordance with GAAP have been set aside for the payment thereof.

(e) Insurance.

(i) Each Grantor will, at its own expense, maintain insurance (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, in such form and with responsible and reputable insurance companies or associations 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 and in any event, in amount, adequacy and scope reasonably satisfactory to the Collateral Agent.

(ii) To the extent requested by the Collateral Agent at any time and from time to time, each such policy for general liability insurance shall provide for all losses to be paid on behalf of the Collateral Agent and any Grantor as their respective interests may appear, and each policy for property damage insurance shall provide for all losses to be adjusted with, and paid

directly to, the Collateral Agent. In addition to and without limiting the foregoing, to the extent requested by the Collateral Agent at any time and from time to time, each such policy shall in addition (A) name the Collateral Agent as an additional insured party and/or loss payee, as applicable, thereunder (without any representation or warranty by or obligation upon the Collateral Agent) as its interests may appear, (B) contain an agreement by the insurer that any loss thereunder shall be payable to the Collateral Agent on its own account notwithstanding any action, inaction or breach of representation or warranty by any Grantor, (C) provide that there shall be no recourse against the Collateral Agent for payment of premiums or other amounts with respect thereto, and (D) provide that at least 30 days' (or 10 days' for non-payment of premium) prior written notice of cancellation, lapse, expiration or other adverse change shall be given to the Collateral Agent by the insurer. Any Grantor will, if so requested by the Collateral Agent, deliver to the Collateral Agent original or duplicate policies of such insurance (including certificates demonstrating compliance with this Section 6(e)). Any Grantor will also, at the request of the Collateral Agent, execute and deliver instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment.

(iii) Reimbursement under any liability insurance maintained by any Grantor pursuant to this Section 6(e) may be paid directly to the Person who shall have incurred liability covered by such insurance. In the case of any loss exceeding $1,000,000 involving damage to Equipment or Inventory, to the extent paragraph (iv) of this Section 6(e) is not applicable, any proceeds of insurance involving such damage shall be paid to the Collateral Agent, and any Grantor will make or cause to be made the necessary repairs to or replacements of such Equipment or Inventory, and any proceeds of insurance maintained by any Grantor pursuant to this Section 6(e) (except as otherwise provided in paragraph (iv) in this Section 6(e)) shall be paid by the Collateral Agent to any Grantor as reimbursement for the reasonable costs of such repairs or replacements.

(iv) Notwithstanding anything to the contrary in subsection 6(e)(iii) above, following written notification by the Collateral Agent to the Grantors during the continuance of an Event of Default, all insurance payments in respect of each Grantor's properties and business shall be paid to the Collateral Agent and applied as specified in Section 8(b) hereof.

(f) Provisions Concerning Name, Organization, Location, Accounts and Licenses.

(i) Each Grantor will (A) notify the Collateral Agent no later than ten (10) Business Days prior to the date of any change in such Grantor's name, identity or organizational structure, (B) maintain its jurisdiction of incorporation, organization or formation as set forth in Schedule I hereto, and (C) keep adequate records concerning the Collateral and permit representatives of the Collateral Agent during normal business hours on reasonable notice to such Grantor, to inspect and make abstracts from such records; provided that unless an Event of Default has occurred and is continuing, the Collateral Agent may not conduct more than once in any calendar year inspections under this Section 6(f)(i) and under Section 7.

(ii) The Collateral Agent shall have the right at any time following the occurrence and during the continuance of an Event of Default to notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Collateral Agent and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to any Grantor thereunder directly to the Collateral Agent or its designated agent and, upon such

notification and at the expense of any Grantor and to the extent permitted by applicable law, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as any Grantor might have done. After receipt by any Grantor of a notice from the Collateral Agent that the Collateral Agent has notified, intends to notify, or has enforced or intends to enforce any Grantor's rights against the Account Debtors or obligors under any Accounts as referred to in the immediately preceding sentence, (A) all amounts and proceeds (including, without limitation, Instruments) received by any Grantor in respect of the Accounts shall be received in trust for the benefit of the Collateral Agent hereunder (for the ratable benefit of the Collateral Agent and the Noteholders), shall be segregated from other funds of any Grantor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary endorsement) to be applied as specified in Section 8(b) hereof, and (B) no Grantor will adjust, settle or compromise the amount or payment of any Account or release wholly or partly any Account Debtor or obligor thereof or allow any credit or discount thereon. In addition, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may (in its sole and absolute discretion) direct any or all of the banks and financial institutions with which any Grantor either maintains a Pledged Account or a lockbox or deposits the proceeds of any Accounts to send immediately to the Collateral Agent by wire transfer (to such deposit account as the Collateral Agent shall specify, or in such other manner as the Collateral Agent shall direct) all or a portion of the cash, investments and other items held by such institution in such Pledged Account. Any such cash, investments and other items so received by the Collateral Agent shall be applied as specified in accordance with Section 8(b) hereof.

(g) Other Liens. No Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral other than a Permitted Lien.

(h) Intellectual Property.

(i) If applicable, each Grantor shall duly execute and deliver the applicable Intellectual Property Security Agreement. Subject to the qualifiers below in this subsection (h)(i), each Grantor (either itself or through licensees) will, and will cause each licensee thereof to, take all action necessary to maintain all of the Intellectual Property in full force and effect, including, without limitation, using the proper statutory notices, numbers and markings (relating to patent, trademark and copyright rights) and using the Trademarks on each applicable trademark class of goods in order to so maintain the Trademarks in full force and free from any claim of abandonment for non-use, and each Grantor will not (nor permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Intellectual Property may become abandoned, cancelled or invalidated; provided, however, that so long as no Event of Default has occurred and is continuing, no Grantor shall have an obligation to use or to maintain any Intellectual Property (A) that each Grantor in its reasonable business judgment determines is no longer needed for the operation of the business of each Grantor's business, so long as no Material Adverse Effect will occur (B) that relates to any product or work, that is no longer necessary or material and has been, or is in the process of being, discontinued, abandoned or terminated in the ordinary course of business and consistent with the exercise of reasonable business judgment, (C) that is being replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the Lien created by this Agreement and does not have a material adverse effect on the business of any Grantor or (D) that is substantially the same as other Intellectual Property that is in full force, so

long the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such other Intellectual Property is subject to the Lien and security interest created by this Agreement and does not have a material adverse effect on the business of any Grantor. Subject to each Grantor's reasonable business judgment, each Grantor will cause to be taken all necessary steps in any proceeding before the United States Patent and Trademark Office and the United States Copyright Office or any similar office or agency in any other country or political subdivision thereof to maintain each registration of the Intellectual Property and application for registration of Intellectual Property (other than the Intellectual Property described in the proviso to the immediately preceding sentence), including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and payment of maintenance fees, filing fees, taxes or other governmental charges or fees. If any Intellectual Property (other than Intellectual Property described in the proviso to the second sentence of subsection (i) of this clause (h)) is infringed, misappropriated, diluted or otherwise violated in any material respect by a third party that would result in a Material Adverse Effect, each Grantor shall (x) upon learning of such infringement, misappropriation, dilution or other violation, promptly notify the Collateral Agent and (y) where deemed appropriate by each Grantor under the circumstances, promptly consider whether to sue for infringement, misappropriation, dilution or other violation, seek injunctive relief where appropriate and recover any and all damages for such infringement, misappropriation, dilution or other violation, or take such other actions as such Grantor shall deem appropriate under the circumstances to protect such Intellectual Property. On each Collateral Reporting Date, the Company shall furnish to the Collateral Agent an updated Schedule II hereto that sets forth all Registered Intellectual Property of the Grantors that has been registered or recorded with the applicable Governmental Authority as of a date that is no earlier than ten (10) Business Days prior to such Collateral Reporting Date and shall comply with such Perfection Requirements required hereunder to subject such Registered Intellectual Property (other than Excluded Property) to the Lien and security interest created by this Agreement. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, no Grantor may abandon, surrender or cancel or otherwise permit any Intellectual Property to become abandoned, surrendered, cancelled or invalid without the prior written consent of the Collateral Agent (in its sole and absolute discretion), and if any Intellectual Property is infringed, misappropriated, diluted or otherwise violated in any material respect by a third party, each Grantor will take such reasonable action, as the Collateral Agent shall deem appropriate under the circumstances to protect such Intellectual Property.

(ii) Upon request of the Collateral Agent, any Grantor shall execute, authenticate and deliver any and all assignments, agreements, instruments, documents and papers as the Collateral Agent may reasonably request to complete the Perfection Requirements with respect to any Registered Intellectual Property (other than Excluded Property) of any Grantor, and each Grantor hereby appoints the Collateral Agent its attorney-in-fact to execute and/or authenticate and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed, and such power (being coupled with an interest) shall be irrevocable until all Obligations are fully performed and Paid in Full.

(i) Pledged Accounts.

(i) Each Grantor shall cause each bank and other financial institution which maintains a Pledged Account that is not an Excluded Account (each a "**Controlled Account Bank**") to execute and deliver to the Collateral Agent a Controlled Account Agreement with

respect to all Pledged Accounts maintained with such Controlled Account Bank pursuant to which such Controlled Account Bank shall agree, among other things, with respect to such Pledged Account, that (i) at any time after any Grantor, the Collateral Agent or any Buyer shall have notified such Controlled Account Bank that an Event of Default has occurred or is continuing, such Controlled Account Bank will comply with any and all instructions originated by the Collateral Agent directing the disposition of the funds in such Controlled Account without further consent by such Grantor and (ii) at any time after the Collateral Agent shall have notified such Pledged Account Bank that an Event of Default has occurred or is continuing, Bank shall not comply with any instructions, directions or orders of any form with respect to such Controlled Accounts other than instructions, directions or orders originated by the Collateral Agent.

(ii) From and after January 19, 2024, if the amount of all unrestricted Cash and cash equivalents of the Company and its Subsidiaries held in Deposit Accounts and Securities Accounts that are not Controlled Accounts ("**Free Cash Amount**") exceeds $60,000,000 (the "**Maximum Free Cash Amount**") as of the Transfer Cut-Off Time of each Business Day in any three (3) consecutive Business Day period (any such period, a "**Free Cash Excess Period**"), the Company shall, or shall cause one or more of its Subsidiaries to, no later than the Transfer Cut-Off Time on the Business Day immediately following the last Business Day of such Free Cash Excess Period, (x) transfer to a Controlled Account an amount of Cash and cash equivalents and/or (y) deliver to the Collateral Agent a Controlled Account Agreement with respect to one or more Pledged Accounts, duly executed by such Grantor and (if applicable) the depositary bank or other financial institution at which such Pledged Account is maintained, so that the Free Cash Amount as of the Transfer Cut-Off Time of the Business Day immediately following such Free Cash Excess Period does not exceed the Maximum Free Cash Amount; provided, however, that in no event shall the Company permit the Free Cash Amount to exceed the Maximum Free Cash Amount as of the Transfer Cut-Off Time of more than eight (8) Business Days in any single calendar month.

(j) Reserved.

(k) Control. Each Grantor hereby agrees to take any or all action that may be necessary or that the Collateral Agent may reasonably request in order for the Collateral Agent to obtain "control" in accordance with Section 8-106 or Section 9-105 through Section 9-107 of the Code, as applicable, with respect Collateral consisting of (i) Investment Property (ii) Electronic Chattel Paper (other than any Electronic Chattel Paper evidencing an obligation that does not exceed $500,000) or (iii) Letter-of-Credit Rights (other than Letter-of-Credit Rights with respect to any letter of credit with a face amount that does not exceed $500,000).

(l) Inspection and Reporting. Each Grantor shall permit the Collateral Agent, or any agent or representatives thereof or such attorneys, accountant or other professionals or other Persons as the Collateral Agent may designate (at Grantors' sole cost and expense) (x)(i) to examine and make copies of and abstracts from any Grantor's Records and books of account, (ii) to visit and inspect its properties, (iii) to verify materials, leases, Instruments, Accounts, Inventory and other assets of any Grantor from time to time, and (iv) to conduct audits, physical counts, appraisals, valuations and/or examinations at the locations of any Grantor and (y) to discuss such Grantor's affairs, finances and accounts with any of its directors, officers, managerial employees, attorneys, independent accountants or any of its other representatives provided that unless an Event of Default has occurred and is continuing, the Collateral Agent may not conduct more than once in any calendar year inspections under this Section 7 and under Section 6(f)(i). Without limiting

the foregoing, the Collateral Agent may, at any time that an Event of Default has occurred and is continuing, in the Collateral Agent's own name, in the name of a nominee of the Collateral Agent, or in the name of any Grantor communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of such Grantor, parties to contracts with such Grantor and/or obligors in respect of Instruments or Pledged Debt of such Grantor to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Pledged Debt, Chattel Paper, payment intangibles and/or other receivables.

(m) Future Subsidiaries; Foreign Collateral Actions. If any Grantor hereafter creates or acquires any Subsidiary (other than an Excluded Subsidiary), or if any Foreign Subsidiary ceases to satisfy the requirements for an Excluded Subsidiary, then as soon as commercially practicable (but no later than thirty (30) days following (1) the creation or acquisition of such Subsidiary or (2) the date such Foreign Subsidiary ceases to satisfy the requirements for an Excluded Subsidiary (or such longer period as may be agreed to by the Collateral Agent)), such Grantor shall (i)(x) if such Subsidiary is a Domestic Subsidiary, cause such Subsidiary to become a party to this Agreement as an additional "Grantor" hereunder by execution of a Joinder Agreement or (y) if such Subsidiary is a Foreign Subsidiary, cause such Subsidiary to execute and deliver to the Collateral Agent such documents and to take such actions in such foreign jurisdictions that the Collateral Agent shall reasonably request to create and perfect in favor of the Collateral Agent a security interest in the assets of such Subsidiary (other than Excluded Property), (ii) deliver to the Collateral Agent updated Schedules to this Agreement, as appropriate (including, without limitation, an updated Schedule IV to reflect the grant by such Grantor of a Lien on and security interest in all Pledged Debt and Pledged Equity now or hereafter owned by such Grantor), (iii) cause such Subsidiary to duly execute and deliver a joinder to the Guaranty in accordance with Section 18 of the Guaranty, (iv) deliver to the Collateral Agent the stock certificates representing all of the Capital Stock of such Subsidiary that is a certificated, along with undated stock powers for each such certificates, executed in blank (or, if any such shares of Capital Stock are uncertificated, confirmation and evidence reasonably satisfactory to the Collateral Agent that the security interest in such uncertificated securities has been perfected by the Collateral Agent, in accordance with Section 8-106(c) of the Code or any other similar or local or foreign law that may be applicable), and (v) duly execute and deliver (or cause to be duly executed and delivered) to the Collateral Agent, in form and substance acceptable to the Collateral Agent, such opinions of counsel and other documents as the Collateral Agent shall reasonably request with respect thereto; provided, however, that no Grantor shall be required to pledge any Excluded Property. Each Grantor hereby authorizes the Collateral Agent to attach such updated Schedules to this Agreement and agrees that all Pledged Equity and Pledged Debt listed on any updated Schedule delivered to the Collateral Agent shall for all purposes hereunder be considered Collateral. The Grantors (i) agree that the pledge of the shares of Capital Stock currently owned or acquired by a Grantor of any Foreign Subsidiary (other than an Excluded Subsidiary) may be supplemented by one or more separate pledge agreements, deeds of pledge, share charges, or other similar agreements or instruments, executed and delivered by the relevant Grantor in favor of the Collateral Agent, which pledge agreements will provide for the pledge of such shares of Capital Stock in accordance with the laws of the applicable foreign jurisdiction and (ii) shall cause each applicable Non-Grantor Subsidiary to execute and deliver Controlled Account Agreements with respect to the Pledged Accounts held by such Non-Grantor Subsidiary (the actions that may be taken by the Collateral Agent under this sentence or under subsection (i)(y) of this Section 6(m), collectively, the "**Foreign Collateral Actions**").

(n) Post-Closing Perfection Requirements. Without limiting any of the Grantors' obligations under this Agreement, the Grantors shall perform the Perfection Requirements set forth on Annex B no later than the dates set forth on Annex B.

SECTION 7. Additional Provisions Concerning the Collateral.

(a) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Collateral Agent to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office to satisfy the Perfection Requirements, (ii) authorizes the Collateral Agent at any time and from time to time to file, one or more financing or continuation statements, and amendments thereto, relating to the Collateral (including, without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Collateral Agent may determine regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the Code or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing or continuation statements, or amendments thereto, prior to the date hereof.

(b) Each Grantor hereby irrevocably appoints the Collateral Agent as its attorney-in-fact and proxy, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Collateral Agent's discretion, to take any action and to execute any instrument which the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, (i) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral, (ii) to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (i) above, (iii) to file any claims or take any action or institute any action, suit or proceedings which the Collateral Agent may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of the Collateral Agent and the Noteholders with respect to any Collateral, (iv) to execute assignments, licenses and other documents to enforce the rights of the Collateral Agent and the Noteholders with respect to any Collateral, and (v) to verify any and all information with respect to any and all Accounts; provided, however, that the Collateral Agent may only take the actions described in clauses (i) through (v) if an Event of Default has occurred and is continuing. This power is coupled with an interest and is irrevocable until all of the Obligations are Paid in Full.

(c) For the purpose of enabling the Collateral Agent to exercise rights and remedies hereunder at such time that an Event of Default has occurred and is continuing, at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose and at no other time, each Grantor hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, assign, license or sublicense any Intellectual

Property in which such Grantor now or hereafter has any right, title or interest, wherever the same may be located, including, without limitation, in such license reasonable 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 thereof. Notwithstanding anything contained herein to the contrary, but subject to the provisions of the Securities Purchase Agreement that limit the right of any Grantor to dispose of its property, and Section 6(g) and Section 6(h) hereof, unless an Event of Default shall have occurred and be continuing, and, other than in the case of a Bankruptcy Event of Default, the Collateral Agent shall have notified the Grantors in writing that the rights of the Grantors under this Section 7(c) are being suspended, any Grantor may exploit, use, enjoy, protect, license, sublicense, assign, sell, dispose of or take other actions with respect to the Intellectual Property in the ordinary course of its business and as otherwise expressly permitted by any of the other Transaction Documents. In furtherance of the foregoing, unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall from time to time, upon the request of any Grantor, execute and deliver any instruments, certificates or other documents, in the form so requested, which such Grantor shall have certified are appropriate (in such Grantor's judgment) to allow it to take any action permitted above (including relinquishment of the license provided pursuant to this clause (c) as to any Intellectual Property). Further, upon the Payment in Full of all of the Obligations, the Collateral Agent shall release and reassign to any Grantor all of the Collateral Agent's right, title and interest in and to the Intellectual Property, and the Licenses, all without recourse, representation or warranty whatsoever. The exercise of rights and remedies hereunder by the Collateral Agent shall not terminate the rights of the holders of any licenses or sublicenses theretofore granted by each Grantor in accordance with the second sentence of this clause (c). Each Grantor hereby releases the Collateral Agent from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Collateral Agent under the powers of attorney granted herein other than actions taken or omitted to be taken through the Collateral Agent's gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(d) If any Grantor fails to perform any agreement or obligation contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement or obligation, in the name of such Grantor or the Collateral Agent, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by such Grantor pursuant to Section 9 hereof and such obligation shall be secured by the Collateral.

(e) The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

(f) Anything herein to the contrary notwithstanding (i) each Grantor shall remain liable under the Licenses and otherwise with respect to any of the Collateral to the extent set forth therein to perform all of its obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Collateral Agent of any of its rights or remedies hereunder shall not release any Grantor from any of its obligations under the Licenses or otherwise in respect of the Collateral, and (iii) the Collateral Agent shall not have any obligation or liability by reason of this Agreement under the Licenses or with respect to any of the other Collateral, nor

shall the Collateral Agent be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 8. Remedies Upon Event of Default; Application of Proceeds. If any Event of Default shall have occurred and be continuing:

(a) The Collateral Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein, in any other Transaction Document or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Collateral Agent's name or into the name of its nominee or nominees (to the extent the Collateral Agent has not theretofore done so) and thereafter receive, for the ratable benefit of itself and the Noteholders, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of its respective Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place or places to be designated by the Collateral Agent that is reasonably convenient to both parties, and the Collateral Agent may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Collateral Agent's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale (including, without limitation, by credit bid), at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable and/or (B) lease, license or dispose of the Collateral or any part thereof upon such terms as the Collateral Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least ten (10) days' notice to any Grantor of the time and place of any public sale or the time after which any private sale or other disposition of its respective Collateral is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Collateral Agent and the Noteholders arising by reason of the fact that the price at which its respective Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree, and waives all rights that any Grantor may have to require that all or any part of such Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of its respective Collateral by the Collateral Agent shall be made without warranty, (ii) the Collateral Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (iii) such actions set forth in clauses (i) and (ii) above shall not adversely affect the commercial reasonableness of any such sale of Collateral. In addition to the foregoing, (1) upon written notice to any Grantor from the Collateral Agent after and during the continuance of an Event of Default,

such Grantor shall cease any use of the Intellectual Property or any trademark, patent or copyright similar thereto for any purpose described in such notice; (2) the Collateral Agent may, at any time and from time to time after and during the continuance of an Event of Default, upon 10 days' prior notice to such Grantor, license, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property, throughout the universe for such term or terms, on such conditions, and in such manner, as the Collateral Agent shall in its sole discretion determine; and (3) the Collateral Agent may, at any time, pursuant to the authority granted in Section 7 hereof or otherwise (such authority being effective upon the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of such Grantor, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country.

(b) Any cash held by the Collateral Agent as Collateral and all Cash Proceeds received by the Collateral Agent in respect of any sale or disposition of or collection from, or other realization upon, all or any part of the Collateral shall be applied as follows (subject to the provisions of the Securities Purchase Agreement): first, to pay any fees, indemnities or expense reimbursements then due to the Collateral Agent (including, without limitation, those described in Section 9 hereof); second, to pay any fees, indemnities or expense reimbursements then due to the Noteholders, on a pro rata basis; third to pay interest due under the Notes owing to the Noteholders, on a pro rata basis; fourth, to pay or prepay principal in respect of the Notes, whether or not then due, owing to the Noteholders, on a pro rata basis; fifth, to pay or prepay any other Obligations, whether or not then due, in such order and manner as the Collateral Agent shall elect, consistent with the provisions of the Securities Purchase Agreement. Any surplus of such cash or Cash Proceeds held by the Collateral Agent and remaining after the full performance and Payment in Full of all of the Obligations shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(c) In the event that the proceeds of any such sale, disposition, collection or realization are insufficient to pay all amounts to which the Collateral Agent and the Noteholders are legally entitled, each Grantor shall be, jointly and severally, liable for the deficiency, together with interest thereon at the highest rate specified in the Notes for interest on overdue principal thereof or such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable fees, costs, expenses and other charges of any attorneys employed by the Collateral Agent to collect such deficiency.

(d) To the extent that applicable law imposes duties on the Collateral Agent to exercise rights and remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring

all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of brokers, investment bankers, consultants, attorneys and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of rights and remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation of the foregoing, nothing contained in this section shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

(e) The Collateral Agent shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Collateral Agent's rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that any Grantor lawfully may, each Grantor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Collateral Agent's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such laws.

(f) Notwithstanding anything to the contrary contained in this Agreement or any of the other Transaction Documents, the Collateral Agent shall not give notice of exclusive control or any similar notice to any Controlled Account Bank under a Controlled Account Agreement unless an Event of Default has occurred and is continuing.

SECTION 9. Indemnity; Expenses.

(a) Each Grantor, jointly and severally, agrees to indemnify and hold harmless the Collateral Agent and each other Indemnitee (as defined in the Securities Purchase Agreement) to the same extent and subject to the same terms that the Company has agreed to indemnify the Indemnitees under Section 9(k) of the Securities Purchase Agreement, which Section 9(k) is hereby incorporated by reference, *mutatis mutandis*.

(b) Each Grantor agrees, jointly and severally, to pay to the Collateral Agent upon demand the amount of any and all costs and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for the Collateral Agent and of any experts and agents (including, without limitation, any collateral trustee which may act as agent of the Collateral

Agent), which the Collateral Agent may incur in connection with (i) the preparation, negotiation, execution, delivery, recordation, administration, amendment, waiver or other modification or termination of this Agreement, the Guaranty and any other Transaction Documents or the performance of any Foreign Collateral Action, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any Collateral, (iii) the exercise or enforcement of any of the rights or remedies of the Collateral Agent hereunder, or (iv) the failure by any Grantor to perform or observe any of the provisions hereof.

SECTION 10. Austrian Capital Maintenance Restrictions.

(a) The liabilities and obligations of each Grantor incorporated in Austria under any of the Transaction Documents shall be limited so that at no time the assumption or enforcement of a liability or obligation under any of the Transaction Documents would be required if this would violate mandatory Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*) pursuant to Austrian company law, in particular sections 82 et seq. of the Austrian Act on Limited Liability Companies (*GmbH-Gesetz*) and/or sections 52 et seq. (including, for the avoidance of doubt and without limitation, section 66a to the extent being directly or analogously applied) of the Austrian Stock Corporation Act (*Aktiengesetz*) (the "**Austrian Capital Maintenance Rules**").

(b) Should any liability and/or obligation of a Grantor incorporated in Austria under the Transaction Documents violate or contradict Austrian Capital Maintenance Rules and should therefore be held invalid or unenforceable or should the assumption, creation or enforcement of such liability and/or obligation expose any managing director or member of the supervisory board of the Grantor incorporated in Austria, if applicable, to personal liability or criminal responsibility, then such liability and/or obligation shall be limited in accordance with the Austrian Capital Maintenance Rules and shall be deemed to be replaced by a liability and/or obligation of a similar nature which is in compliance with the Austrian Capital Maintenance Rules and which provides the best possible security interest in favour of the Collateral Agent on behalf of the Noteholders. By way of example, should it be held that the security created under any Transaction Document contradicts the Austrian Capital Maintenance Rules in relation to any amount of the Obligations, the security created by the respective Transaction Document shall be reduced to such an amount of the Obligations which is permitted pursuant to the Austrian Capital Maintenance Rules.

(c) No reduction of the amount enforceable under any Transaction Document in accordance with the limitations set out in this Section 10 will prejudice the rights of the Collateral Agent or the Noteholders under any Transaction Document (subject always to the operation of the limitations set out in this Section 10 at the time of such enforcement) until full satisfaction of any guaranteed claims.

SECTION 11. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, first-class postage prepaid and return receipt requested), telecopied, e-mailed or delivered, if to any Grantor, to the Company's address, or if to the Collateral Agent or any Noteholder, to it at its respective address, each as set forth in Section 9(f) of the Securities Purchase Agreement; or as to any such Person, at such other address as shall be designated by such Person in a written notice to all other parties hereto complying as to delivery with the terms of this Section 11. All such notices and other communications shall be effective (a) if sent by certified mail, return receipt requested, when received or five Business Days after deposited in the mails, whichever occurs first, (b) if telecopied

or e-mailed, when transmitted (during normal business hours) and confirmation is received, and otherwise, the day after the notice or communication was transmitted and confirmation is received, or (c) if delivered in person, upon delivery. For the avoidance of doubt, all Foreign Subsidiaries, as Grantors, hereby appoint the Company as its agent for receipt of service of process and all notices and other communications in the United States at the address specified below, but shall at any rate not be sent to an address, e-mail address or fax number with an Austrian nexus.

SECTION 12. Miscellaneous.

(a) No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and no waiver of any provision of this Agreement, and no consent to any departure by each Grantor therefrom, shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No amendment, modification or waiver of this Agreement shall be effective to the extent that it (1) applies to fewer than all of the holders of Notes or (2) imposes any obligation or liability on any holder of Notes without such holder's prior written consent (which may be granted or withheld in such holder's sole and absolute discretion).

(b) No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right or remedy hereunder or under any of the other Transaction Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies of the Collateral Agent or any Noteholder provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights and remedies of the Collateral Agent or any Noteholder under any of the other Transaction Documents against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights or remedies under any of the other Transaction Documents against such party or against any other Person, including but not limited to, any Grantor.

(c) 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 portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(d) This Agreement shall create a continuing Lien on and security interest in the Collateral and shall (i) remain in full force and effect until the Payment in Full of the Obligations, and (ii) be binding on each Grantor and all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the Code and shall inure, together with all rights and remedies of the Collateral Agent and the Noteholders hereunder, to the ratable benefit of the Collateral Agent and the Noteholders and their respective permitted successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, without notice to any Grantor, the Collateral Agent and the Noteholders may assign or otherwise transfer their rights and obligations under this Agreement and any of the other Transaction Documents, to any other Person and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Collateral Agent and the Noteholders herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to the Collateral

Agent or any such Noteholder shall mean the assignee of the Collateral Agent or such Noteholder. None of the rights or obligations of any Grantor hereunder may be assigned, delegated or otherwise transferred without the prior written consent of the Collateral Agent in its sole and absolute discretion, and any such assignment, delegation or transfer without such consent of the Collateral Agent shall be null and void.

(e) Upon the Payment in Full of the Obligations, (i) this Agreement and the security interests created hereby shall terminate and all rights to the Collateral shall revert to the respective Grantor that granted such security interests hereunder, and (ii) the Collateral Agent will, upon any Grantor's request and at such Grantor's expense, (A) return to such Grantor such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

(f) Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

(g) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(h) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same Agreement. Delivery of any executed counterpart of a signature page of this Agreement by pdf, facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(i) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Collateral Agent, any Noteholder or any other Person (upon (i) the occurrence of any Insolvency Proceeding of any of the Company or any Grantor or (ii) otherwise, in all cases as though such payment had not been made).

(j) Upon the execution and delivery to the Collateral Agent by the Company of an Austrian law share pledge agreement ("**Austrian Share Pledge**") in favor of the Collateral Agent with respect to 100% of the Capital Stock of Fisker GmbH, an Austrian limited liability company (the "**Austrian Capital Stock**"), the Austrian Capital Stock shall be automatically released from the Lien created by this Agreement so that the Austrian Share Pledge shall be the controlling document with respect to the Collateral Agent's lien on the Austrian Capital Stock.

(k) The parties hereto agree that the Collateral Agent shall be the joint and several creditor (*Gesamtgläubiger*) (together with the relevant other Noteholders) of each and every obligation of the Grantors towards that other Noteholder under the Transaction Documents and that accordingly the Collateral Agent will have its own and independent right to demand performance by the Grantors of those obligations in full.

SECTION 13. Material Non-Public Information.

(a) On or before 9:30 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 (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 Noteholders 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 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.

(b) Upon receipt or delivery by any Grantor of any notice in accordance with the terms of this Agreement, unless such Grantor has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Grantor or any of its Subsidiaries, such Grantor shall by the next Business Day (if delivery is made after the close of the Principal Market on a Business Day or a Saturday or Sunday) or the same Business Day (if disclosure is made on a Business Day prior to the opening of the Principal Market) after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that such Grantor believes that a notice contains material, non-public information relating to such Grantor or any of its Subsidiaries, such Grantor so shall indicate to the Collateral Agent and any applicable Noteholder contemporaneously with delivery of such notice (which shall before the opening or after the close of the Principal Market), and in the absence of any such indication, the Collateral Agent and each Noteholder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to such Grantor or its Subsidiaries. Nothing contained in this Section 13 shall limit any obligations of any Grantor, or any rights or remedies of the Collateral Agent or any Noteholder, under Section 4(l) of the Securities Purchase Agreement.

SECTION 14. Amendments.

(a) Section 4(a) of the Notes (including the form of Note attached to the Securities Purchase Agreement) is hereby amended to add the following:

> "(xvi) any provision of any Transaction Document (including, without limitation) the Security Documents or the Guaranty 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 parties thereto, or the validity or enforceability thereof shall be contested 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 Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including, without limitation, the Security Documents and the Guaranty);
>
> (xvii) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (as defined in the Securities Purchase Agreement) on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent (as defined in the Securities Purchase Agreement) or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;"

(b) Each of the Notes (including the form of Note attached to the Securities Purchase Agreement) are hereby amended to add the following as a new Section 33:

> "33. SECURITY. This Note and the Other Notes are secured and guaranteed to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement, the other Security Documents and the Guaranty)."

(c) The last sentence of Section 20 of each of the Notes (including the form of Note attached to the Securities Purchase Agreement) is hereby amend and restated as follows:

> "Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms in such other Transaction Documents unless otherwise consented to in writing by the Holder."

(d) The defined term "Transaction Documents" when used in any other Transaction Document shall have the meaning set forth in this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

FISKER INC.

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GROUP INC.

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GMBH

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Director

TERRA ENERGY INC.

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

PLATINUM IPR LLC

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Authorized Officer

FISKER TN LLC

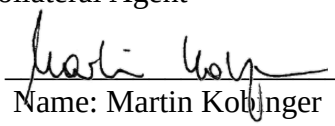
By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: President

BLUE CURRENT HOLDING LLC

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: President

ACCEPTED BY:

CVI INVESTMENTS, INC.,
as Collateral Agent

By: 
Name: Martin Kobinger
Title: President

SCHEDULE I

Grantors

Legal Name	Jurisdiction of Incorporation, Organization or Formation	Organizational Identification Number	Prior Names (if any)
Fisker Inc.	Delaware	6577789	Spartan Energy Acquisition Corp.
Fisker Group Inc.	Delaware	6136073	Fisker Inc.
Fisker GmbH	Austria	N/A	N/A
Terra Energy Inc.	Delaware	6183618	N/A
Platinum IPR LLC	Delaware	6014839	N/A
Fisker TN LLC	Tennessee	001439513	N/A
Blue Current Holding LLC	Delaware	6183618	N/A

SCHEDULE II

Intellectual Property

Utility Patents and Patent Applications

TRANSACTION PARTY	HOST FILE NUMBER	COUNTRY	APP. NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
Fisker Inc.	20003-CON-1-US	US	17580376	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Pending	05/12/2022	20220144048	N/A	N/A
Fisker Inc.	20003-DIV-1-US	US	17580538	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Pending	05/12/2022	20220144049	N/A	N/A
Fisker Inc.	20003-DIV-2-US	US	17580474	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Pending	05/12/2022	20220144359	N/A	N/A
Fisker Inc.	21001-PCT	WO	PCTUS2221666	FRONT STORAGE AND REAR WINDOW GATE	03/24/2022	Pending	09/29/2022	2022204361	N/A	N/A

TRANSACTION PARTY	HOST FILE NUMBER	COUNTRY	APP. NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
				RETRACTION FEATURES						
Fisker Inc.	21002-CON-1-US	US	17455620	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	11/18/2021	Issued	11/03/2022	20220348079	October 11, 2022	11465502
Fisker Inc.	21002-CON-2-US	US	17931076	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	09/09/2022	Allowed	01/05/2023	20230001792	N/A	N/A
Fisker Inc.	21002-NP-US	US	17245826	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/30/2021	Issued	N/A	N/A	January 11, 2022	11220182

TRANSACTION PARTY	HOST FILE NUMBER	COUNTRY	APP. NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
Fisker Inc.	21002-PCT	WO	PCTUS2227012	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/29/2022	Pending	11/03/2022	2022232562	N/A	N/A
Fisker Inc.	21003-PCT	WO	PCTUS2232892	METHODS AND SYSTEMS FOR DISPOSING CELLS	06/09/2022	Pending	12/15/2022	2022/261364	N/A	N/A
Fisker Inc.	21004-PCT	WO	PCTUS2278828	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	10/27/2022	Pending	05/04/2023	2023077035	N/A	N/A
Fisker Inc.	21012-PCT	WO	PCTUS2279728	SUN VISOR METHOD AND APPARATUS	11/11/2022	Pending	05/19/2023	2023086947	N/A	N/A
Fisker Inc.	22001-PCT	WO	PCTUS2361629	SYSTEMS, METHODS, AND DEVICES FOR GRAPHICAL USER INTERFACES	01/31/2023	Pending	08/03/2023	2023/147575	N/A	N/A

TRANSACTION PARTY	HOST FILE NUMBER	COUNTRY	APP. NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
Fisker Inc.	20003-CN	CN	202180080 6711	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	11/18/2021	Pending	N/A	N/A	N/A	N/A
Fisker Inc.	21002-CN	CN		ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/29/2022	Pending	N/A	N/A	N/A	N/A
Fisker Inc.	20003-EU	EP	EP2189562 41	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	11/18/2021	Pending	N/A	N/A	N/A	N/A
Fisker Inc.	21002-EP	EP	227968435	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCHBAR	04/29/2022	Pending	N/A	N/A	N/A	N/A

TRANSACTION PARTY	HOST FILE NUMBER	COUNTRY	APP. NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
Fisker Inc.	21004-NP-US	US	18034304	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	04/24/2023	Pending	N/A	N/A	N/A	N/A
Fisker Inc.		US	16951981	Automobile having retractable rear quarter windows	11/18/2020	Issued	05/27/2021	2021-0155084	March 1, 2022	11260729

Design Patents and Patent Applications

TRANSACTION PARTY	HOST FILE NUMBER	COUNTRY	APPLICATION NUMBER	TITLE	DATE FILED	STATUS	PATENT NUMBER	GRANT DATE
Fisker Inc.		US	29512447	HEADLAMPS FOR A VEHICLE	12/18/2014	Issued	D760930	July 5, 2016
Fisker Inc.	16002-D-US	US	29582466	AUTOMOTIVE VEHICLE	10/27/2016	Issued	D809972	February 13, 2018
Fisker Inc.	17002-D-US	US	29627626	AUTOMOTIVE VEHICLE	11/28/2017	Issued	D832742	November 6, 2018

TRANSACTION PARTY	HOST FILE NUMBER	COUNTRY	APPLICATION NUMBER	TITLE	DATE FILED	STATUS	PATENT NUMBER	GRANT DATE
Fisker Inc.	17003-D-US	US	29630931	AUTOMOTIVE VEHICLE	12/23/2017	Issued	D840874	February 19, 2019
Fisker Inc.	18002-D-US	US	29664312	EXTERIOR LIGHTING FOR AN AUTOMOTIVE VEHICLE	09/24/2018	Issued	D869710	December 10, 2019
Fisker Inc.	20001-D-US	US	29735838	AUTOMOTIVE VEHICLE BODY	05/25/2020	Issued	D944119	February 22, 2022
Fisker Inc.	20004-D-US	US	29762488	WHEEL	12/16/2020	Issued	D970412	November 22, 2022
Fisker Inc.	21006-D-US	US	29790197	VEHICLE STEERING WHEEL	11/10/2021	Issued	D991112	July 4, 2023
Fisker Inc.	21008-D-US	US	29790238	DESIGN FOR WHEEL	11/12/2021	Issued	D1002483	October 24, 2023
Fisker Inc.	21010-D-US	US	29790235	INSTRUMENT PANEL	11/12/2021	Issued	D1000338	October 3, 2023

Trademarks and Trademark Applications

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	AU	FISKER	1359523	05/04/2010	Registered	1359523	12/06/2012
Fisker Inc.	AU	FISKER	1359524	05/04/2010	Registered	1359524	12/07/2010
Fisker Inc.	AU	FISKER	1359525	05/04/2010	Registered	1359525	12/23/2010
Fisker Inc.	AU	FISKER	1359527	05/04/2010	Registered	1359527	12/23/2010
Fisker Inc.	AU	FISKER & Design	1053827	06/08/2010	Registered	1392175	6/24/2013
Fisker Inc.	AU	FISKER & Design	1539118	05/19/2020	Registered	2100654	04/27/2022
Fisker Inc.	BR	FISKER & Design (word and design)	830772294	10/19/2010	Registered	830772294	11/13/2018
Fisker Inc.	BR	FISKER & Design (word and design)	830772308	10/19/2010	Registered	830772308	08/05/2014
Fisker Inc.	BR	FISKER & Design (word and design)	830772316	10/19/2010	Registered	830772316	11/13/2018

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	BR	FISKER & Design (word and design)	830772324	10/19/2010	Registered	830772324	11/13/2018
Fisker Inc.	BR	FISKER & Design	1539118	05/19/2020	Registered	1539118	05/19/2020
Fisker Inc.	CA	FISKER	1479582	05/04/2010	Registered	TMA912350	08/25/2015
Fisker Inc.	CA	FISKER & Design	1479583	05/04/2010	Registered	TMA912349	08/25/2015
Fisker Inc.	CH	FISKER	554562010	05/31/2010	Registered	605443	09/16/2010
Fisker Inc.	CH	FISKER	554572010	05/31/2010	Registered	605444	09/16/2010
Fisker Inc.	CH	FISKER	554582010	05/31/2010	Registered	605226	09/14/2010
Fisker Inc.	CH	FISKER	554592010	05/31/2010	Registered	605227	09/14/2010
Fisker Inc.	CH	Fisker & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
Fisker Inc.	CN	FISKER	8292870	05/13/2010	Registered	8292870	09/21/2011
Fisker Inc.	CN	FISKER	8292871	05/13/2010	Registered	8292871	08/07/2011
Fisker Inc.	CN	FISKER	8292886	05/13/2010	Registered	8292886	07/14/2011
Fisker Inc.	CN	FISKER & Design	8292885	05/13/2010	Registered	8292885	07/14/2011

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	CN	FISKER & Design	8292887	05/13/2010	Registered	8292887	09/21/2011
Fisker Inc.	CN	FISKER & Design	8292888	05/13/2010	Registered	8292888	08/07/2011
Fisker Inc.	CN	FISKER	14055689	02/21/2014	Registered	14055689	06/21/2017
Fisker Inc.	CN	FISKER in Chinese 菲斯科 (Fei Si Ke)	20532914	07/05/2016	Registered	20532914	08/28/2017
Fisker Inc.	CN	FISKER	21186653	09/02/2016	Registered	21186653	06/14/2020
Fisker Inc.	CN	FISKER & Design	1539118	05/19/2020	Total Provisional Refusal	N/A	N/A
Fisker Inc.	DK	FISKER & Design	1053827	06/08/2010	Registered	1053827	02/16/2012
Fisker Inc.	DK	FISKER	VA201001883	06/14/2010	Registered	VR201002264	08/31/2010
Fisker Inc.	DK	FISKER	VA201001884	06/14/2010	Registered	VR201002261	08/31/2010
Fisker Inc.	DK	FISKER	VA201001885	06/14/2010	Registered	VR201002262	08/31/2010
Fisker Inc.	DK	FISKER	VA201001886	06/14/2010	Registered	VR201002263	08/31/2010
Fisker Inc.	EM	RONIN	018696994	05/04/2022	Pending	N/A	N/A

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	EM	FISKER ALASKA	018933588	10/04/2023	Pending	N/A	N/A
Fisker Inc.	EM	FISKER & Design	969292	06/13/2008	Registered	969292	06/13/2008
Fisker Inc.	EM	FISKER	9123589	05/21/2010	Registered	9123589	11/30/2010
Fisker Inc.	EM	FISKER	9124066	05/21/2010	Registered	9124066	11/16/2010
Fisker Inc.	EM	FISKER	9124108	05/21/2010	Registered	9124108	11/17/2010
Fisker Inc.	EM	FISKER	9124124	05/21/2010	Registered	9124124	11/08/2010
Fisker Inc.	EM	FISKER & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
Fisker Inc.	EM	FISKER & Color Design	15232011	03/18/2016	Registered	15232011	07/28/2016
Fisker Inc.	EM	FISKER EMOTION	016450249	03/09/2017	Registered	016450249	03/19/2019
Fisker Inc.	EM	ORBIT	017655929	01/03/2018	Registered	017655929	06/14/2018
Fisker Inc.	EM	FISKER & Design	1539118	05/19/2020	Registered	1539118	05/19/2020
Fisker Inc.	EM	emotion	017655937	01/03/2018	Total Provisional Refusal	N/A	N/A

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	GB	FISKER ALASKA	UK00003963965	10/04/2023	Pending	N/A	N/A
Fisker Inc.	GB	FISKER & Design	UK00800969292	06/13/2008	Registered	UK00800969292	08/10/2009
Fisker Inc.	GB	FISKER	UK00909123589	05/21/2010	Registered	UK00909123589	11/30/2010
Fisker Inc.	GB	FISKER	UK00909124066	05/21/2010	Registered	UK00909124066	11/16/2010
Fisker Inc.	GB	FISKER	UK00909124108	05/21/2010	Registered	UK00909124108	11/17/2010
Fisker Inc.	GB	FISKER	UK00909124124	05/21/2010	Registered	UK00909124124	11/08/2010
Fisker Inc.	GB	FISKER & Design	UK00801053827	06/08/2010	Registered	UK00801053827	09/06/2011
Fisker Inc.	GB	FISKER & Design (in color)	UK00915232011	03/18/2016	Registered	UK00915232011	07/28/2016
Fisker Inc.	GB	FISKER EMOTION	00916450249	03/09/2017	Registered	00916450249	03/19/2019
Fisker Inc.	GB	ORBIT	00917655929	01/03/2018	Registered	00917655929	06/14/2018
Fisker Inc.	GB	FISKER & Design	UK00801539118	05/19/2020	Registered	UK00801539118	11/24/2020
Fisker Inc.	HK	FISKER	301603016AA	04/30/2010	Registered	301603016AA	10/13/2010
Fisker Inc.	HK	FISKER & Design	301603052AA	04/30/2010	Registered	301603052AA	11/09/2010

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	HR	FISKER & Design	1053827	06/08/2010	Registered	1053827	11/11/2010
Fisker Inc.	HR	FISKER	Z20101111A	06/11/2010	Registered	Z20101111	07/15/2011
Fisker Inc. Platinum IPR LLC	HR	FISKER	Z20101112A	06/11/2010	Registered	Z20101112	07/15/2011
Fisker Inc.	HR	FISKER	Z20101113A	06/11/2010	Registered	Z20101113	07/15/2011
Fisker Inc. Platinum IPR LLC	HR	FISKER	Z20101114A	06/11/2010	Registered	Z20101114	07/15/2011
Fisker Inc.	IB	FISKER & Design	969292	06/13/2008	Registered	969292	06/13/2008
Fisker Inc.	IB	FISKER & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
Fisker Inc.	IB	FISKER & Design	1539118	05/19/2020	Registered	1539118	05/19/2020
Fisker Inc.	IN	FISKER	1961371	05/06/2010	Registered	1961371	04/15/2011
Fisker Inc.	IN	FISKER	1961372	05/06/2010	Registered	1961372	04/15/2011
Fisker Inc.	IN	FISKER	1961373	05/06/2010	Registered	1961373	02/29/2016
Fisker Inc.	IN	FISKER	1961374	05/06/2010	Registered	1961374	04/18/2011
Fisker Inc.	IN	FISKER & Design	1961367	05/06/2010	Registered	1961367	06/07/2013

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	IN	FISKER & Design	1961368	05/06/2010	Registered	1961368	04/15/2011
Fisker Inc.	IN	FISKER & Design	1961369	05/06/2010	Registered	1961369	04/15/2011
Fisker Inc.	IN	FISKER & Design	1961370	05/06/2010	Registered	1961370	04/18/2011
Fisker Inc.	IN	FISKER & Design	1539118	05/19/2020	Registered	4557790	05/19/2020
Fisker Inc.	JP	FISKER	201036753	05/12/2010	Registered	5364000	10/29/2010
Fisker Inc.	JP	FISKER	201036754	05/12/2010	Registered	5352615	09/10/2010
Fisker Inc.	JP	FISKER	201036755	05/12/2010	Registered	5347041	08/20/2010
Fisker Inc.	JP	FISKER	201036756	05/12/2010	Registered	5352616	09/10/2010
Fisker Inc.	JP	FISKER & Design	201036757	05/12/2010	Registered	5364001	10/29/2010
Fisker Inc.	JP	FISKER & Design	201036758	05/12/2010	Registered	5352617	09/10/2010
Fisker Inc.	JP	FISKER & Design	201036759	05/12/2010	Registered	5347042	08/20/2010
Fisker Inc.	JP	FISKER & Design	201036760	05/12/2010	Registered	5352618	09/10/2010
Fisker Inc.	JP	FISKER & Design	4020207010728	05/19/2020	Registered	1539118	05/19/2020
Fisker Inc.	KR	FISKER	4020100023668	05/03/2010	Registered	4009042900000	02/13/2012

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	KR	FISKER	4120100011461	05/03/2010	Registered	4102256320000	02/02/2012
Fisker Inc.	KR	FISKER	4120100011462	05/03/2010	Registered	4102224670000	12/05/2011
Fisker Inc.	KR	FISKER	4120100011463	05/03/2010	Registered	4102186450000	10/07/2011
Fisker Inc.	KR	FISKER & Design	4020100023669	05/03/2010	Registered	4009042510000	02/13/2012
Fisker Inc.	KR	FISKER & Design	4120100011464	05/03/2010	Registered	4102256440000	02/02/2012
Fisker Inc.	KR	FISKER & Design	4120100011465	05/03/2010	Registered	4102224960000	12/05/2011
Fisker Inc.	KR	FISKER & Design	4120100011466	05/03/2010	Registered	4102256200000	02/02/2012
Fisker Inc.	KR	FISKER & Design	4020207010728	05/19/2020	Registered	1539118	10/14/2021
Fisker Inc.	MC	Fisker & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
Fisker Inc.	MC	FISKER	29658	08/04/2010	Registered	1028061	09/01/2010
Fisker Inc.	MC	FISKER	29659	08/04/2010	Registered	1028062	01/09/2010
Fisker Inc.	MC	FISKER	29660	08/04/2010	Registered	1028063	09/01/2010
Fisker Inc.	MC	FISKER	29661	08/04/2010	Registered	1028064	09/01/2010
Fisker Inc.	MX	FISKER & Design	1539118	05/19/2020	Registered	2303671	09/27/2021

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	MX	FISKER	2581304	07/14/2021	Registered	2306179	09/30/2021
Fisker Inc.	MX	FISKER	2581305	07/14/2021	Registered	2306180	09/30/2021
Fisker Inc.	MX	FISKER	2581306	07/14/2021	Registered	2306181	09/30/2021
Fisker Inc.	MX	FISKER	2581308	07/14/2021	Registered	2312883	10/20/2021
Fisker Inc.	MX	FISKER & Design	2581310	07/14/2021	Registered	2314941	10/22/2021
Fisker Inc.	MX	FISKER & Design	2581312	07/14/2021	Registered	2313371	10/20/2021
Fisker Inc.	MX	FISKER & Design	2581314	07/14/2021	Registered	2312884	10/20/2021
Fisker Inc.	MX	FISKER & Design	2581315	07/14/2021	Registered	2314942	10/22/2021
Fisker Inc.	NO	FISKER	201004926	05/10/2010	Registered	259954	05/11/2011
Fisker Inc.	NO	FISKER	201004927	05/10/2010	Registered	262954	12/09/2011
Fisker Inc.	NO	Fisker	201004928	05/10/2010	Registered	256950	09/30/2010
Fisker Inc.	NO	Fisker	201004929	05/10/2010	Registered	256951	09/30/2010
Fisker Inc.	NO	FISKER & Design	1053827	06/08/2010	Registered	201011449	06/08/2010
Fisker Inc.	NZ	FISKER	836427	01/27/2011	Registered	836427	07/27/2011

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	NZ	FISKER & Design	836423	01/27/2011	Registered	836423	07/27/2011
Fisker Inc.	RS	FISKER & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
Fisker Inc.	RS	FISKER	201001062	06/14/2010	Registered	63185	09/07/2011
Fisker Inc.	RS	FISKER	201001063	06/14/2010	Registered	61934	11/19/2010
Fisker Inc.	RS	FISKER	201001064	06/14/2010	Registered	61935	11/19/2010
Fisker Inc.	RS	FISKER	201001065	06/14/2010	Registered	63236	09/19/2011
Fisker Inc.	RU	FISKER	2010715114	05/07/2010	Registered	432836	03/21/2011
Fisker Inc.	RU	FISKER	2010715115	05/07/2010	Registered	440975	07/13/2011
Fisker Inc.	RU	FISKER	2010715116	05/07/2010	Registered	432837	03/21/2011
Fisker Inc.	RU	FISKER	2010715118	05/07/2010	Registered	432838	03/21/2011
Fisker Inc.	RU	Fisker & Design	1053827	06/08/2010	Registered	1053827	09/15/2011
Fisker Inc.	RU	FISKER & Design	1539118	05/19/2020	Registered	1539118	10/20/2020
Fisker Inc.	SG	FISKER	T1005806E	05/07/2010	Registered	T1005806E	08/06/2010
Fisker Inc.	SG	FISKER	T1005807C	05/07/2010	Registered	T1005807C	11/24/2010

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Platinum IPR LLC	SG	FISKER	T1005808A	05/07/2010	Registered	T1005808A	08/12/2010
Platinum IPR LLC	SG	FISKER	T1005809Z	05/07/2010	Registered	T1005809Z	02/21/2011
Fisker Inc.	SG	FISKER & Design	1053827	06/08/2010	Registered	T1014558H	09/20/2011
Fisker Inc.	TR	FISKER & Design	1053827	06/08/2010	Registered	201074355	07/23/2012
Fisker Inc.	TR	FISKER	201054305	08/19/2010	Registered	201054305	10/20/2011
Fisker Inc.	TR	FISKER	201054306	08/19/2010	Registered	201054306	10/20/2011
Fisker Inc.	TR	FISKER	201054307	08/19/2010	Registered	201054307	03/01/2012
Fisker Inc.	TR	FISKER	201054308	08/19/2010	Registered	201054308	03/01/2012
Fisker Inc.	UA	Fisker & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
Fisker Inc.	UA	FISKER	m201008966	06/10/2010	Registered	140078	06/10/2011
Fisker Inc.	UA	FISKER	m201008967	06/10/2010	Registered	140079	06/10/2011
Fisker Inc.	UA	FISKER	m201008968	06/10/2010	Registered	140080	06/10/2011
Fisker Inc.	UA	FISKER	m201008969	06/10/2010	Registered	140081	06/10/2011
Fisker Inc.	US	FISKER	85012432	04/13/2010	Registered	3899607	04/13/2010

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	US	FISKER	85024473	04/27/2010	Registered	3896838	12/28/2010
Fisker Inc.	US	FISKER	85024490	04/27/2010	Registered	4168418	07/03/2012
Fisker Inc.	US	FISKER	85024495	04/27/2010	Registered	4246405	11/20/2012
Fisker Inc.	US	FISKER & Design	85024481	04/27/2010	Registered	3880033	11/23/2010
Fisker Inc.	US	FISKER & Design	85024509	04/27/2010	Registered	4242403	11/13/2012
Fisker Inc.	US	FISKER & Design	85024511	04/27/2010	Registered	4168419	07/03/2012
Fisker Inc.	US	FISKER	87011307	04/22/2016	Registered	6013877	03/17/2020
Fisker Inc.	US	FISKER & Design	87022120	05/02/2016	Registered	5247488	07/18/2017
Fisker Inc.	US	FISKER & Design	87022124	05/02/2016	Registered	5262153	08/08/2017
Fisker Inc.	US	FISKER & Design	87022125	05/02/2016	Registered	5242662	07/11/2017
Fisker Inc.	US	EMOTION (Stylized)	87518475	07/06/2017	Registered	5517053	07/17/2018
Fisker Inc.	US	FISKER & Design	88657179	10/16/2019	Registered	6171096	10/06/2020
Fisker Inc.	US	FISKER OCEAN	88668176	10/24/2019	Registered	7176431	09/26/2023
Fisker Inc.	US	FI-PILOT	90445783	01/02/2021	Registered	7219211	11/14/2023

TRANSACTION PARTY	COUNTRY	TITLE	APPLICATION NO.	DATE FILED	STATUS	REGISTRATION NO.	REGISTRATION DATE
Fisker Inc.	VN	FISKER design	4201939679	09/10/2019	Pending	N/A	N/A
Fisker Inc.	ZA	FISKER	201009117	04/30/2010	Registered	201009117	10/25/2013
Fisker Inc.	ZA	FISKER	201009120	04/30/2010	Registered	201009120	06/14/2012
Fisker Inc.	ZA	FISKER	201009121	04/30/2010	Registered	201009121	06/14/2012
Fisker Inc.	ZA	FISKER	201009122	04/30/2010	Registered	201009122	06/14/2012
Fisker Inc.	ZA	FISKER	201009123	04/30/2010	Registered	201009123	06/14/2012
Fisker Inc.	ZA	FISKER & Design	201009116	04/30/2010	Registered	201009116	10/25/2013
Fisker Inc.	ZA	FISKER & Design	201009118	04/30/2010	Registered	201009118	10/25/2013
Fisker Inc.	ZA	FISKER & Design	201009119	04/30/2010	Registered	201009119	10/25/2013

Copyrights and Copyright Applications

Grantor	Country	Title	Type of Work	Application or Registration No.	Issue Date
Fisker Inc.	US	Fisker Ocean Ultra.	Visual Material	VA0002295401	01/26/2022
Fisker Inc.	US	FISKER LOGO	Visual Material	VA0002266552	08/24/2021

SCHEDULE III

Locations of Chief Executive Office, Principal Place of Business and Books and Records

Transaction Party	Chief Executive Office	Principal Place of Business	Books and Records
Fisker Inc.	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266
Fisker Group Inc.	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266
Fisker GmbH	Liebenauer Hauptstraße 2-6, 8041 Graz, Austria	Liebenauer Hauptstraße 2-6, 8041 Graz, Austria	Liebenauer Hauptstraße 2-6, 8041 Graz, Austria
Terra Energy Inc.	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266
Platinum IPR LLC	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266
Fisker TN LLC	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266
Blue Current Holding LLC	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266	1888 Rosecrans Avenue Manhattan Beach, CA 90266

Locations of Equipment, Fixtures, Inventory and Other Goods

1888 Rosecrans Avenue Manhattan Beach, CA 90266 (corporate headquarters)

Manufacturing facility located Liebenauer Hauptstraße 2-6, 8041 Graz, Austria, operated by Magna Steyr Fahrzeugtechnik AG & Co KG

Finished Vehicle Locations

Country	Site	Address
USA	Fisker Lounge at The Grove	189 The Grove Dr., Los Angeles, CA 90036
USA	Adesa Atlanta	5055 Oakley Industrial Blvd. Fairburn, GA 30213
USA	Adesa Birmingham	804 Sollie Drive, Moody, AL 35004
USA	Adesa Brashers	6233 Blacktop Road, Rio Linda, CA 95673
USA	Adesa Chicago	2785 Beverly Road Hoffman Estates, IL 60169
USA	Adesa Concord	77 Hosmer Street, Acton, MA 01720
USA	Adesa DC	43375 Old Ox Road, Dulles, VA 20166
USA	Adesa Indianapolis	2950 East Main Street. Plainfield, IN 46168
USA	Adesa Kansas City	15511 ADESA Drive, Belton, MO 64012
USA	Adesa Los Angeles	9700 Galena Street Riverside CA 92509
USA	Adesa New Jersey	200 North Main St. Manville, NJ 08835
USA	Adesa Phoenix	400 N. Beck Avenue, Chandler, AZ 85226
USA	Adesa Portland	23585 NE Sandy Blvd, Wood Village, OR 97060
USA	Adesa Riverside	2350 Fleetwood Dr Riverside CA 92509
USA	Adesa San Diego	2175 Cactus Road, San Diego, CA 92154
USA	Adesa Shreveport	7666 Greenwood Road, Shreveport, LA 71119
USA	Adesa Tulsa	16015 E. Admiral Place Tulsa, OK 74116
USA	Boxer VPC	3030 Warrenville Rd suite number 104, Lisle, IL 60532
USA	COE – La Palma, US	14 Centerpointe Dr La Palma CA 90623
USA	CORTE MADERA, CA	1618 Redwood Hwy, Corte Madera, CA 94925

Country	Site	Address
USA	Ct+ - Brentwood, TN	1641 Westgate Circle, Brentwood TN 37027
USA	Ct+ - Tempe, AZ	1717 East Curry Road, Tempe AZ 85281
USA	Ct+ - Vista	1715 Hacienda Dr, Vista, CA 92081
USA	Ct+ Long Island City, NY	38-50 21st St., Long Island City, NY 11101
USA	Ct+ Owings Mills, MD	10 Music Fair Rd, Owings Mills MD, 21117
USA	PDC Huntington Beach, US	14422 Astronautics Dr, Huntington Beach, CA 92647
USA	Port of Baltimore	2700 Broening Highway, Bldg. 602A; 21222, Baltimore, MD
USA	Port of Brunswick	1 Joe Frank Harris Blvd, Brunswick, GA 31523
USA	Port of Los Angeles	500 E. Water Street, Wilmington, CA 90744
USA	Port of San Diego	1309 Bay Marina Dr, National City, CA 91950
USA	Port of Tacoma	4004 NE 4th Street, Suite 107-430, Renton, WA 98056
USA	VPC - Acworth, GA	501 Northpoint Parkway Acworth, GA 30102
USA	VPC - OKC, OK	4701 United Drive, Oklahoma City OK 73179
USA	Dallas Service Center	3131 Irving Blvd, Irving, TX 75207
USA	Naples Service Center	2085 Tamiami Tril, Naples, FL 34102
USA	Redwood City Lounge	950 Charter Rd., Redwood City, CA 94063
USA	New York City Lounge	401 W. 14th St., New York, NY 10014
Canada	OpenLane/Adesa - Toronto Canada	55 Auction Ln Brampton ON, L6T 5P4
Canada	BC Service Center, Canada	7111 No. 8 Rd. Richmond, BC V6W 1L9
France	Fisker Center+, Buc	638, Avenue Roland Garros, F-78530 Buc, France
France	CEVA Marckolsheim	Rue du 1 er Septembre 1990, ZI et Portuaire, 67390 Marckolsheim
France	CEVA Marly-la-Ville	ZI de Moimont, 11 Rue Jean Jaurès, 95670 Marly-la-Ville
Denmark	Copenhagen FISKER Center+	Taastrup Hovedgade, 176 DK-2630 Taastrup Denmark

Country	Site	Address
Denmark	Vejle FISKER Center+ (Denmark)	Bugattivej 9, 7100 Vejle, Denmark
Switzerland	Dagmersellen FISKER Center+	Industriestrasse 6 6252 Dagmersellen Switzerland
Switzerland	Fisker Test Drive Center Zürich	Industriestrasse 24 8305 Dietlikon Switzerland
UK	Fisker - Westfield London Lounge	Unit 2032, Westfield London Shopping Centre, Ariel Way, London W12 7GF
UK	Fisker Center+ Milton Keynes	Tickford Roundabout, London Rd, Newport Pagnell MK16 0HA, United Kingdom
UK	NVD - Southampton	B209 Compound, Redbridge, Western Docks, Southampton, SO15 0AL
Germany	Fisker Center + Frankfurt	Borsigallee 12, D-60388 Frankfurt am Main, Germany
Germany	Fisker Center + Neuss	An der Hammer Brücke 5, D-41460 Neuss, Germany
Germany	Munich FISKER Lounge Flagship	Kaufingerstasse 12, D-80331 Munich, Germany
Germany	Munich, Motorworld	Motorworld: Fisker, Am Ausbesserungswerk 8, D-80939 München, Germany
Austria	Fisker Center + Vienna	Simmeringer Hauptstrasse 1, A-1110 Vienna Austria
Austria	Frikus/Lagermax Kalsdorf	Feldkirchenstrasse 22, 8401 Kalsdorf, Austria
Sweden	Fisker Center- Stockholm	Mätarvagen 23, S-196 37 Kungsängen, Sweden
Sweden	Auto logik, Sweden	Lodgatan 22, 211 24 Malmö, Sweden
Sweden	Tidler AB, Göteborg	Sydatlanten, Port 2; 21124 Göteborg
Netherlands	Fisker Center+ Rotterdam	Driemanssteeweg 700, 3084CB Rotterdam, Netherlands
Norway	Oslo, Vestby FISKER Center+	Verpetveien 30, N-3019 Vestby, Norway
Norway	Norsk Biltransport AS, Bergen	Kokstadflaten 51, 5257 Bergen
Norway	Norsk Biltransport AS, Lier	Tømmersvingen 3, 3400 Lier, Norway
Norway	Norsk Drammen, Norway	Hans Kiærs gate 1A 3041 Drammen
Belgium	Belgium, Antwerp CTP	Sint Jozefstraat 12, 2840 Rumst, Belgium
Belgium	Port of Zeebrugge Belgium (ICO)	Margareta van Oostenrijkstraat 1 8380 Zeebrugge, Belgium (ICO)
Belgium	Port of Zeebrugge Belgium (WWS)	Quay 530 Alfred Ronsestraat 100, 8380, Belgium
Belgium	Port of Antwerp (AET)	Kaai 1333, Blikken, 9130 Beveren, Belgium

SCHEDULE IV

Pledged Equity; Pledged Debt; Pledged Accounts

Pledged Equity

Grantor	Pledged Entity	Ownership Interest	Certificate #
Fisker Inc.	Fisker Group Inc.	100%	Uncertificated
Fisker Group Inc.	Fisker GmbH	100%	Uncertificated
Fisker Group Inc.	Terra Energy Inc.	100%	Uncertificated
Fisker Group Inc.	Platinum IPR LLC	100%	Uncertificated
Fisker Group Inc.	Fisker TN LLC	100%	Uncertificated
Fisker Group Inc.	Blue Current Holding LLC	100%	Uncertificated

Pledged Debt

None.

Deposit Accounts of Grantors

Grantor	Bank	Country	Account No.	Type or Purpose of Account	Excluded Account
Fisker Group Inc.	JPM	United States	627869867	Checking - Corporate	No
Fisker Group Inc.	JPM	United States	705026539	Checking - Payroll	Yes; clause (a)(i)
Fisker Group Inc.	JPM	United States	627869933	Checking - Reserved Cars	Yes; clause (a)(iv)
Fisker Group Inc.	JPM	United States	3835007809	MM - Corporate	No
Fisker Group Inc.	JPM	United States	3835007965	MM - Reserved Cars	Yes; clause (a)(iv)
Fisker Group Inc.	JPM	United States	3929058759	MM - L/C	Yes; clause (b)
Fisker Group Inc.	JPM	United States	901658333	US Revenue	No
Fisker Group Inc.	JPM	United States	3968272188	MM - Chase Auto	Yes; clause (a)(v)
Fisker Group Inc.	Bank of America	United States	1453955220	L/C	Yes; clause (b)
Fisker GmbH	JPM	Germany	6161551681	Austrian US$ payment account	No

Grantor	Bank	Country	Account No.	Type or Purpose of Account	Excluded Account
Fisker GmbH	JPM	Germany	6161543829	Austrian Euro payment account	No
Fisker GmbH	JPM	Germany	6161556813	Austria Payroll	Yes; clause (a)(i)
Fisker GmbH	JPM	Germany	6161559098	Austria Revenue	No
Terra Energy Inc.	JPM	United States	788769856	Checking (Dormant)	No

Securities Accounts of Grantors

Grantor	Bank or Broker	Country	Account No.	Type or Purpose of Account	Excluded Account
Fisker Group Inc.	JP Asset Mgmt	United States	4704000312	Liquidity Fund	No
Fisker Group Inc.	JP Asset Mgmt	United States	5024563	Money Market Fund	No

Pledged Accounts of Non-Grantor Subsidiaries

Grantor	Bank	Country	Account No.	Type or Purpose of Account	Excluded Account
Fisker GmbH	JPM	Germany	6161543795	Payment Account	No
Fisker GmbH	JPM	Germany	6161559114	Revenue Account	No
Fisker France SAS	JPM	France	609001940	Payment Account	No
Fisker France SAS	JPM	France	609002037	Revenue Account	No
Fisker (GB) Limited	JPM	United Kingdom	40066323	Payment Account	No
Fisker (GB) Limited	JPM	United Kingdom	76973212	Revenue Account	No
Fisker Norway AS	JPM	Luxembourg	55009196	Payment Account	No
Fisker Norway AS	JPM	Luxembourg	55009269	Revenue Account	No

SCHEDULE V

Financing Statements

Grantor	Financing Statement	Jurisdiction
Fisker Inc.	UCC-1	Delaware
Fisker Group Inc.	UCC-1	Delaware
Fisker GmbH	UCC-1	D.C.
Terra Energy Inc.	UCC-1	Delaware
Platinum IPR LLC	UCC-1	Delaware
Fisker TN LLC	UCC-1	Tennessee
Blue Current Holding LLC	UCC-1	Delaware

SCHEDULE VI

Commercial Tort Claims

None.

SCHEDULE VII

Permitted Liens

Tax Liens

Fisker Inc.

- Tax Lien in the amount of $3,932.45 filed by the Los Angeles County Tax Collector on November 23, 2020.
- Tax Lien in the amount of $6,245.86 filed by the Los Angeles County Tax Collector on November 23, 2021.
- Tax Lien in the amount of $43,528.62 filed by the Los Angeles County Tax Collector on November 18, 2022.
- Tax Lien in the amount of $1,743.79 filed by the Los Angeles County Tax Collector on November 20, 2023.
- Tax Lien in the amount of $123,211.02 filed by the Los Angeles County Tax Collector on November 20, 2023.

All outstanding property taxes have been paid.

Judgment Liens

Fisker Inc.

- $6,108,113 in respect of Dr. Fabio Albano vs. Henrik Fisker, Dr. Geeta Fisker and Fisker Inc., Case No. 20TRCV00731 in the Superior Court of California, County of Los Angles. This matter was settled and the Company’s appeal dismissed in June 2023.

ANNEX A

EXCLUDED SUBSIDIARIES

Subsidiary	Jurisdiction of Formation
Fisker Belgium SRL	Belgium
Fisker Canada Ltd.	Canada
Fisker (Shanghai) Motors Ltd.	China
Fisker Denmark ApS	Denmark
Fisker France SAS	France
Fisker GmbH	Germany
Fisker Vigyan India Private Limited	India
Fisker Ireland Limited	Ireland
Ocean E.V.	Mexico
Fisker Netherlands B.V.	Netherlands
Fisker Netherlands Sales B.V.	Netherlands
Fisker Norway AS	Norway
Fisker Spain	Spain
Fisker Sweden AB	Sweden
Fisker Switzerland GmbH	Switzerland
Fisker Switzerland Sales GmbH	Switzerland
Fisker (GB) Limited	United Kingdom

ANNEX B

POST-CLOSING PERFECTION REQUIREMENT

Perfection Requirement	**Completion Date (no later than)**
Execution and delivery by the Company of a share pledge agreement in favor of the Collateral Agent with respect to 100% of the Capital Stock of Fisker GmbH, an Austrian limited liability company ("**Fisker Austria**")	January 19, 2024
Execution and delivery by Fisker Austria of an Account Pledge Agreement (*Kontenverpfändungsvertrag*) in favor of the Collateral Agent with respect to the Pledged Accounts of Fisker Austria	January 19, 2024
Execution and delivery by Fisker Austria of pledge agreement with respect to intercompany receivables	January 19, 2024
Execution and delivery by each Grantor and the applicable Controlled Account Bank of a Controlled Account Agreement with respect to each Pledged Account of the Company	January 19, 2024
Execution and delivery by each applicable Non-Grantor Subsidiary and the applicable Controlled Account Bank of an account pledge agreement and a Controlled Account Agreement with respect to each Pledged Account of such Non-Grantor Subsidiary	January 19, 2024

EXHIBIT A

THIS DOCUMENT WAS EXECUTED OUTSIDE OF AUSTRIA. THE TAKING OF THIS DOCUMENT OR ANY CERTIFIED COPY OF IT OR ANY DOCUMENT WHICH CONSTITUTES SUBSTITUTE DOCUMENTATION FOR IT, OR ANY DOCUMENT WHICH INCLUDES WRITTEN CONFIRMATIONS OR REFERENCES TO IT, INTO AUSTRIA AS WELL AS PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO THIS DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO ANY TRANSACTION DOCUMENT TO AN AUSTRIAN ADDRESSEE MAY CAUSE THE IMPOSITION OF AUSTRIAN STAMP DUTY. ACCORDINGLY, KEEP THE ORIGINAL DOCUMENT AS WELL AS ALL CERTIFIED COPIES THEREOF AND WRITTEN AND SIGNED REFERENCES TO IT OUTSIDE OF AUSTRIA AND AVOID PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO ANY TRANSACTION DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO THIS DOCUMENT TO AN AUSTRIAN ADDRESSEE.

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this "**IP Security Agreement**"), dated **[●]**, is made by the Persons listed on the signature pages hereof (each, a "**Grantor**" and, collectively, the "**Grantors**") in favor of CVI Investments, Inc**.**, in its capacity as collateral agent (together with its successors and permitted assigns, the "**Collateral Agent**") for the Noteholders. All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Security Agreement (as defined below).

WHEREAS, Fisker Inc., a company organized under the laws of the State of Delaware (the "**Company**"), is party to that certain Securities Purchase Agreement, dated as of July 10, 2023 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as an "Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, pursuant to the terms of the Indenture, each Grantor has executed and delivered that certain Amended and Restated Security and Pledge Agreement, dated as of December 28, 2023, made by the Grantors to the Collateral Agent (as amended, modified, supplemented, renewed, restated or replaced from time to time, the "**Security Agreement**");

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a Lien on and security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities; and

WHEREAS, the Grantors have determined that the execution, delivery and performance of this IP Security Agreement directly benefits, and is in the best interest of, the Grantors.

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows

SECTION 1. Grant of Security. As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under the following (the "**Collateral**"):

(i) the Patents and Patent applications set forth in Schedule A hereto;

(ii) the Trademark and service mark registrations and applications set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby;

(iii) all Copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including, without limitation, the copyright registrations and applications set forth in Schedule C hereto;

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to

any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all Proceeds, including without limitation Cash and Noncash Proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations (as provided in the Code) relating to, any and all of the collateral of or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a Lien on and security interest in, the Collateral by each Grantor under this IP Security Agreement constitutes continuing collateral security for the payment and performance of all Obligations of such Grantor now or hereafter existing under or in respect of the Notes and the Transaction Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same agreement.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the Lien and security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

_____

By _____
Name:
Title:

Address for Notices:

_____
_____
_____

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

_____

By _____
Name:
Title:

Address for Notices:
_____
_____
_____

Schedule A

Patents

Grantor	Country	Title	Application or Patent No.	Application or Registration Date	Assignees

Schedule B

Trademarks

Grantor	Country	Trademark	Application or Registration No.	Application or Registration Date	Assignees

Schedule C

Copyrights

Grantor	Country	Title	Type of Work	Application or Registration No.	Issue Date	Assignees

EXHIBIT B

FORM OF JOINDER AGREEMENT

This Joinder Agreement (this "**Joinder**"), dated [●], 202[●], by and among Fisker Inc., a Delaware corporation (the "**Company**"), [●] (the "**Additional Grantor**"), a [●] and a Subsidiary of the Company, and [_____], in its capacity as collateral agent for the Noteholders (together with its successors and assigns, in such capacity, the "**Collateral Agent**") under that certain Security and Pledge Agreement, dated as of December 28, 2023, by and among the Company, the Collateral Agent and the other Grantors party thereto (as may from time to time be amended, the "**Agreement**"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Agreement.

Pursuant to Section 6(m) of the Agreement, by executing and delivering this Joinder, the Additional Grantor hereby becomes a party to the Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein. Without limiting the generality of the foregoing, the Additional Grantor, as collateral security for the punctual payment and performance in full of the Obligations, as and when due, hereby pledges and assigns to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of Grantor's right, title and interest in, to and under all Collateral.

By executing and delivering this Joinder, the Company and the Additional Grantor hereby agree that the schedules attached to this Joinder shall automatically, and without further action, supplement and become part of the schedules to the Agreement.

Each of the Company and the Additional Grantor represents and warrants to the Collateral Agent that (i) it has the requisite power and authority to enter into, deliver and perform its obligations under this Joinder and has taken all necessary action to authorize the execution, delivery and performance by it of this Joinder; (ii) this Joinder has been duly executed and delivered on behalf of each of the Company and the Additional Grantor; and (iii) this Joinder constitutes a legal, valid and binding obligation of each of the Company and the Additional Grantor, enforceable against such party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

[*Signature Pages Follow*]

FISKER INC.

By: _____
Name:
Title:

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

Acknowledged by:

[_____]
as Collateral Agent

By: _____
Name:
Title:

EXHIBIT F

THIS DOCUMENT WAS EXECUTED OUTSIDE OF AUSTRIA. THE TAKING OF THIS DOCUMENT OR ANY CERTIFIED COPY OF IT OR ANY DOCUMENT WHICH CONSTITUTES SUBSTITUTE DOCUMENTATION FOR IT, OR ANY DOCUMENT WHICH INCLUDES WRITTEN CONFIRMATIONS OR REFERENCES TO IT, INTO AUSTRIA AS WELL AS PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO THIS DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO ANY TRANSACTION DOCUMENT TO AN AUSTRIAN ADDRESSEE MAY CAUSE THE IMPOSITION OF AUSTRIAN STAMP DUTY. ACCORDINGLY, KEEP THE ORIGINAL DOCUMENT AS WELL AS ALL CERTIFIED COPIES THEREOF AND WRITTEN AND SIGNED REFERENCES TO IT OUTSIDE OF AUSTRIA AND AVOID PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO ANY TRANSACTION DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO THIS DOCUMENT TO AN AUSTRIAN ADDRESSEE.

GUARANTY

This GUARANTY, dated as of December 28, 2023 (this "**Guaranty**"), is made by each of the undersigned (each a "**Guarantor**", and collectively, the "**Guarantors**"), in favor of CVI Investments, Inc., in its capacity as collateral agent (in such capacity, the "**Collateral Agent**") for the Noteholders (as defined below).

W I T N E S S E T H:

WHEREAS, Fisker Inc., a company organized under the laws of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**") and each party listed as a "Investor" on the Schedule of Investors attached thereto (collectively, the "**Investors**") are parties to the Securities Purchase Agreement, dated as of July 10, 2023 (as amended, restated, extended, replaced or otherwise modified from time to time, the "**Securities Purchase Agreement**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, restated, extended, replaced or otherwise modified from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that certain Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**") providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, the Indenture requires that the Guarantors execute and deliver to the Collateral Agent, (i) a guaranty guaranteeing all of the obligations of the Company under the Securities Purchase Agreement, the Notes and the other Transaction Documents (as defined below); and (ii) an Amended and Restated Security and Pledge Agreement, dated as of the date hereof, granting the Collateral Agent a lien on and security interest in all of their assets and properties (the "**Security Agreement**"); and

WHEREAS, each Guarantor has determined that the execution, delivery and performance of this Guaranty directly benefits, and is in the best interest of, such Guarantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Guarantor hereby agrees with each Noteholder as follows:

SECTION 1. Definitions. Reference is hereby made to the Securities Purchase Agreement, the Indenture and the Notes for a statement of the terms thereof. All terms used in this Guaranty and the recitals hereto which are defined in the Securities Purchase Agreement or the Notes, and which are not otherwise defined herein shall have the same meanings herein as set forth therein. In addition, the following terms when used in the Guaranty shall have the meanings set forth below:

"**Bankruptcy Code**" means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

"**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in New York City 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.

"**Investor**" or "**Investors**" shall have the meaning set forth in the recitals hereto.

"**Capital Stock**" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

"Collateral" shall have the meaning set forth in Section 3(a) of the Security Agreement.

"**Collateral Agent**" shall have the meaning set forth in the recitals hereto.

"**Company**" shall have the meaning set forth in the recitals hereto.

"**Governmental Authority**" 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.

"**Guaranteed Obligations**" shall have the meaning set forth in Section 2 of this Guaranty.

"**Guarantor**" or "**Guarantors**" shall have the meaning set forth in the recitals hereto.

"**Indemnified Party**" shall have the meaning set forth in Section 14(a) of this Guaranty.

"**Insolvency Proceeding**" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"**Joinder Agreement**" means an agreement substantially in the form attached hereto as Exhibit A.

"**Notes**" shall have the meaning set forth in the recitals hereto.

"**Obligations**" shall have the meaning set forth in Section 4 of the Security Agreement.

"**Other Taxes**" shall have the meaning set forth in Section 13(a)(iv) of this Guaranty.

"**Paid in Full" or "Payment in Full**" means the indefeasible payment in full in cash of all of the Guaranteed Obligations (other than inchoate indemnity obligations).

"**Person**" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"**Securities Purchase Agreement**" shall have the meaning set forth in the recitals hereto.

"**Security Agreement**" shall have the meaning set forth in the recitals hereto.

"**Subsidiary"** means any Person in which a Guarantor directly or indirectly, (i) owns a majority of the outstanding Capital Stock of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person, and all of the foregoing, collectively, "**Subsidiaries**".

"**Taxes**" shall have the meaning set forth in Section 13(a) of this Guaranty.

"**Transaction Documents**" shall have the meaning set forth in the Securities Purchase Agreement, as supplemented by the Second Supplemental Indenture.

"**Transaction Party**" means the Company and each Guarantor, collectively, "**Transaction Parties**".

SECTION 2. Guaranty.

(a) The Guarantors, jointly and severally, hereby unconditionally and irrevocably, guaranty to the Collateral Agent, for the benefit of the Collateral Agent and the Noteholders, the punctual payment, as and when due and payable, by stated maturity or

otherwise, of all Obligations, including, without limitation, all interest, make-whole and other amounts that accrue after the commencement of any Insolvency Proceeding of the Company or any Guarantor, whether or not the payment of such interest, make-whole and/or other amounts are enforceable or are allowable in such Insolvency Proceeding, and all fees, interest, premiums, penalties, causes of actions, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under any of the Transaction Documents (all of the foregoing collectively being the "**Guaranteed Obligations**"), and agrees to pay any and all costs and expenses (including counsel fees and expenses) incurred by the Collateral Agent in enforcing any rights under this Guaranty. Without limiting the generality of the foregoing, each Guarantor's liability hereunder shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Company to the Collateral Agent or any Noteholder under the Securities Purchase Agreement and the Notes but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Transaction Party.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Collateral Agent and each Noteholder, hereby confirms that it is the intention of all such Persons that this Guaranty and the Guaranteed Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal, provincial, state, or other applicable law to the extent applicable to this Guaranty and the Guaranteed Obligations of each Guarantor hereunder. To effectuate the foregoing intention, by acceptance of the benefits of this Guaranty, the Collateral Agent, the Noteholders and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of each Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

SECTION 3. Guaranty Absolute; Continuing Guaranty; Assignments.

(a) The Guarantors, jointly and severally, guaranty that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Transaction Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Collateral Agent or any Noteholder with respect thereto. The obligations of each Guarantor under this Guaranty are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce such obligations, irrespective of whether any action is brought against any Transaction Party or whether any Transaction Party is joined in any such action or actions. The liability of any Guarantor under this Guaranty shall be as a primary obligor (and not merely as a surety) and shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives, to the extent permitted by law, any defenses (other than a defense of Payment in Full of the Guaranteed Obligations) it may now or hereafter have in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of any Transaction Document;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Transaction Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Transaction Party or extension of the maturity of any Guaranteed Obligations or otherwise;

(iii) any taking, exchange, release or non-perfection of any Collateral;

(iv) any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(v) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Transaction Party;

(vi) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Guaranteed Obligations or any other Obligations of any Transaction Party under the Transaction Documents or any other assets of any Transaction Party or any of its Subsidiaries;

(vii) any failure of the Collateral Agent or any Noteholder to disclose to any Transaction Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Transaction Party now or hereafter known to the Collateral Agent or any Noteholder (each Guarantor waiving any duty on the part of the Collateral Agent or any Noteholder to disclose such information);

(viii) the taking of any action in furtherance of the release of any Guarantor or any other Person that is liable for the Guaranteed Obligations from all or any part of any liability arising under or in connection with any Transaction Document without the prior written consent of the Collateral Agent; or

(ix) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Collateral Agent or any Noteholder that might otherwise constitute a defense available to, or a discharge of, any Transaction Party or any other guarantor or surety.

(b) This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Collateral Agent, any Noteholder, or any other Person upon the insolvency, bankruptcy or reorganization of any Transaction Party or otherwise, all as though such payment had not been made.

(c) This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until Payment in Full of the Guaranteed Obligations and shall not terminate for any reason prior to the respective Maturity Date of each Note (other than Payment in Full of the Guaranteed Obligations) and (ii) be binding upon each Guarantor and its respective successors and assigns. This Guaranty shall inure to the benefit of and be enforceable by the Collateral Agent, the Noteholders, and their respective successors, and permitted pledgees, transferees and

assigns. Without limiting the generality of the foregoing sentence, the Collateral Agent or any Noteholder may pledge, assign or otherwise transfer all or any portion of its rights and obligations under and subject to the terms of any Transaction Document to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Collateral Agent or such Noteholder (as applicable) herein or otherwise, in each case as provided in the Securities Purchase Agreement or such Transaction Document. None of the rights or obligations of any Guarantor hereunder may be assigned or otherwise transferred without the prior written consent of each Noteholder.

SECTION 4. Waivers. To the extent permitted by applicable law, each Guarantor hereby waives promptness, diligence, protest, notice of acceptance and any other notice or formality of any kind with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that the Collateral Agent exhaust any right or take any action against any Transaction Party or any other Person or any Collateral. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 4 is knowingly made in contemplation of such benefits. The Guarantors hereby waive any right to revoke this Guaranty, and acknowledge that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future. Without limiting the foregoing, to the extent permitted by applicable law, each Guarantor hereby unconditionally and irrevocably waives (a) any defense arising by reason of any claim or defense based upon an election of remedies by the Collateral Agent or any Noteholder that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Transaction Parties, any other guarantor or any other Person or any Collateral, and (b) any defense based on any right of set-off or counterclaim against or in respect of the Guaranteed Obligations of such Guarantor hereunder. Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Collateral Agent or any Noteholder to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Transaction Party or any of its Subsidiaries now or hereafter known by the Collateral Agent or an Noteholder.

SECTION 5. Subrogation. No Guarantor may exercise any rights that it may now or hereafter acquire against any Transaction Party or any other guarantor that arise from the existence, payment, performance or enforcement of any Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Collateral Agent or any Noteholder against any Transaction Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Transaction Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until there has been Payment in Full of the Guaranteed Obligations. If any amount shall be paid to a Guarantor in violation of the immediately preceding sentence at any time prior to Payment in Full of the Guaranteed Obligations and all other amounts payable under this Guaranty, such amount shall be held in trust for the benefit of the Collateral Agent and shall forthwith be paid to the Collateral Agent to be credited and applied to the Guaranteed

Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Transaction Document, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (a) any Guarantor shall make payment to the Collateral Agent of all or any part of the Guaranteed Obligations, and (b) there has been Payment in Full of the Guaranteed Obligations, the Collateral Agent will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

SECTION 6. Representations, Warranties and Covenants.

(a) Each Guarantor hereby represents and warrants as of the date first written above as follows:

(i) such Guarantor (A) is a corporation, limited liability company, limited partnership or other legal entity duly organized, validly existing and in good standing (to the extent that the concept of good standing exists) under the laws of the jurisdiction of its organization as set forth on the signature pages hereto, (B) has all requisite corporate, limited liability company, limited partnership or other legal entity power and authority to conduct its business as now conducted and as presently contemplated and to execute, deliver and perform its obligations under this Guaranty and each other Transaction Document to which such Guarantor is a party, and to consummate the transactions contemplated hereby and thereby and (C) is duly qualified to do business and is in good standing to the extent that the concept of good standing exists) 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 be so qualified (individually or in the aggregate) would not result in a Material Adverse Effect.

(ii) The execution, delivery and performance by such Guarantor of this Guaranty and each other Transaction Document to which such Guarantor is a party (A) have been duly authorized by all necessary corporate, limited liability company, limited partnership or other legal entity action, (B) do not and will not contravene its charter, articles, certificate of formation or by-laws, its limited liability company or operating agreement or its certificate of partnership or partnership agreement, or similar formation and organizational documents, as applicable, or any applicable law or any contractual restriction binding on such Guarantor or its properties do not and will not result in or require the creation of any lien, security interest or encumbrance (other than pursuant to any Transaction Document) upon or with respect to any of its properties, and (C) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to it or its operations or any of its properties, except any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal that would not result in a Material Adverse Effect.

(iii) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required in connection with the due execution, delivery and performance by such Guarantor of this Guaranty or any of the other

Transaction Documents to which such Guarantor is a party (other than as expressly provided for in any of the Transaction Documents).

(iv) This Guaranty has been duly executed and delivered by each Guarantor and is a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms, except as may be limited by the Bankruptcy Code or other applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

(v) There is no pending or, to the best knowledge of such Guarantor, threatened action, suit or proceeding against such Guarantor or to which any of the properties of such Guarantor is subject, before any court or other Governmental Authority or any arbitrator that (A) if adversely determined, could reasonably be expected to have a Material Adverse Effect or (B) relates to this Guaranty or any of the other Transaction Documents to which such Guarantor is a party or any transaction contemplated hereby or thereby.

(vi) Such Guarantor (A) has read and understands the terms and conditions of the Securities Purchase Agreement and the other Transaction Documents, and (B) now has and will continue to have independent means of obtaining information concerning the affairs, financial condition and business of the Company and the other Transaction Parties, and has no need of, or right to obtain from the Collateral Agent or any Noteholder, any credit or other information concerning the affairs, financial condition or business of the Company or the other Transaction Parties.

(b) Each Guarantor covenants and agrees that, until Payment in Full of the Guaranteed Obligations, it will comply with each of the covenants (except to the extent applicable only to a public company) which are set forth in Section 4 of the Securities Purchase Agreement as if such Guarantor were a party thereto.

SECTION 7. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent and any Noteholder may, and is hereby authorized to, at any time and from time to time, without prior notice to the Guarantors (any such notice being expressly waived by each Guarantor) and to the fullest extent permitted by law, set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Collateral Agent or any Noteholder to or for the credit or the account of any Guarantor against any and all obligations of the Guarantors now or hereafter existing under this Guaranty or any other Transaction Document, irrespective of whether or not the Collateral Agent or any Noteholder shall have made any demand under this Guaranty or any other Transaction Document and although such obligations may be contingent or unmatured. The Collateral Agent and each Noteholder agrees to notify the relevant Guarantor promptly after any such set-off and application made by the Collateral Agent or such Noteholder, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Collateral Agent or any Noteholder under this Section 7 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Collateral Agent or such Noteholder may have under this Guaranty or any other Transaction Document in law or otherwise.

SECTION 8. Limitation on Guaranteed Obligations.

(a) Notwithstanding any provision herein contained to the contrary, each Guarantor's liability hereunder shall be limited to an amount not to exceed as of any date of determination the greater of:

(i) the amount of all Guaranteed Obligations, plus interest thereon at the applicable Interest Rate as specified in the Note; and

(ii) the amount which could be claimed by the Collateral Agent from any Guarantor under this Guaranty without rendering such claim voidable or avoidable under the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, Guarantor's right of contribution and indemnification.

(b) Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guaranty hereunder or affecting the rights and remedies of the Collateral Agent or any Noteholder hereunder or under applicable law.

(c) No payment made by the Company, any Guarantor, any other guarantor or any other Person or received or collected by the Collateral Agent or any other Noteholder from the Company, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Guaranteed Obligations or any payment received or collected from such Guarantor in respect of the Guaranteed Obligations), remain liable for the Guaranteed Obligations up to the maximum liability of such Guarantor hereunder until after all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been Paid in Full.

SECTION 9. Austrian Capital Maintenance Restrictions.

(a) The liabilities and obligations of each Guarantor incorporated in Austria under any of the Transaction Documents shall be limited so that at no time the assumption or enforcement of a liability or obligation under any of the Transaction Documents would be required if this would violate mandatory Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*) pursuant to Austrian company law, in particular sections 82 et seq. of the Austrian Act on Limited Liability Companies (*GmbH-Gesetz*) and/or sections 52 et seq. (including, for the avoidance of doubt and without limitation, section 66a to the extent being directly or analogously applied) of the Austrian Stock Corporation Act (*Aktiengesetz*) (the "**Austrian Capital Maintenance Rules**").

(b) Should any liability and/or obligation of a Guarantor incorporated in Austria under the Transaction Documents violate or contradict Austrian Capital Maintenance Rules and should therefore be held invalid or unenforceable or should the assumption, creation

or enforcement of such liability and/or obligation expose any managing director or member of the supervisory board of the Guarantor incorporated in Austria, if applicable, to personal liability or criminal responsibility, then such liability and/or obligation shall be limited in accordance with the Austrian Capital Maintenance Rules and shall be deemed to be replaced by a liability and/or obligation of a similar nature which is in compliance with the Austrian Capital Maintenance Rules and which provides the best possible security interest in favour of the Collateral Agent, on behalf of the Noteholders. By way of example, should it be held that the security created under any Transaction Document contradicts the Austrian Capital Maintenance Rules in relation to any amount of the Guaranteed Obligations, the security created by the respective Transaction Document shall be reduced to such an amount of the Guaranteed Obligations which is permitted pursuant to the Austrian Capital Maintenance Rules.

(c) No reduction of the amount enforceable under any Transaction Document in accordance with the limitations set out in this Section 9 will prejudice the rights of the Collateral Agent or the Noteholders under any Transaction Document (subject always to the operation of the limitations set out in this Section 9 at the time of such enforcement) until full satisfaction of any guaranteed claims.

SECTION 10. Notices, Etc. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Guaranty must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by email or other electronic transmission (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 email could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an nationally recognized overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. All notices and other communications provided for hereunder shall be sent, if to any Guarantor, to the Company's address and/or email address, or if to the Collateral Agent or any Noteholder, to it at its respective address and/or email address, each as set forth in Section 9(f) of the Securities Purchase Agreement, but shall at any rate not be sent to an address, e-mail address or fax number with an Austrian nexus.

SECTION 11. Governing Law; Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Guaranty shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York. Each Guarantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, obligation or defense 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 Section 9(f) of the Securities Purchase Agreement

and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Guarantor in any other jurisdiction to collect on a Guarantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or an Noteholder.

SECTION 12. WAIVER OF JURY TRIAL, ETC. EACH GUARANTOR 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 GUARANTY, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

SECTION 13. Taxes.

(a) All payments made by any Guarantor 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 taxes imposed on the net income of the Collateral Agent or any Noteholder by the jurisdiction in which the Collateral Agent or such Noteholder is organized or where it has its principal lending office (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities, collectively or individually, "**Taxes**"). If any Guarantor 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:

(i) 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 the Collateral Agent or any Noteholder pursuant to this sentence) the Collateral Agent or each Noteholder receives an amount equal to the sum it would have received had no such deduction or withholding been made,

(ii) such Guarantor shall make such deduction or withholding,

(iii) such Guarantor shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law, and

(iv) as promptly as possible thereafter, such Guarantor shall send the Collateral Agent or each Noteholder an official receipt (or, if an official receipt is not available, such other documentation as shall be satisfactory to the Collateral Agent, as the case may be) showing payment. In addition, each Guarantor 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 Guaranty or any other Transaction Document (collectively, "**Other Taxes**").

(b) Each Guarantor hereby indemnifies and agrees to hold 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 13) 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 Guaranty 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 the Collateral Agent or such Noteholder makes written demand therefor, which demand shall identify the nature and amount of such Taxes or Other Taxes.

(c) If any Guarantor fails to perform any of its obligations under this Section 13, such Guarantor shall indemnify the Collateral Agent and each Noteholder for any taxes, interest or penalties that may become payable as a result of any such failure. The obligations of the Guarantors under this Section 13 shall survive the termination of this Guaranty and the payment of the Guaranteed Obligations and all other amounts payable hereunder.

SECTION 14. Right of Contribution.

(a) Each Guarantor agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made hereunder in respect of any Guaranteed Obligations of any other Guarantor, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor which has not paid its proportionate share of such payment.

(b) Each Guarantor's right of contribution under this Section 14 shall be subject to the terms and conditions of Section 5. The provisions of this Section 14 shall in no respect limit the obligations and liabilities of the Company or any other Guarantor to the Collateral Agent and the Noteholders, and each Guarantor shall remain jointly and severally liable to the Collateral Agent and the Noteholders for the full amount of the Guaranteed Obligations. Each Guarantor agrees to contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Noteholders under or in respect of the Transaction Documents.

SECTION 15. Indemnification.

(a) Without limitation of any other obligations of any Guarantor or remedies of the Collateral Agent or the Noteholders under this Guaranty or applicable law, each Guarantor shall, to the fullest extent permitted by law, indemnify, defend and save and hold harmless the Collateral Agent and each other Indemnitee (as defined in the Securities Purchase Agreement) to the same extent and subject to the same terms that the Company has agreed to indemnify the Indemnities under Section 9(k) of the Securities Purchase Agreement, which Section 9(k) is hereby incorporated by reference, *mutatis mutandis*.

(b) Each Guarantor hereby also agrees that none of the Indemnified Parties shall have any liability (whether direct or indirect, in contract, tort or otherwise) or any fiduciary duty or obligation to any of the Guarantors or any of their respective affiliates or any of their respective officers, directors, employees, agents and advisors, and each Guarantor hereby agrees not to assert any claim against any Indemnified Party on any theory of liability, for special, indirect, consequential, incidental or punitive damages arising out of or otherwise relating to the this Guaranty, the other Transaction Documents or any of the transactions contemplated hereby and thereby.

SECTION 16. Miscellaneous.

(a) Each Guarantor will make each payment hereunder in lawful money of the United States of America and in immediately available funds to the Collateral Agent or each Noteholder, at such address specified by the Collateral Agent or such Noteholder from time to time by notice to the Guarantors.

(b) No amendment or waiver of any provision of this Guaranty and no consent to any departure by any Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by each Guarantor, the Collateral Agent and each Noteholder, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of the Collateral Agent or any Noteholder to exercise, and no delay in exercising, any right or remedy hereunder or under any other Transaction Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder or under any Transaction Document preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies of the Collateral Agent and the Noteholders provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights and remedies of the Collateral Agent and the Noteholders under any Transaction Document against any party thereto are not conditional or contingent on any attempt by the Collateral Agent or any Noteholder to exercise any of their respective rights or remedies under any other Transaction Document against such party or against any other Person.

(d) Any provision of this Guaranty 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 portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(e) 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.

(f) This Guaranty and the other Transaction Documents reflect the entire understanding of the transaction contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, entered into before the date hereof.

(g) Section headings herein are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

SECTION 17. Currency Indemnity.

If, for the purpose of obtaining or enforcing judgment against Guarantor in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 17 referred to as the "**Judgment Currency**") an amount due under this Guaranty in any currency (the "**Obligation Currency**") other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date on which the judgment is given (such date being hereinafter in this Section 17 referred to as the "**Judgment Conversion Date**").

If, in the case of any proceeding in the court of any jurisdiction referred to in the preceding paragraph, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due in immediately available funds, the Guarantors shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. If the amount of the Judgment Currency actually paid is greater than the sum originally due to the Collateral Agent or any Noteholder in the Obligation Currency, the Collateral Agent or such Noteholder agrees to return the amount of any excess to the Company (or to any other Person who may be entitled thereto under applicable law). Any amount due from the Guarantors under this Section 17 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 Guaranty.

SECTION 18. Joinder of Additional Guarantors. Any Subsidiary of the Company may become a Guarantor under this Guaranty by executing and delivering to the Collateral Agent a joinder agreement in substantially the form attached hereto as Exhibit A.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be executed by its respective duly authorized officer, as of the date first above written.

GUARANTORS:

FISKER INC.

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GROUP INC.

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GMBH

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Director

TERRA ENERGY INC.

By: Geeta Gupta-Fisker (Dec 18, 2023 17:32 PST)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

PLATINUM IPR LLC

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: Authorized Officer

FISKER TN LLC

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: President

BLUE CURRENT HOLDING LLC

By: Dr. Geeta Gupta-Fisker
Name: Dr. Geeta Gupta-Fisker
Title: President

CVI INVESTMENTS, INC.,
as Collateral Agent
C/O Heights Capital Management, Inc., its authorized agent

By: _____
Name: Martin Kobinger
Title: President

EXHIBIT A

FORM OF JOINDER AGREEMENT

This Joinder Agreement (this "**Joinder**"), dated [●], 202[●], by and among Fisker Inc., a Delaware corporation (the "**Company**"), [●] (the "**Additional Guarantor**"), a [●] and a Subsidiary of the Company, and CVI Investments, Inc., in its capacity as collateral agent for the Noteholders (together with its successors and assigns, in such capacity, the "**Collateral Agent**") under that certain Guaranty, dated as of December 28, 2023, by and among the Company, the Collateral Agent and the other Guarantors party thereto (as may from time to time be amended, the "**Guaranty**"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Guaranty.

Pursuant to Section 18 of the Guaranty, by executing and delivering this Joinder, the Additional Guarantor hereby becomes a party to the Guaranty as a Guarantor thereunder with the same force and effect as if originally named as a Guarantor therein. Without limiting the generality of the foregoing, the Additional Guarantor, jointly and severally with all other Guarantors, hereby unconditionally and irrevocably, guaranties to the Collateral Agent, for the benefit of the Collateral Agent and the Noteholders, the punctual payment, as and when due and payable, by stated maturity or otherwise, of all Guaranteed Obligations.

Each of the Company and the Additional Guarantor represents and warrants to the Collateral Agent that (i) it has the requisite power and authority to enter into, deliver and perform its obligations under this Joinder and has taken all necessary action to authorize the execution, delivery and performance by it of this Joinder; (ii) this Joinder has been duly executed and delivered on behalf of each of the Company and the Additional Guarantor; and (iii) this Joinder constitutes a legal, valid and binding obligation of each of the Company and the Additional Guarantor, enforceable against such party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

[*Signature Pages Follow*]

FISKER INC.

By: _____
Name:
Title:

[ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

Acknowledged by:

CVI INVESTMENTS, INC.,
as Collateral Agent

By: _____
Name:
Title:

EXHIBIT G

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this "**IP Security Agreement**"), dated December 15, 2023, is made by the Persons listed on the signature pages hereof (collectively, the "**Grantors**") in favor of CVI Investments, Inc., in its capacity as collateral agent (the "**Collateral Agent**") for the Noteholders. All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Pledge Agreement (as defined below).

WHEREAS, Fisker Inc., a company organized under the laws of the State of Delaware (the "**Company**") and each party listed as a "Buyer" therein (collectively, the "**Buyers**") are parties to that certain Securities Purchase Agreement (as may be amended, modified, supplemented, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), dated July 11, 2023, pursuant to which the Company shall be required to sell, and the Buyers shall purchase or have the right to purchase, the "Notes" (as defined therein) issued pursuant thereto (as such Notes may be amended, modified, supplemented, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, pursuant to the terms of the Indenture certain Grantors have executed and delivered that certain Pledge Agreement, dated as of November 22, 2023, made by such Grantors to the Collateral Agent (as amended, modified, supplemented, renewed, restated or replaced from time to time, the "**Pledge Agreement**");

WHEREAS, under the terms of the Pledge Agreement, certain Grantors have granted to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a Lien on and security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities;

WHEREAS, each of Platinum IPR LLC and Terra Energy Inc. (the "**Additional Grantors**") are Affiliates that are part of a common enterprise such that each such Grantor will derive substantial direct and indirect financial and other benefits from the consummation of the transactions contemplated under the Securities Purchase Agreement and, accordingly, the consummation of such transactions are in the best interests of each such Grantor;

WHEREAS, the Additional Grantors desire to join the Pledge Agreement;

WHEREAS, the Grantors have determined that the execution, delivery and performance of this IP Security Agreement directly benefits, and is in the best interest of, the Grantors.

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Buyers to perform under the Securities Purchase Agreement, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows:

SECTION 1. Joinder. Concurrently with the execution and delivery of this IP Security Agreement, each Additional Grantor hereby becomes a party to the Pledge Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein.

SECTION 2. Grant of Security. As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent, its successors and permitted assigns, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under the following (the "**Collateral**"):

(i) the Patents and Patent applications set forth in Schedule A hereto;

(ii) the Trademark and service mark registrations and applications set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby;

(iii) all Copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including, without limitation, the copyright registrations and applications set forth in Schedule C hereto;

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all Proceeds, including without limitation Cash and Noncash Proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations (as each such capitalized term in this clause (vi) is defined in the Code) relating to, any and all of the collateral of or arising from any of the foregoing.

SECTION 3. Security for Obligations. The grant of a Lien on and security interest in, the Collateral by each Grantor under this IP Security Agreement constitutes continuing collateral security for the payment and performance of all Obligations of such Grantor now or

hereafter existing under or in respect of the Notes and the Transaction Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 4. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 5. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same agreement.

SECTION 6. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Pledge Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the Lien and security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Pledge Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 7. Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

FISKER INC.

By Geeta Gupta-Fisker
Geeta Gupta-Fisker (Dec 12, 2023 11:43 PST)
Name: Geeta Gupta-Fisker
Title: COO & CFO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER GROUP INC.

By Geeta Gupta-Fisker
Geeta Gupta-Fisker (Dec 12, 2023 11:43 PST)
Name: Geeta Gupta-Fisker
Title: COO & CFO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER GMBH

By Geeta Gupta-Fisker
Geeta Gupta-Fisker (Dec 12, 2023 11:43 PST)
Name: Geeta Gupta-Fisker
Title: Director

Address for Notices:

Liebenauer Hauptstraße 2-6
8041 Graz, Austria

PLATINUM IPR LLC

By Geeta Gupta-Fisker
Geeta Gupta-Fisker (Dec 12, 2023 11:43 PST)
Name: Geeta Gupta-Fisker
Title: COO & CFO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

TERRA ENERGY INC.

By Geeta Gupta-Fisker
Geeta Gupta-Fisker (Dec 12, 2023 11:43 PST)
Name: Geeta Gupta-Fisker
Title: COO & CFO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

Schedule A

Patents

Utility Patents and Patent Applications

HOST FILE NUMBER	COUNTRY	APPLICATION NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
20003-CON-1-US	US	17580376	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Pending	05/12/2022	20220144048		
20003-DIV-1-US	US	17580538	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Pending	05/12/2022	20220144049		
20003-DIV-2-US	US	17580474	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Pending	05/12/2022	20220144359		
21001-PCT	WO	PCTUS2221666	FRONT STORAGE AND REAR WINDOW GATE RETRACTION FEATURES	03/24/2022	Pending	09/29/2022	2022204361		

21002-CON-1-US	US	17455620	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	11/18/2021	Issued	11/03/2022	20220348079	October 11, 2022	11465502
21002-CON-2-US	US	17931076	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	09/09/2022	Allowed	01/05/2023	20230001792		
21002-NP-US	US	17245826	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/30/2021	Issued			January 11, 2022	11220182
21002-PCT	WO	PCTUS2227012	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/29/2022	Pending	11/03/2022	2022232562		
21003-PCT	WO	PCTUS2232892	METHODS AND SYSTEMS FOR DISPOSING CELLS	06/09/2022	Pending	12/15/2022	2022/261364		

21004-PCT	WO	PCTUS2278828	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	10/27/2022	Pending	05/04/2023	2023077035		
21012-PCT	WO	PCTUS2279728	SUN VISOR METHOD AND APPARATUS	11/11/2022	Pending	05/19/2023	2023086947		
22001-PCT	WO	PCTUS2361629	SYSTEMS, METHODS, AND DEVICES FOR GRAPHICAL USER INTERFACES	01/31/2023	Pending	08/03/2023	2023/147575		
20003-CN	CN	2021800806711	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	11/18/2021	Pending				
21002-CN	CN		ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/29/2022	Pending				
20003-EU	EP	EP218956241	AUTOMOBILE HAVING RETRACTABLE	11/18/2021	Pending				

			REAR QUARTER WINDOWS						
21002-EP	EP	227968435	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCHBAR	04/29/2022	Pending				
21004-NP-US	US	18034304	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	04/24/2023	Pending				
	US	16951981	Automobile having retractable rear quarter windows	11/18/2020	Issued	05/27/2021	2021-0155084	March 1, 2022	11260729

Design Patents and Patent Applications

HOST FILE NUMBER	COUNTRY	APPLICATION NUMBER	TITLE	DATE FILED	STATUS	PATENT NUMBER	GRANT DATE
	US	29512447	HEADLAMPS FOR A VEHICLE	12/18/2014	Issued	D760930	July 5, 2016
16002-D-US	US	29582466	AUTOMOTIVE VEHICLE	10/27/2016	Issued	D809972	February 13, 2018

17002-D-US	US	29627626	AUTOMOTIVE VEHICLE	11/28/2017	Issued	D832742	November 6, 2018
17003-D-US	US	29630931	AUTOMOTIVE VEHICLE	12/23/2017	Issued	D840874	February 19, 2019
18002-D-US	US	29664312	EXTERIOR LIGHTING FOR AN AUTOMOTIVE VEHICLE	09/24/2018	Issued	D869710	December 10, 2019
20001-D-US	US	29735838	AUTOMOTIVE VEHICLE BODY	05/25/2020	Issued	D944119	February 22, 2022
20004-D-US	US	29762488	WHEEL	12/16/2020	Issued	D970412	November 22, 2022
21006-D-US	US	29790197	VEHICLE STEERING WHEEL	11/10/2021	Issued	D991112	July 4, 2023
21008-D-US	US	29790238	DESIGN FOR WHEEL	11/12/2021	Issued	D1002483	October 24, 2023
21010-D-US	US	29790235	INSTRUMENT PANEL	11/12/2021	Issued	D1000338	October 3, 2023

Schedule B

Trademarks

COUNTRY	TITLE	APPLICATION NUMBER	DATE FILED	STATUS	REGISTRATION NUMBER	REGISTRATION DATE
AU	FISKER	1359523	05/04/2010	Registered	1359523	12/06/2012
AU	FISKER	1359524	05/04/2010	Registered	1359524	12/07/2010
AU	FISKER	1359525	05/04/2010	Registered	1359525	12/23/2010
AU	FISKER	1359527	05/04/2010	Registered	1359527	12/23/2010
AU	FISKER & Design	1053827	06/08/2010	Registered	1392175	06/24/2013
AU	FISKER & Design	1539118	05/19/2020	Registered	2100654	04/27/2022
BR	FISKER & Design (word and design)	830772294	10/19/2010	Registered	830772294	11/13/2018
BR	FISKER & Design (word and design)	830772308	10/19/2010	Registered	830772308	08/05/2014
BR	FISKER & Design (word and design)	830772316	10/19/2010	Registered	830772316	11/13/2018
BR	FISKER & Design (word and design)	830772324	10/19/2010	Registered	830772324	11/13/2018
BR	FISKER & Design	1539118	05/19/2020	Registered	1539118	05/19/2020
CA	FISKER	1479582	05/04/2010	Registered	TMA912350	08/25/2015
CA	FISKER & Design	1479583	05/04/2010	Registered	TMA912349	08/25/2015

CH	FISKER	554562010	05/31/2010	Registered	605443	09/16/2010
CH	FISKER	554572010	05/31/2010	Registered	605444	09/16/2010
CH	FISKER	554582010	05/31/2010	Registered	605226	09/14/2010
CH	FISKER	554592010	05/31/2010	Registered	605227	09/14/2010
CH	Fisker & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
CN	FISKER	8292870	05/13/2010	Registered	8292870	09/21/2011
CN	FISKER	8292871	05/13/2010	Registered	8292871	08/07/2011
CN	FISKER	8292886	05/13/2010	Registered	8292886	07/14/2011
CN	FISKER & Design	8292885	05/13/2010	Registered	8292885	07/14/2011
CN	FISKER & Design	8292887	05/13/2010	Registered	8292887	09/21/2011
CN	FISKER & Design	8292888	05/13/2010	Registered	8292888	08/07/2011
CN	FISKER	14055689	02/21/2014	Registered	14055689	06/21/2017
CN	FISKER in Chinese 菲斯科 (Fei Si Ke)	20532914	07/05/2016	Registered	20532914	08/28/2017
CN	FISKER	21186653	09/02/2016	Registered	21186653	06/14/2020
CN	FISKER & Design	1539118	05/19/2020	Total Provisional Refusal		
DK	FISKER & Design	1053827	06/08/2010	Registered	1053827	02/16/2012
DK	FISKER	VA201001883	06/14/2010	Registered	VR201002264	08/31/2010

DK	FISKER	VA201001884	06/14/2010	Registered	VR201002261	08/31/2010
DK	FISKER	VA201001885	06/14/2010	Registered	VR201002262	08/31/2010
DK	FISKER	VA201001886	06/14/2010	Registered	VR201002263	08/31/2010
EM	RONIN	018696994	05/04/2022	Pending		
EM	FISKER ALASKA	018933588	10/04/2023	Pending		
EM	FISKER & Design	969292	06/13/2008	Registered	969292	06/13/2008
EM	FISKER	9123589	05/21/2010	Registered	9123589	11/30/2010
EM	FISKER	9124066	05/21/2010	Registered	9124066	11/16/2010
EM	FISKER	9124108	05/21/2010	Registered	9124108	11/17/2010
EM	FISKER	9124124	05/21/2010	Registered	9124124	11/08/2010
EM	FISKER & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
EM	FISKER & Color Design	15232011	03/18/2016	Registered	15232011	07/28/2016
EM	FISKER EMOTION	016450249	03/09/2017	Registered	016450249	03/19/2019
EM	ORBIT	017655929	01/03/2018	Registered	017655929	06/14/2018
EM	FISKER & Design	1539118	05/19/2020	Registered	1539118	05/19/2020
EM	emotion	017655937	01/03/2018	Total Provisional Refusal		
GB	FISKER ALASKA	UK00003963965	10/04/2023	Pending		
GB	FISKER & Design	UK00800969292	06/13/2008	Registered	UK00800969292	08/10/2009

GB	FISKER	UK00909123589	05/21/2010	Registered	UK00909123589	11/30/2010
GB	FISKER	UK00909124066	05/21/2010	Registered	UK00909124066	11/16/2010
GB	FISKER	UK00909124108	05/21/2010	Registered	UK00909124108	11/17/2010
GB	FISKER	UK00909124124	05/21/2010	Registered	UK00909124124	11/08/2010
GB	FISKER & Design	UK00801053827	06/08/2010	Registered	UK00801053827	09/06/2011
GB	FISKER & Design (in color)	UK00915232011	03/18/2016	Registered	UK00915232011	07/28/2016
GB	FISKER EMOTION	00916450249	03/09/2017	Registered	00916450249	03/19/2019
GB	ORBIT	00917655929	01/03/2018	Registered	00917655929	06/14/2018
GB	FISKER & Design	UK00801539118	05/19/2020	Registered	UK00801539118	11/24/2020
HK	FISKER	301603016AA	04/30/2010	Registered	301603016AA	10/13/2010
HK	FISKER & Design	301603052AA	04/30/2010	Registered	301603052AA	11/09/2010
HR	FISKER & Design	1053827	06/08/2010	Registered	1053827	11/11/2010
HR	FISKER	Z20101111A	06/11/2010	Registered	Z20101111	07/15/2011
HR	FISKER	Z20101112A	06/11/2010	Registered	Z20101112	07/15/2011
HR	FISKER	Z20101113A	06/11/2010	Registered	Z20101113	07/15/2011
HR	FISKER	Z20101114A	06/11/2010	Registered	Z20101114	07/15/2011
IB	FISKER & Design	969292	06/13/2008	Registered	969292	06/13/2008
IB	FISKER & Design	1053827	06/08/2010	Registered	1053827	06/08/2010

IB	FISKER & Design	1539118	05/19/2020	Registered	1539118	05/19/2020
IN	FISKER	1961371	05/06/2010	Registered	1961371	04/15/2011
IN	FISKER	1961372	05/06/2010	Registered	1961372	04/15/2011
IN	FISKER	1961373	05/06/2010	Registered	1961373	02/29/2016
IN	FISKER	1961374	05/06/2010	Registered	1961374	04/18/2011
IN	FISKER & Design	1961367	05/06/2010	Registered	1961367	06/07/2013
IN	FISKER & Design	1961368	05/06/2010	Registered	1961368	04/15/2011
IN	FISKER & Design	1961369	05/06/2010	Registered	1961369	04/15/2011
IN	FISKER & Design	1961370	05/06/2010	Registered	1961370	04/18/2011
IN	FISKER & Design	1539118	05/19/2020	Registered	4557790	05/19/2020
JP	FISKER	201036753	05/12/2010	Registered	5364000	10/29/2010
JP	FISKER	201036754	05/12/2010	Registered	5352615	09/10/2010
JP	FISKER	201036755	05/12/2010	Registered	5347041	08/20/2010
JP	FISKER	201036756	05/12/2010	Registered	5352616	09/10/2010
JP	FISKER & Design	201036757	05/12/2010	Registered	5364001	10/29/2010
JP	FISKER & Design	201036758	05/12/2010	Registered	5352617	09/10/2010
JP	FISKER & Design	201036759	05/12/2010	Registered	5347042	08/20/2010
JP	FISKER & Design	201036760	05/12/2010	Registered	5352618	09/10/2010

JP	FISKER & Design	1539118	05/19/2020	Registered	1539118	05/19/2020
KR	FISKER	4020100023668	05/03/2010	Registered	4009042900000	02/13/2012
KR	FISKER	4120100011461	05/03/2010	Registered	4102256320000	02/02/2012
KR	FISKER	4120100011462	05/03/2010	Registered	4102224670000	12/05/2011
KR	FISKER	4120100011463	05/03/2010	Registered	4102186450000	10/07/2011
KR	FISKER & Design	4020100023669	05/03/2010	Registered	4009042510000	02/13/2012
KR	FISKER & Design	4120100011464	05/03/2010	Registered	4102256440000	02/02/2012
KR	FISKER & Design	4120100011465	05/03/2010	Registered	4102224960000	12/05/2011
KR	FISKER & Design	4120100011466	05/03/2010	Registered	4102256200000	02/02/2012
KR	FISKER & Design	4020207010728	05/19/2020	Registered	1539118	10/14/2021
MC	Fisker & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
MC	FISKER	29658	08/04/2010	Registered	1028061	09/01/2010
MC	FISKER	29659	08/04/2010	Registered	1028062	01/09/2010
MC	FISKER	29660	08/04/2010	Registered	1028063	09/01/2010
MC	FISKER	29661	08/04/2010	Registered	1028064	09/01/2010
MX	FISKER & Design	1539118	05/19/2020	Registered	2303671	09/27/2021
MX	FISKER	2581304	07/14/2021	Registered	2306179	09/30/2021
MX	FISKER	2581305	07/14/2021	Registered	2306180	09/30/2021

MX	FISKER	2581306	07/14/2021	Registered	2306181	09/30/2021
MX	FISKER	2581308	07/14/2021	Registered	2312883	10/20/2021
MX	FISKER & Design	2581310	07/14/2021	Registered	2314941	10/22/2021
MX	FISKER & Design	2581312	07/14/2021	Registered	2313371	10/20/2021
MX	FISKER & Design	2581314	07/14/2021	Registered	2312884	10/20/2021
MX	FISKER & Design	2581315	07/14/2021	Registered	2314942	10/22/2021
NO	FISKER	201004926	05/10/2010	Registered	259954	05/11/2011
NO	FISKER	201004927	05/10/2010	Registered	262954	12/09/2011
NO	Fisker	201004928	05/10/2010	Registered	256950	09/30/2010
NO	Fisker	201004929	05/10/2010	Registered	256951	09/30/2010
NO	FISKER & Design	1053827	06/08/2010	Registered	201011449	06/08/2010
NZ	FISKER	836427	01/27/2011	Registered	836427	07/27/2011
NZ	FISKER & Design	836423	01/27/2011	Registered	836423	07/27/2011
RS	FISKER & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
RS	FISKER	201001062	06/14/2010	Registered	63185	09/07/2011
RS	FISKER	201001063	06/14/2010	Registered	61934	11/19/2010
RS	FISKER	201001064	06/14/2010	Registered	61935	11/19/2010
RS	FISKER	201001065	06/14/2010	Registered	63236	09/19/2011

RU	FISKER	2010715114	05/07/2010	Registered	432836	03/21/2011
RU	FISKER	2010715115	05/07/2010	Registered	440975	07/13/2011
RU	FISKER	2010715116	05/07/2010	Registered	432837	03/21/2011
RU	FISKER	2010715118	05/07/2010	Registered	432838	03/21/2011
RU	Fisker & Design	1053827	06/08/2010	Registered	1053827	09/15/2011
RU	FISKER & Design	1539118	05/19/2020	Registered	1539118	10/20/2020
SG	FISKER	T1005806E	05/07/2010	Registered	T1005806E	08/06/2010
SG	FISKER	T1005807C	05/07/2010	Registered	T1005807C	11/24/2010
SG	FISKER	T1005808A	05/07/2010	Registered	T1005808A	08/12/2010
SG	FISKER	T1005809Z	05/07/2010	Registered	T1005809Z	02/21/2011
SG	FISKER & Design	1053827	06/08/2010	Registered	T1014558H	09/20/2011
TR	FISKER & Design	1053827	06/08/2010	Registered	201074355	08/10/2012
TR	FISKER	201054305	08/19/2010	Registered	201054305	10/20/2011
TR	FISKER	201054306	08/19/2010	Registered	201054306	10/20/2011
TR	FISKER	201054307	08/19/2010	Registered	201054307	03/01/2012
TR	FISKER	201054308	08/19/2010	Registered	201054308	03/01/2012
UA	Fisker & Design	1053827	06/08/2010	Registered	1053827	06/08/2010
UA	FISKER	m201008966	06/10/2010	Registered	140078	06/10/2011

UA	FISKER	m201008967	06/10/2010	Registered	140079	06/10/2011
UA	FISKER	m201008968	06/10/2010	Registered	140080	06/10/2011
UA	FISKER	m201008969	06/10/2010	Registered	140081	06/10/2011
US	FISKER	85024473	04/27/2010	Registered	3896838	12/28/2010
US	FISKER	85024490	04/27/2010	Registered	4168418	07/03/2012
US	FISKER	85024495	04/27/2010	Registered	4246405	11/20/2012
US	FISKER & Design	85024481	04/27/2010	Registered	3880033	11/23/2010
US	FISKER & Design	85024509	04/27/2010	Registered	4242403	11/13/2012
US	FISKER & Design	85024511	04/27/2010	Registered	4168419	07/03/2012
US	FISKER	87011307	04/22/2016	Registered	6013877	03/17/2020
US	FISKER & Design	87022120	05/02/2016	Registered	5247488	07/18/2017
US	FISKER & Design	87022124	05/02/2016	Registered	5262153	08/08/2017
US	FISKER & Design	87022125	05/02/2016	Registered	5242662	07/11/2017
US	EMOTION (Stylized)	87518475	07/06/2017	Registered	5517053	07/17/2018
US	FISKER & Design	88657179	10/16/2019	Registered	6171096	10/06/2020
US	FISKER OCEAN	88668176	10/24/2019	Registered	7176431	09/26/2023
US	FI-PILOT	90445783	01/02/2021	Registered	7219211	11/14/2023
US	FISKER	85012432	04/13/2010	Registered	3899607	01/04/2011

VN	FISKER design	4201939679	09/10/2019	Pending		
ZA	FISKER	201009117	04/30/2010	Registered	201009117	10/25/2013
ZA	FISKER	201009120	04/30/2010	Registered	201009120	06/14/2012
ZA	FISKER	201009121	04/30/2010	Registered	201009121	06/14/2012
ZA	FISKER	201009122	04/30/2010	Registered	201009122	06/14/2012
ZA	FISKER	201009123	04/30/2010	Registered	201009123	06/14/2012
ZA	FISKER & Design	201009116	04/30/2010	Registered	201009116	10/25/2013
ZA	FISKER & Design	201009118	04/30/2010	Registered	201009118	10/25/2013
ZA	FISKER & Design	201009119	04/30/2010	Registered	201009119	10/25/2013

Schedule C

Copyrights

Grantor	Country	Title	Type of Work	Application or Registration No.	Issue Date
Fisker Inc.	US	Fisker Ocean Ultra.	Visual Material	VA0002295401	01/26/2022
Fisker Inc.	US	FISKER LOGO	Visual Material	VA0002266552	08/24/2021

EXHIBIT G-1

THIS DOCUMENT WAS EXECUTED OUTSIDE OF AUSTRIA. THE TAKING OF THIS DOCUMENT OR ANY CERTIFIED COPY OF IT OR ANY DOCUMENT WHICH CONSTITUTES SUBSTITUTE DOCUMENTATION FOR IT, OR ANY DOCUMENT WHICH INCLUDES WRITTEN CONFIRMATIONS OR REFERENCES TO IT, INTO AUSTRIA AS WELL AS PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO THIS DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO ANY TRANSACTION DOCUMENT TO AN AUSTRIAN ADDRESSEE MAY CAUSE THE IMPOSITION OF AUSTRIAN STAMP DUTY. ACCORDINGLY, KEEP THE ORIGINAL DOCUMENT AS WELL AS ALL CERTIFIED COPIES THEREOF AND WRITTEN AND SIGNED REFERENCES TO IT OUTSIDE OF AUSTRIA AND AVOID PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO ANY TRANSACTION DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO THIS DOCUMENT TO AN AUSTRIAN ADDRESSEE.

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this "**IP Security Agreement**"), dated January 31, 2024, is made by the Persons listed on the signature pages hereof (each, a "**Grantor**" and, collectively, the "**Grantors**") in favor of CVI Investments, Inc., in its capacity as collateral agent (together with its successors and permitted assigns, the "**Collateral Agent**") for the Noteholders. All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Security Agreement (as defined below).

WHEREAS, Fisker Inc., a company organized under the laws of the State of Delaware (the "**Company**"), is party to that certain Securities Purchase Agreement, dated as of July 10, 2023 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as an "Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, pursuant to the terms of the Indenture, each Grantor has executed and delivered that certain Amended and Restated Security and Pledge Agreement, dated as of December 28, 2023, made by the Grantors to the Collateral Agent (as amended, modified, supplemented, renewed, restated or replaced from time to time, the "**Security Agreement**");

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a Lien on and security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the

U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities; and

WHEREAS, the Grantors have determined that the execution, delivery and performance of this IP Security Agreement directly benefits, and is in the best interest of, the Grantors.

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows

SECTION 1. Grant of Security. As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under the following (the "**Collateral**"):

(i) the Patents and Patent applications set forth in Schedule A hereto;

(ii) the Trademark and service mark registrations and applications set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby;

(iii) all Copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including, without limitation, the copyright registrations and applications set forth in Schedule C hereto;

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all Proceeds, including without limitation Cash and Noncash Proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations (as provided in the Code) relating to, any and all of the collateral of or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a Lien on and security interest in, the Collateral by each Grantor under this IP Security Agreement constitutes continuing collateral security for the payment and performance of all Obligations of such Grantor now or

hereafter existing under or in respect of the Notes and the Transaction Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same agreement.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the Lien and security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

FISKER INC.

By _____
Name: Dr. Geeta Gupta-Fisker
Title: CFO & COO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER GROUP INC.

By _____
Name: Dr. Geeta Gupta-Fisker
Title: CFO & COO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER GMBH

By _____
Name: Dr. Geeta Gupta-Fisker
Title: Director

Address for Notices:

Liebenauer Hauptstraße 2-6
8041 Graz, Austria

PLATINUM IPR LLC

By _____
Name: Dr. Geeta Gupta-Fisker
Title: Authorized Officer

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

TERRA ENERGY INC.

By _____
Name: Dr. Geeta Gupta-Fisker
Title: CFO & COO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER EN LLC

By _____
Name: Dr. Geeta Gupta-Fisker
Title: President

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

BLUE CURRENT HOLDING LLC

By _____
Name: Dr. Geeta Gupta-Fisker
Title: President

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

Schedule A

Patents

Utility Patents and Patent Applications

COUNTRY	APPLICATION NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
US	18471428	VEHICLE HAVING RETRACTABLE REAR GATE	09/21/2023	Published	01/11/2024	N/A	N/A	N/A
US	18473095	VEHICLE HAVING FRONT STORAGE	09/22/2023	Published	01/11/2024	N/A	N/A	N/A

Design Patents and Patent Applications

N/A

Schedule B

Trademarks

COUNTRY	TITLE	APPLICATION NUMBER	DATE FILED	STATUS	REGISTRATION NUMBER	REGISTRATION DATE
EM	KAYAK (Stylized)	018952135	11/16/2023	Published	N/A	N/A
CA	FISKER ALASKA	2296295	11/30/2023	Pending	N/A	N/A
IB	FISKER OCEAN	A0143132	01/11/2024	Pending	N/A	N/A
GB	KAYAK (Stylized)	UK00003980550	11/16/2023	Published	N/A	N/A

Schedule C

Copyrights

N/A

EXHIBIT G-2

THIS DOCUMENT WAS EXECUTED OUTSIDE OF AUSTRIA. THE TAKING OF THIS DOCUMENT OR ANY CERTIFIED COPY OF IT OR ANY DOCUMENT WHICH CONSTITUTES SUBSTITUTE DOCUMENTATION FOR IT, OR ANY DOCUMENT WHICH INCLUDES WRITTEN CONFIRMATIONS OR REFERENCES TO IT, INTO AUSTRIA AS WELL AS PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO THIS DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO ANY TRANSACTION DOCUMENT TO AN AUSTRIAN ADDRESSEE MAY CAUSE THE IMPOSITION OF AUSTRIAN STAMP DUTY. ACCORDINGLY, KEEP THE ORIGINAL DOCUMENT AS WELL AS ALL CERTIFIED COPIES THEREOF AND WRITTEN AND SIGNED REFERENCES TO IT OUTSIDE OF AUSTRIA AND AVOID PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO ANY TRANSACTION DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO THIS DOCUMENT TO AN AUSTRIAN ADDRESSEE.

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this "**IP Security Agreement**"), dated March 29, 2024, is made by the Persons listed on the signature pages hereof (each, a "**Grantor**" and, collectively, the "**Grantors**") in favor of CVI Investments, Inc**.**, in its capacity as collateral agent (together with its successors and permitted assigns, the "**Collateral Agent**") for the Noteholders. All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Security Agreement (as defined below).

WHEREAS, Fisker Inc., a company organized under the laws of the State of Delaware (the "**Company**"), is party to that certain Securities Purchase Agreement, dated as of July 10, 2023 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as an "Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, the Company is party to that Indenture, dated as of July 11, 2023, by and between the Company and Wilmington Savings Fund Society, FSB, as trustee (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Indenture**"), providing for the issuance from time to time of Securities (as defined in the Indenture) by the Company;

WHEREAS, pursuant to the terms of the Indenture, each Grantor has executed and delivered that certain Amended and Restated Security and Pledge Agreement, dated as of December 28, 2023, made by the Grantors to the Collateral Agent (as amended, modified, supplemented, renewed, restated or replaced from time to time, the "**Security Agreement**");

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a Lien on and security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the

U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities; and

WHEREAS, the Grantors have determined that the execution, delivery and performance of this IP Security Agreement directly benefits, and is in the best interest of, the Grantors.

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows

SECTION 1. Grant of Security. As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under the following (the "**Collateral**"):

(i) the Patents and Patent applications set forth in Schedule A hereto;

(ii) the Trademark and service mark registrations and applications set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby;

(iii) all Copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including, without limitation, the copyright registrations and applications set forth in Schedule C hereto;

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all Proceeds, including without limitation Cash and Noncash Proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations (as provided in the Code) relating to, any and all of the collateral of or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a Lien on and security interest in, the Collateral by each Grantor under this IP Security Agreement constitutes continuing collateral security for the payment and performance of all Obligations of such Grantor now or

hereafter existing under or in respect of the Notes and the Transaction Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same agreement.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the Lien and security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

FISKER INC.

By _____
Name: Dr. Geeta Gupta-Fisker
Title: CFO & COO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER GROUP INC.

By _____
Name: Dr. Geeta Gupta-Fisker
Title: CFO & COO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER GMBH

By _____
Name: Dr. Geeta Gupta-Fisker
Title: Director

Address for Notices:

Liebenauer Hauptstraße 2-6
8041 Graz, Austria

PLATINUM IPR LLC

By _____
Name: Dr. Geeta Gupta-Fisker
Title: Authorized Officer

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

TERRA ENERGY INC.

By _____
Name: Dr. Geeta Gupta-Fisker
Title: CFO & COO

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

FISKER TN LLC

By _____
Name: Dr. Geeta Gupta-Fisker
Title: President

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

BLUE CURRENT HOLDING LLC

By _____
Name: Dr. Geeta Gupta-Fisker
Title: President

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

Address for Notices:

1888 Rosecrans Avenue
Manhattan Beach, CA 90266

Schedule A

Patents

Utility Patents and Patent Applications

COUNTRY	APPLICATION NUMBER	TITLE	DATE FILED	STATUS	PUBLICATION DATE	PUBLICATION NUMBER	GRANT DATE	PATENT NUMBER
US	18471428	VEHICLE HAVING RETRACTABLE REAR GATE	09/21/2023	Published	01/11/2024	N/A	N/A	N/A
US	18473095	VEHICLE HAVING FRONT STORAGE	09/22/2023	Published	01/11/2024	N/A	N/A	N/A

Design Patents and Patent Applications

N/A

Schedule B

Trademarks

COUNTRY	TITLE	APPLICATION NUMBER	DATE FILED	STATUS	REGISTRATION NUMBER	REGISTRATION DATE
EM	KAYAK (Stylized)	018952135	11/16/2023	Published	N/A	N/A
CA	FISKER ALASKA	2296295	11/30/2023	Pending	N/A	N/A
IB	FISKER OCEAN	A0143132	01/11/2024	Pending	N/A	N/A
GB	KAYAK (Stylized)	UK00003980550	11/16/2023	Published	UK00003980550	2/16/2024

Schedule C

Copyrights

N/A

EXHIBIT H

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 12:45 PM 12/28/2023
U.C.C. Initial Filing No: 2023 8787425

Service Request No: 20234355103

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Blue Current Holding LLC

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc.

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, Inc., 101 California St, Suite 3250	San Francisco	CA	94111	US

4. COLLATERAL: This financing statement covers the following collateral:

All assets, now existing or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
Delaware Secretary of State 34928.46

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 11:41 AM 11/22/2023
U.C.C. Initial Filing No: 2023 7954810

Service Request No: 20234041280

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
Fisker Group Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
CVI Investments, Inc.

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, Inc., 101 California St, Suite 3250	San Francisco	CA	94111	US

4. COLLATERAL: This financing statement covers the following collateral:

All personal property and assets of the Debtor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible and all proceeds, including all cash proceeds and noncash proceeds, and products of any and all of the foregoing, except for Excluded Property, as such term is defined in that certain Pledge Agreement by and among the Debtor, the Grantors that are a party thereto and the Secured Party, dated as of November 22, 2023, as amended from time to time.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
To be filed with the Delaware Secretary of State

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 12:42 PM 12/28/2023
U.C.C. Initial Filing No: 2023 8787193

Service Request No: 20234355015

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Fisker Group Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc.

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, Inc., 101 California St, Suite 3250	San Francisco	CA	94111	US

4. COLLATERAL: This financing statement covers the following collateral:

All assets, now existing or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
Delaware Secretary of State 34928.46

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 11:37 AM 11/22/2023
U.C.C. Initial Filing No: 2023 7954604

Service Request No: 20234041197

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if 2ny p2rt of the /ndiEidD2l - e3tor's n2me will not fit in line 13, le2Ee 2ll of item 1 3l2nk, check here ☐ 2nd proEide the /ndiEidD2l - e3tor inform2tion in item 10 of the Fin2ncin8 0t2tement AddendDm (Form 1 CC1Ad)

1a. ORGANIZATION'S NAME
Fisker Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if 2ny p2rt of the /ndiEidD2l - e3tor's n2me will not fit in line 23, le2Ee 2ll of item 2 3l2nk, check here ☐ 2nd proEide the /ndiEidD2l - e3tor inform2tion in item 10 of the Fin2ncin8 0t2tement AddendDm (Form 1 CC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
CVI Investments, Inc.

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, Inc.,101 California St, Suite 3250	San Francisco	CA	94111	US

4. COLLATERAL: This financing statement covers the following collateral:

All personal property and assets of the Debtor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible and all proceeds, including all cash proceeds and noncash proceeds, and products of any and all of the foregoing, except for Excluded Property, as such term is defined in that certain Pledge Agreement by and among the Debtor, the Grantors that are a party thereto and the Secured Party, dated as of November 22, 2023, as amended from time to time.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
To be filed with the Delaware Secretary of State

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 12:47 PM 12/28/2023
U.C.C. Initial Filing No: 2023 8787573

Service Request No: 20234355146

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Fisker Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc.

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, Inc., 101 California St, Suite 3250	San Francisco	CA	94111	US

4. COLLATERAL: This financing statement covers the following collateral:

All assets, now existing or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
Delaware Secretary of State 34928.46

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 12:43 PM 12/28/2023
U.C.C. Initial Filing No: 2023 8787300

Service Request No: 20234355056

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: PLATINUM IPR LLC

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc.

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, Inc., 101 California St, Suite 3250	San Francisco	CA	94111	US

4. COLLATERAL: This financing statement covers the following collateral:

All assets, now existing or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
Delaware Secretary of State 34928.46

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 12:39 PM 12/28/2023
U.C.C. Initial Filing No: 2023 8787086

Service Request No: 20234354934

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Terra Energy Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc.

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, Inc., 101 California St, Suite 3250	San Francisco	CA	94111	US

4. COLLATERAL: This financing statement covers the following collateral:

All assets, now existing or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
Delaware Secretary of State 34928.46

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

Doc #: 2023104703
11/22/2023 11:39 AM

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901
Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Fisker GmbH					
OR 1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX	
1c. MAILING ADDRESS: Liebenauer Hauptstraße 2-6	CITY: Graz	STATE	POSTAL CODE: 8041	COUNTRY: AT	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR 2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc.				
OR 3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS: c/o Heights Capital Management, Inc.,101 California St, Suite 3250	CITY: San Francisco	STATE: CA	POSTAL CODE: 94111	COUNTRY: US

4. COLLATERAL: This financing statement covers the following collateral:

All personal property and assets of the Debtor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible and all proceeds, including all cash proceeds and noncash proceeds, and products of any and all of the foregoing, except for Excluded Property, as such term is defined in that certain Pledge Agreement by and among the Debtor, the Grantors that are a party thereto and the Secured Party, dated as of November 22, 2023, as amended from time to time.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
To be filed in Washington D.C.

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

Doc #: 2023115831
12/28/2023 12:57 PM

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Kelley Drye & Warren LLP
201 Broad Street, 8th Floor
Stamford, CT 06901 Attention: Wendy Clarke

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Fisker GmbH					
OR 1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX	
1c. MAILING ADDRESS: Liebenauer Haupstraße 2-6	CITY: Graz	STATE	POSTAL CODE: 8041	COUNTRY: AT	

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR 2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc.				
OR 3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS: c/o Heights Capital Management, Inc., 101 California Street, Suite 3250	CITY: San Francisco	STATE: CA	POSTAL CODE: 94111	COUNTRY: US

4. **COLLATERAL:** This financing statement covers the following collateral:

All assets, now existing or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

File in Washington D.C.

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

EXHIBIT I

CONTROL AGREEMENT

AGREEMENT dated as of January 23, 2024, by and among SS&C GIDS, INC., as transfer agent ("Transfer Agent") of JPMorgan Prime Money Market Fund and each of the other JPMorgan Mutual Funds (individually, "Fund", collectively, "Funds"), CVI Investments, Inc. ("Collateral Agent") and Fisker Group Inc. ("Borrower"). The parties hereby agree as follows:

PREAMBLE:

1. Funds have issued, and may in the future issue additional, uncertificated shares registered in the name of Borrower (the "Shares") and Transfer Agent has established the account number 5024563 on the books and records of the Transfer Agent to reflect record ownership of the Shares in the name of Borrower (such accounts as may from time to time be established, collectively, the "Accounts").

2. Borrower has granted Collateral Agent a security interest in the Shares and the Accounts pursuant to a separate agreement.

3. Collateral Agent, Borrower and Transfer Agent are entering into this Agreement to provide for the control of the Shares and the Accounts and to perfect the security interest of Collateral Agent in the Shares and the Accounts.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. The Shares and the Accounts. Transfer Agent is instructed by the Funds to execute this Agreement and to provide the services contemplated hereby. In consideration of such instruction, Transfer Agent hereby represents and warrants to Collateral Agent and Borrower that: (a) Transfer Agent is the transfer agent for the Funds; (b) the Shares are registered in the name of Borrower; (c) the Accounts are maintained in the name of Borrower; (d) the Transfer Agent is organized under the laws of the Commonwealth of Massachusetts; and (e) except for the claims and interest of Collateral Agent and Borrower in the Shares and the Accounts (and subject to any rights of the Funds and the Transfer Agent under applicable law), Funds and Transfer Agent do not have any actual knowledge of any claim to or interest in the Shares or the Accounts.

Section 2. Priority of Lien. Transfer Agent is hereby advised that by separate agreement, Borrower has granted Collateral Agent a security interest in the Shares and the Accounts and all proceeds, substitutions and replacements thereof. Transfer Agent will not agree with any third party that it will comply with instructions concerning the Shares or the Accounts originated by such third party without the prior written consent of Collateral Agent and Borrower, unless otherwise required by law, rule or regulation or pursuant to governmental or court order, process or subpoena. Collateral Agent hereby acknowledges that (a) the Transfer Agent has made no representations or offered any opinions as to the legal effectiveness of this Agreement to establish a security interest or control over the Shares or the Accounts and (b) Collateral Agent and Borrower accept full responsibility for the legal effectiveness of this document to effectuate its purposes and to fulfill its intended purpose.

Section 3. Control. (a) Except as otherwise provided in Section 2 above and this Section 3, Transfer Agent is authorized to and shall redeem Shares at the instruction of Borrower, or its authorized representatives pursuant to the Transfer Agency Agreement with the Funds, until such time as a notice purporting to be signed by Collateral Agent in substantially the form of Exhibit A, attached hereto, with a copy of this Agreement attached thereto (a "Notice of Exclusive Control"), is actually received by any one of the individual employee(s) of Transfer Agent to whom the notice is required hereunder to be addressed (or, if any such employee is no longer an employee or no longer has direct responsibility for the Borrower or the Accounts, the employee succeeding to such individual's duties and responsibilities with the respect to the Borrower or the Accounts) and one of such employees or successor employees has notified the Collateral Agent by phone (including during a phone call initiated by the Collateral Agent) or facsimile of his or her receipt of the Notice of Exclusive Control ("Receive" or "Received") and the Notice of Exclusive Control becomes effective, as set forth in clause (b) below. The Transfer Agent agrees to promptly provide Collateral Agent a confirmation of the receipt of any such Notice of Exclusive Control. After the Notice of Exclusive Control shall be Received and shall become effective in accordance with clause (b) below each Fund (acting through the Transfer Agent or any successor transfer agent) shall comply with all instructions in accordance with the Notice of Exclusive Control. Transfer Agent is hereby authorized to and will cease complying with instructions concerning the Shares and the Accounts originated by Borrower or its representatives and is hereby authorized to and will comply with instructions originated by Collateral Agent concerning the Shares and the Accounts, without further consent by or notice to Borrower. Any and all cash payments of dividends and capital gains received on any Shares shall be re-invested in Shares. Borrower may exercise voting and/or consent rights with respect to the Shares and the Accounts until Transfer Agent shall Receive a Notice of Exclusive Control from Collateral Agent.

(b) Any Notice of Exclusive Control Received by Transfer Agent shall not be deemed effective until four hours after it is Received by Transfer Agent; provided, however, that any Notice of Exclusive Control Received by Transfer Agent after 4:00 p.m. New York City time on any Business Day shall not be deemed effective until 10:00 a.m. New York City time on the next succeeding Business Day. A Notice of Exclusive Control deemed effective as set forth in the prior sentence is referred to herein as "Effective." "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks and registered broker-dealers in New York City, New York and in Newark, Delaware are authorized or required to be closed.

(c) Notwithstanding the foregoing, (i) all transactions relating to the Shares and the Accounts consummated, input into the Transfer Agent's recordkeeping and transaction processing system (or its auxiliary systems) or processed by Transfer Agent prior to a Notice of Exclusive Control becoming Effective (or commenced by Transfer Agent prior to a Notice of Exclusive Control becoming Effective and consummated or processed thereafter) shall be deemed not to constitute a violation of this Agreement and (ii) Transfer Agent may (at its discretion and without any obligation to do so) (x) cease honoring Borrower's instructions and/or commence honoring solely Collateral Agent's instructions concerning the Shares and the Accounts at any time or from time to time after it becomes aware that Collateral Agent has sent to it a Notice of Exclusive Control (including without limitation reversing or redirecting any transaction referred to in clause (i) above), whether or not the Notice of Exclusive Control has become Effective, or (y) deem a Notice of Exclusive Control to be Received by it for purposes of the foregoing paragraph if such Notice of Exclusive Control contains minor mistakes or irregularities but otherwise substantially complies with the form attached hereto as Exhibit A or does not attach an appropriate copy of this Agreement, with no liability whatsoever to Borrower or any other party for doing so.

(d) Upon executing this Agreement, Collateral Agent shall provide Transfer Agent with documentation in substantially the form of Exhibit B attached hereto ("Authorized Signers Exhibit") to establish the identity and authority of the individuals who may sign any such Notice of Exclusive Control or other issuing instructions in respect of the Shares and the Accounts on behalf of Collateral Agent, it being understood

that, in the Transfer Agent's discretion, a purported Notice of Exclusive Control may be deemed unauthorized if not executed by an officer of Collateral Agent acting in such capacity. If, at the time of Collateral Agent's issuance of a Notice of Exclusive Control, the individual signing on behalf of Collateral Agent is not an individual identified on the Authorized Signer Exhibit, Collateral Agent shall provide Transfer Agent with an updated Authorized Signer Exhibit and any such documentation as Transfer Agent may reasonably request to establish the identity and authority of the individuals who may sign any such Notice of Exclusive Control or other issuing instructions in respect of the Shares and the Accounts on behalf of Collateral Agent.

Section 4. Statements, Confirmations and Notices of Adverse Claims. Transfer Agent is hereby authorized to and will mark its books and records to indicate that the Shares in the Accounts have been pledged to Collateral Agent by, upon execution of this Agreement, inserting in the Account registration after the Borrower's name, the phrase "Pledged but not restricted". Upon Receipt of an Effective Notice of Exclusive Control, Transfer Agent shall replace the foregoing by the phrase "Pledged to and controlled by Collateral Agent" and place a "stop transfer" on the Account. Transfer Agent will send copies of all statements, confirmations and other correspondence concerning the Shares and the Accounts simultaneously to each of Borrower and Collateral Agent at the address set forth in Section 14 of this Agreement. If any person asserts any lien, encumbrance or adverse claim against the Shares or the Accounts, Transfer Agent will (to the extent permitted by law and only after the employees responsible for the direct interaction with Borrower concerning the Shares and the Accounts become aware thereof) promptly notify Collateral Agent and Borrower thereof.

Section 5. Responsibility of Transfer Agent. (a) None of Transfer Agent or any of the Funds shall have any responsibility or liability to Collateral Agent for redeeming or purchasing Shares at the direction of Borrower, or its authorized representatives, or complying with instructions from Borrower, or its authorized representatives, concerning the Shares and/or the Accounts so long as such transactions shall be in compliance with Section 3 above. None of Transfer Agent or any of the Funds shall have any responsibility or liability to Borrower for complying with a Notice of Exclusive Control (whether or not Effective) or complying with instructions concerning the Accounts and/or Shares originated by Collateral Agent. It is hereby acknowledged and agreed that Transfer Agent has no knowledge of (and is not required to know) the terms and provisions of the separate agreement referred to in Section 2 above or any other related documentation or whether any actions by the Collateral Agent (including without limitation the sending of a Notice of Exclusive Control), Borrower or any other person or entity are permitted or a breach thereunder or consistent or inconsistent therewith.

(b) Notwithstanding anything to the contrary in this Agreement: (i) Transfer Agent shall have only the duties and responsibilities with respect to the matters set forth herein as is expressly set forth in writing herein and shall not be deemed to be an agent, bailee or fiduciary for any party hereto; (ii) Transfer Agent shall not be liable to any party hereto or any other person for any action or failure to act under or in connection with this Agreement except to the extent such conduct constitutes its own willful misconduct or gross negligence (and to the maximum extent permitted by law, shall under no circumstances be liable for any incidental, indirect, special, consequential or punitive damages); in addition, and notwithstanding the foregoing Transfer Agent shall have no liability whatsoever to any party hereto or any other person or entity for failing to honor or otherwise act upon any instruction (other than a Notice of Exclusive Control Received by the Transfer Agent) given by the Collateral Agent to the Transfer Agent prior to a Notice of Exclusive Control becoming Effective; and (iii) Transfer Agent shall not be liable for losses or delays caused by force majeure, interruption or malfunction of computer, transmission or communications facilities, labor difficulties, court order or decree, the commencement of bankruptcy or other similar proceedings or other matters beyond Transfer Agent's reasonable control.

(c) Borrower hereby agrees to indemnify, defend and hold harmless Transfer Agent and each of the Funds (each an "Indemnified Party") against any loss, liability or expense (including reasonable attorney fees and disbursements) (collectively, "Covered Items") incurred in connection with this Agreement, the Shares or the Account (except to the extent due to such Indemnified Party's willful misconduct or gross negligence) or in connection with any interpleader proceeding relating thereto or incurred at Borrower's direction or instruction.

(d) Collateral Agent hereby agrees to indemnify, defend and hold harmless each Indemnified Party against any Covered Items incurred (i) on or after a Notice of Exclusive Control becomes Effective in connection with this Agreement, the Shares or the Account (except to the extent due to such Indemnified Party's willful misconduct or gross negligence) or in connection with any interpleader proceeding relating to the Shares or the Account or (ii) at Collateral Agent's direction or instruction at any time (including without limitation Transfer Agent's honoring of a Notice of Exclusive Control).

Section 6. Tax Reporting. All items of income, gain, expense and loss recognized in the Shares and/or the Accounts shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Borrower.

Section 7. Customer Agreement. This Agreement supplements, rather than replaces, the application(s) to purchase shares in the Funds and any account conditions, terms and conditions and other standard documentation in effect from time to time with respect to the Shares and the Accounts (the "Account Documentation"), which Account Documentation will continue to apply to the Accounts and the Shares and the services to be provided by Transfer Agent in respect thereto, and the respective rights, powers, duties, obligations, liabilities and responsibilities of the parties thereto and hereto, to the extent not expressly conflicting with the provisions of this Agreement (however, in the event of any such conflict, the provisions of this Agreement shall control).

Section 8. Termination. Collateral Agent and Borrower agree that the rights and powers granted herein to Collateral Agent have been granted in order to perfect its security interest in the Shares and the Accounts, are powers coupled with an interest and, to the extent legally permissible under the applicable Uniform Commercial Code and bankruptcy law, will neither be affected by the death or bankruptcy of Borrower nor by the lapse of time. Transfer Agent may terminate this Agreement (a) in its discretion upon the sending of at least thirty (30) days' advance written notice to the other parties hereto or (b) because of a material breach by Borrower or Collateral Agent of any of the terms of this Agreement or the Account Documentation, upon the sending of at least five (5) days' advance written notice to the other parties hereto. Collateral Agent may terminate this Agreement in its discretion upon the sending of at least three (3) days advance written notice to the other parties hereto. Any other termination or any amendment or waiver of this Agreement shall be effected solely by an instrument in writing executed by all the parties hereto. The provisions of Section 5 above shall survive any termination of this Agreement.

Section 9. This Agreement. This Agreement, the covenants contained in the Account application and the exhibits hereto and the agreements and instruments required to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof and supersede and discharge all prior agreements (written or oral) and negotiations and all contemporaneous oral agreements concerning such subject matter and negotiations. There are no oral conditions precedent to the effectiveness of this Agreement.

Section 10. Amendments. No amendment, modification or termination of this Agreement, except as otherwise provided in Section 8 hereof, or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by the parties hereto.

Section 11. Severability. If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances, other than those to which it is held invalid or unenforceable, shall be construed in all respects as if such invalid or unenforceable term or provision were omitted.

Section 12. Successors. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective assignees and corporate successors or heirs and personal representatives. A successor to or assignee of Collateral Agent's rights under any extension of credit may be assigned the benefits of this Agreement by Collateral Agent. Transfer Agent may assign its rights, powers, obligations and duties under this Agreement to any successor transfer agent of the Funds.

Section 13. Rules of Construction. In this Agreement, words in the singular number include the plural, and in the plural include the singular; words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender and the word "or" is disjunctive but not exclusive. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit or describe the scope or intent of the provisions of this Agreement.

Section 14. Notices. (a) Any notice, or other communications required or permitted to be given under this Agreement shall be in writing and (except for a Notice of Exclusive Control) deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error free receipt, is received or two days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth next to such parties' name below. Any party may change his address for notices in the manner set forth above.

Borrower:	Fisker Group Inc. 1888 Rosecrans Avenue Manhattan Beach, CA 90266 Attention: Frank Boroch / Radu Coman Email: fboroch@fiskerinc.com rcoman@fiskerinc.com Phone No.: 310-490-6986 / 323-620-1245	Collateral Agent: CVI Investments, Inc. 101 California Street, Suite 3250 San Francisco, CA 94111 Attention: Sarah Travis Email: heightsnotice@sig.com Phone No.: 610 617 2951

Transfer Agent: SS&C GIDS, INC.
c/o J.P. Morgan Institutional Funds Service Center
1111 Polaris Pkwy, Floor -2F
Mail code: OH1-1299
Columbus, Ohio 43240-2050

Attention:	Philip OConnor	614-217-9378
	Ben Thompson	614-213-4572

Fax No.: (877) 371-5948
Email: liquidity.client.services.americas@jpmorgan.com

(b) Upon a Notice of Exclusive Control becoming Effective, Collateral Agent may establish an account with the Funds by providing Transfer Agent or its designee with a completed JPMorgan Funds Application.

Section 15. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

Section 16. Choice of Law. Notwithstanding any other agreement to the contrary, the parties hereto agree that this Agreement shall be governed and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this Agreement.

FISKER GROUP INC.

By: _____

Name: Dr. Geeta Gupta-Fisker

Title: Chief Financial Officer and
Chief Operating Officer

CVI INVESTMENTS, INC.

By: _____

Name:

Title:

SS&C GIDS, INC., in its capacity as Transfer Agent for each of the Funds

By: _____
DocuSigned by:
F3F980GBF042493...

Name: Nick Wright

Title: Authorized Signatory

JPMORGAN TRUST I, on behalf of its series, JPMORGAN TRUST II, on behalf of its series and JPMORGAN TRUST IV, on behalf of its series, each hereby acknowledges and agrees to the Section 3(a) of this Agreement.

By: _____
DocuSigned by:
F90A13CB5E7D439...

Name: Jeffrey House

Title: Vice President

IN WITNESS WHEREOF, the parties' duly authorized representatives hereby execute this Agreement.

FISKER GROUP INC.

By: _____

Name:

Title:

CVI INVESTMENTS, INC.
By: Heights Capital Management, Inc., its authorized agent

By: _____

Name: Martin Kobinger

Title: President

SS&C GIDS, INC., in its capacity as Transfer Agent for each of the Funds

By: _____

Name:

Title:

JPMORGAN TRUST I, on behalf of its series, JPMORGAN TRUST II, on behalf of its series and JPMORGAN TRUST IV, on behalf of its series, each hereby acknowledges and agrees to the Section 3(a) of this Agreement.

By: _____

Name: _____

Title: _____

EXHIBIT A

[to be placed on Collateral Agent letterhead]

NOTICE OF EXCLUSIVE CONTROL

_____, 2024

SS&C GIDS, INC., as Transfer Agent
c/o J.P. Morgan Institutional Funds Service Center
1111 Polaris Pkwy, Floor- 2F
Mail code: OH1-1299
Columbus, Ohio 43240-2050

Attention:	Philip OConnor	614-217-9378
	Ben Thompson	614-213-4572

Re: Account Control Agreement dated as of _____, 2024 (the "Agreement") by and among Fisker Group Inc., CVI Investments, Inc., and SS&C GIDS, INC.

Ladies and Gentlemen:

This constitutes a Notice of Exclusive Control as referred to in paragraph 3 of the above-referenced Agreement, a copy of which is attached hereto.

Very truly yours,

CVI INVESTMENTS, INC.

By:_____
Name:

Title:

EXHIBIT B

[see attached]

CVI INVESTMENTS, INC.
c/o Heights Capital Management, Inc.
101 California Street, Suite 3250
San Francisco, California 94111

COLLATERAL AGENT AUTHORIZED SIGNERS TO EXECUTE INSTRUCTIONS

January ___, 2024

SS&C GIDS, INC., as Transfer Agent
c/o J.P. Morgan Institutional Funds Service Center
1111 Polaris Pkwy, Floor 2F
Mail code: OH1-1299
Columbus, Ohio 43240-2050

Attention:	Philip O'Connor	614-213-9378
	Ben Thompson	614-213-4572

Re: Account Control Agreement dated as of January ___, 2024 (the "Agreement") by and among Fisker Group Inc., CVI Investments, Inc., and SS&C GIDS, INC.

Ladies and Gentlemen:

Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement. Pursuant to paragraph 3 of the Agreement, the following employees of the Collateral Agent are authorized to issue instructions concerning the Account and the Shares.

If applicable:

All requests for changes and redemptions on the Account must be signature verified against the original authorized signatures on this form.

Martin Kobinger, President, Heights Capital Management, Inc.		Brad Alles, Authorized Signatory, Heights Capital Management, Inc.	
Name Title	Signature	Name Title	Signature
Sarah Travis, Assistant General Counsel, Heights Capital Management, Inc.			
Name Title	Signature	Name Title	Signature

CVI INVESTMENTS, INC.
c/o Heights Capital Management, Inc.
101 California Street, Suite 3250
San Francisco, California 94111

COLLATERAL AGENT AUTHORIZED SIGNERS TO EXECUTE INSTRUCTIONS

January ___, 2024

SS&C GIDS, INC., as Transfer Agent
c/o J.P. Morgan Institutional Funds Service Center
1111 Polaris Pkwy, Floor 2F
Mail code: OH1-1299
Columbus, Ohio 43240-2050

Attention:	Philip O'Connor	614-213-9378
	Ben Thompson	614-213-4572

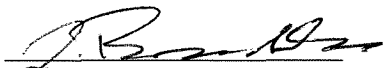
Re: Account Control Agreement dated as of January ___, 2024 (the "Agreement") by and among Fisker Group Inc., CVI Investments, Inc., and SS&C GIDS, INC.

Ladies and Gentlemen:

Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement. Pursuant to paragraph 3 of the Agreement, the following employees of the Collateral Agent are authorized to issue instructions concerning the Account and the Shares.

If applicable:

All requests for changes and redemptions on the Account must be signature verified against the original authorized signatures on this form.

Martin Kobinger, President, Heights Capital Management, Inc.		Brad Alles, Authorized Signatory, Heights Capital Management, Inc.	
Name Title	Signature	Name Title	Signature
Sarah Travis, Assistant General Counsel, Heights Capital Management, Inc.			
Name Title	Signature	Name Title	Signature

CVI INVESTMENTS, INC.
c/o Heights Capital Management, Inc.
101 California Street, Suite 3250
San Francisco, California 94111

COLLATERAL AGENT AUTHORIZED SIGNERS TO EXECUTE INSTRUCTIONS

January ___, 2024

SS&C GIDS, INC., as Transfer Agent
c/o J.P. Morgan Institutional Funds Service Center
1111 Polaris Pkwy, Floor 2F
Mail code: OH1-1299
Columbus, Ohio 43240-2050

Attention:	Philip O'Connor	614-213-9378
	Ben Thompson	614-213-4572

Re: Account Control Agreement dated as of January ___, 2024 (the "Agreement") by and among Fisker Group Inc., CVI Investments, Inc., and SS&C GIDS, INC.

Ladies and Gentlemen:

Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement. Pursuant to paragraph 3 of the Agreement, the following employees of the Collateral Agent are authorized to issue instructions concerning the Account and the Shares.

If applicable:

All requests for changes and redemptions on the Account must be signature verified against the original authorized signatures on this form.

Martin Kobinger, President, Heights Capital Management, Inc.		Brad Alles, Authorized Signatory, Heights Capital Management, Inc.	
Name Title	Signature	Name Title	Signature
Sarah Travis, Assistant General Counsel, Heights Capital Management, Inc.			
Name Title	Signature	Name Title	Signature

Very truly yours,
CVI INVESTMENTS, INC.
By: Heights Capital Management, Inc., its authorized agent

By: _____
Name: Martin Kobinger
Title: President

EXHIBIT J

BLOCKED ACCOUNT CONTROL AGREEMENT SHIFTING CONTROL

Negotiated-V1.7_08_24_21

BLOCKED ACCOUNT CONTROL AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") dated as of January 18, 2024, by and among the company entities listed on Schedule 1 attached hereto and incorporated herein by reference (individually and collectively "**Company**"), CVI Investments Inc (together with its permitted successors and assigns, "**Secured Party**") and JPMorgan Chase Bank, N.A. ("**Bank**" and together with Company and Secured Party, "**Parties**" and each of the Parties in its individual capacity, "**Party**").

The Parties refer to those account numbers listed on Schedule 1 attached hereto in the name of the corresponding Company maintained at Bank (individually and collectively, the "**Account**") and hereby agree as follows:

1. (a) Company and Secured Party notify Bank that by separate agreement Company has granted Secured Party a security interest in the Account and all funds on deposit from time to time therein. Bank acknowledges being so notified.

(b) Bank hereby confirms that the Account is a demand deposit account maintained by Company with Bank in Bank's ordinary course of business and that Bank is a national banking association. Each Party confirms that it intends that this Agreement constitute an "authenticated record" as defined in Article 9 of the Uniform Commercial Code as in effect in the State of New York from time to time (the "**UCC**"). As of the effective date of this Agreement, Bank confirms that except for this Agreement and the applicable Account Documentation, (i) Bank is not currently entered into any agreement with any person or entity pursuant to which Bank is obligated to comply with instructions as to the disposition of funds from the Account and (ii) for the duration of the Agreement Bank shall not, without the prior written consent of Secured Party, enter into any agreement with any other person or entity pursuant to which Bank is obligated to comply with instructions as to the disposition of funds from the Account.

2. (a) It is the intent of the Parties that Secured Party has control over the Account within the meaning of Section 9-104 of the UCC. Bank agrees that it shall follow the Instructions (as defined below) of Secured Party concerning the Account without further consent of Company. Secured Party hereby instructs Bank that prior to the Effective Time (as defined below) Bank shall honor all withdrawal, payment, transfer or other fund disposition or other instructions (collectively, "**Instructions**"), which Company is entitled to give under the Account Documentation (as defined below) received from Company (but not those from Secured Party) concerning the Account. On and after the Effective Time (and without Company's consent), Bank shall honor all written Instructions received from Secured Party (but not those from Company) concerning the Account and Company shall have no right to issue Instructions or any other right or ability to access or withdraw or transfer funds from the Account.

(b) The "**Effective Time**" shall be the opening of business on the second Business Day following the Business Day on which a notice purporting to be signed by Secured Party in substantially the same form as Exhibit A, with a copy of this Agreement attached to such notice (a "**Shifting Control Notice**"), is actually received by the unit of Bank to whom the notice is required to be addressed; provided, however, that if any such notice is so received after 12:00 noon, Eastern time, on any Business Day, the Effective Time shall be the opening of business on the third Business Day following the Business Day on which such receipt occurs. A "**Business Day**" is any day other than a Saturday, Sunday or other day on which Bank is or is authorized or required by law to be closed.

(c) Notwithstanding the foregoing: (i) all transactions involving or resulting in a transaction involving the Account duly commenced by Bank or any affiliate prior to the Effective Time and consummated or processed thereafter shall be deemed not to constitute a violation of this Agreement and (ii) Bank and/or any affiliate may (at its discretion and without any obligation to do so) (x) cease honoring Company's Instructions and/or commence honoring solely Secured Party's Instructions concerning the Account at any time or from time to time after it becomes aware that Secured Party has sent to it a Shifting Control Notice but prior to the Effective Time (including without limitation halting, reversing or redirecting any transaction referred to in clause (i) above) or (y) deem a Shifting Control Notice to be received by it, for purposes of the foregoing paragraph, prior to the specified unit's actual receipt if otherwise actually received by Bank (or if such Shifting Control Notice does not substantially comply with the form attached as Exhibit A or does not attach an appropriate copy of this Agreement), with no liability whatsoever to Company for doing so.

3. This Agreement supplements, rather than replaces, Bank's deposit account agreement, terms and conditions and other standard documentation in effect from time to time with respect to the Account or services provided in connection with the Account (the "**Account Documentation**"), which Account Documentation will continue to apply to the Account and such services, and the respective rights, powers, duties, obligations, liabilities and responsibilities of the Parties to such Account Documentation and this Agreement, to the extent not expressly conflicting with the provisions of this Agreement (however, in the event of any such conflict, the provisions of this Agreement shall control). Prior to issuing any Instructions on or after the Effective Time, Secured Party shall provide Bank with such documentation as Bank may reasonably request to establish the identity and authority of the individuals issuing Instructions on behalf of Secured Party. Secured Party may request Bank to provide other services (such as automatic daily transfers) with respect to the Account on or after the Effective Time; however, if such services are not authorized or otherwise covered under the Account Documentation, Bank's decision to provide any such services shall be made in its sole discretion (including without limitation being subject to Company and/or Secured Party executing such Account Documentation or other documentation as Bank may require).

4. (a) Bank agrees not to exercise or claim any right of offset, banker's lien or other like right against the Account for so long as this Agreement is in effect except with respect to (i) returned or charged-back items, reversals or cancellations of payment orders and other electronic fund transfers or other corrections or adjustments to the Account or transactions therein, (ii) overdrafts in the Account or (iii) Bank's customary charges, fees and documented expenses with respect to the Account or the services provided hereunder.

(b) Upon the occurrence of any of the items referred to in clauses (i)-(iii), inclusive, of the above paragraph 4(a) (any such item a "**Returned Item**"), Bank shall first attempt to obtain reimbursement from the Account or the Company; however, if Bank fails to obtain reimbursement within fifteen (15) days after the occurrence of the Returned Item, then Secured Party shall reimburse Bank the amount of the Returned Item within five (5) days after Secured Party's receipt of a written request therefor from Bank; provided that the Secured Party's aggregate obligations under this sentence shall be limited to the aggregate amount transferred from the Account on the instructions of the Secured Party pursuant to this Agreement.

5. Notwithstanding anything to the contrary in this Agreement: (i) Bank shall have only the duties and responsibilities with respect to the matters set forth in writing in this Agreement and shall not be deemed to be an agent, bailee or fiduciary for any Party, (ii) Bank shall be fully protected in acting or refraining from acting in good faith without investigation on any notice (including without limitation a Shifting Control Notice), Instruction or request purportedly furnished to it by Company or Secured Party in accordance with the terms of this Agreement, in which case the Parties agree that Bank has no duty to make any further inquiry whatsoever, (iii) it is hereby acknowledged and agreed that Bank has no knowledge of (and is not required to know) the terms and provisions of the separate agreement referred to in Section 1 above or any other related documentation or whether any actions by Secured Party (including without limitation the sending of a Shifting Control Notice), Company or any other person or entity are permitted under, constitutes a breach of, or is consistent or inconsistent with such separate agreement, (iv) Bank shall not be liable to Company or Secured Party or any other person for any action or failure to act under or in connection with this Agreement or the Account, except to the extent such conduct constitutes its own willful misconduct or gross negligence (and to the maximum extent permitted by law, neither Bank nor Secured Party shall under any circumstances be liable for any incidental, indirect, special, consequential or punitive damages) and (v) Bank shall not be liable for losses or delays caused by force majeure, interruption or malfunction of computer, transmission or communications facilities, labor difficulties, court order or decree, the commencement of bankruptcy or other similar proceedings or other matters beyond Bank's reasonable control.

6. (a) Company agrees to indemnify, defend and save harmless Bank against any loss, liability or expense (including reasonable fees and disbursements of outside counsel) (collectively, "**Covered Items**") incurred (i) in connection with this Agreement or the Account (except to the extent due to Bank's willful misconduct or gross negligence) or any related interpleader proceeding or (ii) as a result of following Company's direction or Instructions.

(b) To the extent Bank is not indemnified by Company pursuant to the preceding sentence, Secured Party hereby agrees to indemnify, defend and save harmless Bank against any Covered Items incurred as a result of following Secured Party's direction or instruction (including without limitation Bank's honoring of a Shifting Control Notice). .

7. (a) Bank may terminate this Agreement (i) in its discretion upon the sending of at least thirty (30) calendar days advance written notice to Company and Secured Party or (ii) because of a material breach by Company or Secured Party of any of the terms of this Agreement or the Account Documentation, upon the sending of at least five (5) Business Days advance written notice to Company and Secured Party.

(b) Secured Party may terminate this Agreement in its discretion upon the sending of at least three (3) Business Days advance written notice ("**Termination Delivery Requirement**") in substantially the same form as Exhibit B, with a copy of the Agreement attached thereto (a "**Secured Party Termination Notice**") to Bank and Company, provided that Bank may shorten or waive the Termination Delivery Requirement and any such shortening or waiver shall be binding on the Parties.

(c) Any other termination, any amendment or waiver of this Agreement shall be effected solely by an instrument in writing executed by all the Parties. The provisions of Sections 5 and 6 above shall survive any termination of this Agreement.

8. Company shall compensate Bank for the opening and administration of the Account and services provided hereunder in accordance with Bank's customary fee schedules from time to time in effect. Payment will be effected by a direct debit to the Account or as otherwise agreed to between Company and Bank; however, Bank retains the right to debit the Account for any fees that are not paid when due.

9. (a) No Party may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the other Parties; provided, however, that no consent will be required if the assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Bank; and provided further that only Bank's prior written consent is required for an assignment by Secured Party. A failure to comply with the assignment requirements referenced under this section shall result in such assignment being null and void.

(b) Notwithstanding the foregoing, Secured Party may transfer its rights and obligations under this Agreement (i) to an assignee to which, by contract or operation of law, Secured Party transfers substantially all of its rights and obligations under the financing arrangement with Company or (ii) to a successor representative, if Secured Party is acting as a representative in whose favor a security interest is provided for or created; provided as between Bank and Secured Party, Secured Party will not be released from its obligations under this Agreement unless and until an Assignment Notice is actually received by the unit of Bank to whom notice is required to be addressed. An "**Assignment Notice**" is a notice purporting to be signed by Secured Party and assignee in which assignee agrees to assume all of Secured Party's obligations under this Agreement substantially in the same form as Exhibit C, with a copy of this Agreement to be attached to the notice.

10. Upon Secured Party's request and at Company's sole expense, Bank will provide Bank's standard bank statements covering deposits to and withdrawals from the Account. Bank may disclose to Secured Party such other information concerning the Account as Secured Party may from time to time reasonably request.

11. This Agreement: (i) may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same instrument, (ii) shall become effective when counterparts have been signed and delivered by the Parties and (iii) may be executed using Electronic Signatures, which the Parties agree are intended to authenticate this writing and to have the same force and effect as manual signatures. **"Electronic Signature"** means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures. Each Party represents and warrants on a continuous basis that (i) any Electronic Signature on this Agreement constitutes valid execution of this Agreement by a duly authorized signer in accordance with applicable law and, as applicable, its constitutional documents and (ii) this Agreement constitutes its valid, legal, enforceable and binding obligation. Each Party confirms that the others have relied on the foregoing representations and warranties when accepting an Electronic Signature on this Agreement. Each Party confirms that this Agreement constitutes an electronic record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such printed copies will be treated to the same extent and under the same conditions as other original business records created and maintained in documentary form. All notices under this Agreement shall be in writing and sent (including via emailed pdf or similar file or facsimile transmission) to the Parties at their respective addresses,

email addresses or fax numbers set forth below (or to such other address, email address or fax number as any such Party shall designate in writing to the other Parties from time to time).

12. This Agreement and all claims, disputes or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, will be governed by, and enforced in accordance with, the internal laws of the State of New York without regard to conflict of law principles. Regardless of any provision in any other separate agreement, the State of New York shall be deemed to be Bank's "jurisdiction" for purposes of Section 9-304 of the UCC. The Parties intend that New York's periods of limitations govern the aforementioned causes of action irrespective of any otherwise applicable statute. **All Parties hereby waive all rights to a trial by jury in any action or proceeding relating to the Account or this Agreement.**

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first above written.

Terra Energy Inc. **FISKER GROUP INC.** **Fisker TN LLC**		
By:	Geeta Gupta	**Date:** 01/18/2024
Name:	Dr. Geeta Gupta	
Title:	CFO & COO	
Address for Notices:	c/o Fisker Group Inc. 1888 ROSECRANS AVE MANHATTAN BEACH CA 902663712	
Email Address:	gfisker@fiskerinc.com; fboroch@fiskerinc.com; cmacgillivray@fiskerinc.com	

CVI Investments Inc., By: Heights Capital Management, Inc., its authorized agent		
By:	Martin Kobinger	**Date:** 01/18/2024
Name:	Martin Kobinger	
Title:	President	
Address for Notices:	c/o Heights Capital Management Attn: Sarah Travis 101 California Street, Suite 3250 San Francisco, CA 94111	
Email Address:	heightsnotice@sig.com; Martin.Kobinger@sig.com	

JPMorgan Chase Bank, N.A.		
By:		**Date:** 01/18/2024
Name:	Yvonne Rager	
Title:	Vice President	
Address for Instructions and other Notices:	JPMorgan Chase Bank, N.A. Attn: Gilbert Medina 3 Park Plaza, Floor 09 Irvine, CA 92614-8505 Email: gilbert.x.medina@jpmorgan.com	
Address for Assignment, Shifting Control and Termination Notices:	JPMorgan Chase Bank, N.A. Attn: Blocked Account Contracts Team Email: blocked.account.contracts@jpmchase.com	

Exhibit A | Shifting Control Notice

Date: _____

JPMorgan Chase Bank, N.A.
Attention: Blocked Account Contracts Team
Email : blocked.account.contracts@jpmchase.com

Re: Blocked Account Control Agreement dated as of January 18, 2024 (the "**Agreement**"), by and among the company entities listed in Schedule 1 (individually and collectively, "**Company**"), CVI Investments Inc ("**Secured Party**") and JPMorgan Chase Bank, N.A. ("**Bank**") relating to the account numbers listed in Schedule 1 (individually and collectively, "**Account**").

Ladies and Gentlemen:

This constitutes a Shifting Control Notice as referred to in Section 2 of the Agreement, a copy of which is attached hereto.

CVI Investments Inc		
By:		**Date:**
Name:		
Title:		

ATTACHMENT: Blocked Account Control Agreement

Exhibit B | Secured Party Termination Notice

Date: _____

JPMorgan Chase Bank, N.A.
Attention: Blocked Account Contracts Team
Email : blocked.account.contracts@jpmchase.com

Terra Energy Inc.
FISKER GROUP INC.
Fisker TN LLC

Address: 1888 ROSECRANS AVE
MANHATTAN BEACH CA 902663712
Attention: _____

Re: Blocked Account Control Agreement dated as of January 18, 2024 (the "**Agreement**"), by and among the company entities listed in Schedule 1 (individually and collectively, "**Company**"), CVI Investments Inc ("**Secured Party**") and JPMorgan Chase Bank, N.A. ("**Bank**") relating to the account numbers listed in Schedule 1 (individually and collectively, "**Account**").

Ladies and Gentlemen:

This constitutes a Secured Party Termination Notice as referred to in section 7(b) of the Agreement, a copy of which is attached hereto.

CVI Investments Inc		
By:		**Date:**
Name:		
Title:		

ATTACHMENT: Blocked Account Control Agreement

Exhibit C | Assignment Notice

Date: _____

JPMorgan Chase Bank, N.A.
Attention: Blocked Account Contracts Team
Email : blocked.account.contracts@jpmchase.com

Re: Blocked Account Control Agreement dated as of January 18, 2024 (the "**Agreement**"), by and among the company entities listed in Schedule 1 (individually and collectively, "**Company**"), CVI Investments Inc ("**Secured Party**") and JPMorgan Chase Bank, N.A. ("**Bank**") relating to the account numbers listed in Schedule 1 (individually and collectively, "**Account**").

Ladies and Gentlemen:

This constitutes an Assignment Notice as referred to in Section 9 of the Agreement, a copy of which is attached hereto.

[NAME OF ASSIGNEE] ("**Assignee**") agrees to assume all of Secured Party's obligations under the Agreement.

Please select the appropriate response below indicating if Assignee is an existing client of Bank.

_____ Assignee is an existing client of Bank

_____ Assignee is not a client of Bank

(Note: Additional documentation may be required by Bank in order to satisfy its know your customer policies and its due diligence requirements to qualify the assignee as a customer)

The Assignee's address for notices is as follows.

Address: _____
_____
Attention: _____

Email: _____
Fax No.: _____

CVI Investments Inc		
By:		**Date:**
Name:		
Title:		

Assignee		
By:		**Date:**
Name:		
Title:		

ATTACHMENT: Blocked Account Control Agreement

Schedule 1 | List of Company Entities and Accounts

Company	Account
Terra Energy Inc.	788769856
FISKER GROUP INC.	3835007809
FISKER GROUP INC.	627869867
FISKER GROUP INC.	901658333
Fisker TN LLC	567227106

EXHIBIT K

WEBER & CO.
RECHTSANWÄLTE

Execution Version

THIS DOCUMENT WAS EXECUTED OUTSIDE OF AUSTRIA. THE TAKING OF THIS DOCUMENT OR ANY CERTIFIED COPY OF IT OR ANY DOCUMENT WHICH CONSTITUTES SUBSTITUTE DOCUMENTATION FOR IT, OR ANY DOCUMENT WHICH INCLUDES WRITTEN CONFIRMATIONS OR REFERENCES TO IT, INTO AUSTRIA AS WELL AS PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO THIS DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO ANY TRANSACTION DOCUMENT TO AN AUSTRIAN ADDRESSEE MAY CAUSE THE IMPOSITION OF AUSTRIAN STAMP DUTY. ACCORDINGLY, KEEP THE ORIGINAL DOCUMENT AS WELL AS ALL CERTIFIED COPIES THEREOF AND WRITTEN AND SIGNED REFERENCES TO IT OUTSIDE OF AUSTRIA AND AVOID PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO ANY TRANSACTION DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO THIS DOCUMENT TO AN AUSTRIAN ADDRESSEE.

SHARE PLEDGE AGREEMENT

---

dated 19 January 2024

between

Fisker Group Inc.
as **Pledgor**

and

CVI Investments, Inc.
as **Pledgee**

concerning the share interest in
Fisker GmbH

Table of Contents

SHARE PLEDGE AGREEMENT

This share pledge agreement (the "**Agreement**") is made by and between:

1. **Fisker Group Inc.**, a company organized under the laws of Delaware, with its registered offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266, United States of America, as pledgor (the "**Pledgor**");

2. **CVI Investments, Inc.**, a company organized under the laws of California, with its registered offices located at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, as pledgee (the "**Pledgee**" and "**Collateral Agent**"); and

3. **Fisker GmbH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of Austria, registered with the companies' register (*Firmenbuch*) of the Regional Court Graz (*Landesgericht Graz*) under FN 552387 i, having its registered seat in Graz, Austria, and its business address at Liebenauer Hauptstraße 2-6, 8041 Graz, Austria (the "**Company**").

under accession in respect of Clause 3.4 of

4. **Fisker Inc.**, a company organized under the laws of Delaware, with its registered offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266, United States of America (the "**Issuer**").

RECITALS

(A) The Issuer and the Pledgor is party to a Securities Purchase Agreement dated as of 10 July 2023 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**") between the Issuer, the Pledgor and each party listed as an investor on the Schedule thereto, pursuant to which the Issuer shall be required to sell, and the investors shall purchase or have the right to purchase, the notes issued pursuant thereto (as such notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**").

(B) The Collateral Agent, the Issuer, the Pledgor and the Company are, amongst others, parties to an Indenture dated as of 11 July 2023 (as supplemented by a first supplemental indenture dated 11 July 2023, a second supplemental indenture dated 29 September 2023 and a third supplemental indenture dated 22 November 2023, the "**Indenture**") providing for the issuance from time to time of Securities (as defined in the Indenture) by the Issuer.

(C) The Collateral Agent, the Issuer, the Pledgor and the Company (as defined below) have entered into a New York law-governed Pledge Agreement to secure all of the Issuer's obligations under the Transaction Documents (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**US Pledge Agreement**",

together with the Securities Purchase Agreement, the Notes, the Indenture, the Security Documents (as defined below) and this Agreement, the "**Transaction Documents**").

(D) It was agreed that the Pledgor enters into this Agreement to grant to the Pledgee a first-ranking pledge over the Shares (as defined below) as security for the Secured Obligations (as defined below).

(C) The security created by or pursuant to this Agreement is to be administered by the Collateral Agent for and on behalf of the Secured Parties pursuant to the relevant provisions of the Transaction Documents.

NOW THEREFORE, it is hereby agreed as follows:

1. DEFINITIONS

A term defined in the Indenture shall, unless otherwise defined in this Agreement, have the same meaning when used in this Agreement and in addition:

Agreement	means this share pledge agreement, including its Schedules as the same may from time to time be varied, amended, modified, supplemented or replaced;
Ancillary Rights	means the rights to receive any Distribution and any present or future right to participate in an increase the nominal value of the Share as well as any other monetary right (*geldwerte Forderung*) of the Pledgor as shareholder in the Company;
Company	has the meaning given to such term in the Parties' list;
Collateral Agent	has the meaning given to such term in the Parties' list;
Distribution	means dividends (whether in cash, in kind or otherwise) payable in relation to the Share, liquidation proceeds, consideration for redemption (*Einziehungsentgelt*), payments in the context of reduction of the share capital (*Kapitalherabsetzung*), any compensation in case of termination (*Kündigung, Ausschluss*) and/or withdrawal (*Austritt*) of a shareholder of the Company, the surplus in case of surrender (*Preisgabe*), any claims for consideration (in kind or in cash) in connection with a corporate restructuring, a squeeze out or disposal and any other distribution (in cash or in kind) to the Pledgor in its capacity as shareholder of the Company;
Enforcement Event	means the occurrence of an Event of Default pursuant to any of the Transaction Documents which is continuing and in respect of which a notice of acceleration has been delivered to the Pledgor by the Collateral Agent upon which the Secured Obligations become due and payable but are unpaid (*Pfandreife*);

Existing Shares	means the share interest in the Company (*Geschäftsanteil*) held by the Pledgor corresponding on the date of this Agreement to a nominal amount (*Stammeinlage*) of EUR 35,000 equal to 100% of the share capital of the Company and fully paid in;
Future Shares	means all additional shares in the share capital of the Company in whatever nominal value which the Pledgor may acquire in the future in the event of an increase of the capital of the Company, in the event of a merger of the Company, in the event of a demerger of the Company, in the event of a conversion of the Company, or otherwise;
Grantor	has the meaning given to such term in the Indenture;
Indenture	has the meaning given to such term in Preamble Clause (B);
Legal Reservations	means (i) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; (ii) the time barring of claims; (iii) the Austrian principle of accessory (*Akzessorietätsprinzip*); and (iv) any other matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions supplied to the Collateral Agent in connection with this Agreement.
Notes	has the meaning given to such term in Preamble Clause (B);
Noteholders	means, at any time, the holders of the Notes at such time;
Party	means a Party to this Agreement. The term "**Parties**" means all of them;
Pledges	has the meaning given to such term in Clause 4.1;
Pledged Assets	means the Shares and the Ancillary Rights;
Pledgee	has the meaning given to such term in the Parties' list;
Pledgor	has the meaning given to such term in the Parties' list;
Private Sale	has the meaning given to such term in Clause 8.2;
Public Auction	has the meaning given to such term Clause 8.2;
Secured Obligations	means all present and future obligations and liabilities of whatever nature at any time due, owing or incurred by any Grantor to any Secured Party under or in connection with the Transaction Documents (as amended, supplemented or restated from time to time and including, without limitation, any increase of existing or introduction of new payment obligations or extension of term), both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, including (without limitation, the "Obligations" as such term is defined in the US Pledge

	Agreement, and any claims based on unjust enrichment (*ungerechtfertigte Bereicherung*) or tort (*Delikt*);
Secured Parties	means the Collateral Agent and any other Noteholder from time to time;
Shares	means the Existing Shares and the Future Shares;
Securities Purchase Agreement	has the meaning given to such term in Preamble Clause (B);
Security Documents	has the meaning given to such term in the Indenture;
Transaction Documents	has the meaning given to such term in Preamble Clause (C);
US Pledge Agreement	has the meaning given to such term in Preamble Clause (C)

2. CONSTRUCTION

2.1 In this Agreement, unless the context otherwise requires:

2.1.1 a reference to a "**Clause**" or a "**Schedule**" is a reference to a clause or a schedule of this Agreement;

2.1.2 a reference to the Pledgor, the Pledgee, the Collateral Agent, each of the Grantors or any other person shall, where applicable, be deemed to be a reference to or to include their respective successors (*Einzel- oder Gesamtrechtsnachfolger*) from time to time;

2.1.3 a reference to a provision of law is to be construed as a reference to that provision as from time to time amended, enacted or re-enacted;

2.1.4 a reference to any act or determination by a party to be performed or made "reasonably" shall be deemed to be a reference to the Austrian law term "*angemessen*" and shall be construed according to this term, and any other reference relating to reasonability shall be construed to be a reference to the Austrian law concept of "*Angemessenheit*";

2.1.5 words importing the plural shall include the singular and *vice versa*; and

2.1.6 a reference to (or to any specified provision of) any agreement is to be construed as a reference to that agreement or provision as from time to time amended, supplemented or restated.

2.2 Except where referred to as being "expressly permitted", references to any matter being "permitted" under one or more of the Transaction Documents shall include references to such matters not being prohibited under those Transaction Documents.

2.3 This Agreement is made in the English language. The English language version of this Agreement shall prevail over any translation of this Agreement. However, where a German translation of a word or phrase appears in the text of this Agreement, the German translation of such word or phrase shall prevail.

3. SECURED OBLIGATIONS

3.1 The Pledge hereunder is constituted in order to secure the prompt and complete satisfaction of any and all Secured Obligations. The security created hereunder shall remain in full force and effect as a continuing security for the Secured Obligations unless and until the earlier of the following occurs: (i) discharge by the Collateral Agent or (ii) complete satisfaction or explicit waiver of any and all Secured Obligations.

3.2 The Parties agree that in the case of a transfer or assignment or novation of any Secured Obligations, the Pledges hereunder shall not lapse but shall continue to secure such transferred or assigned or novated Secured Obligations.

3.3 Furthermore, the Parties agree that in case of a substitution of any Grantor or the assumption of any of the Secured Obligations from any Grantor or the transfer of any of the Secured Obligations from any Grantor to another person, the Pledges hereunder shall not lapse but shall continue to secure such Secured Obligations in accordance with section 1407 para 2 Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch – ABGB*).

3.4 In this Agreement, the Collateral Agent acts in its own name but for the account and benefit of itself and all Secured Parties. In the event that the Secured Obligations or any part thereof is transferred by the Collateral Agent to any other person and such person then qualifying as Noteholder under the Transaction Documents, the Company, the Pledgor and the Issuer agree to enter into any agreement, amendment or supplement of any Transaction Document and/or execute and deliver any other document, make any declarations and/or take any other measures that may be required or reasonably desirable to ensure that the Collateral Agent

(i) be the joint and several creditor (*Gesamtgläubiger*) (together with the relevant other Secured Party/ies) of each and every obligation of the Grantors towards the Secured Parties under the Transaction Documents; and

(ii) accordingly, will have its own and independent right to demand performance by the Grantors of those obligations in full.

4. PLEDGE

4.1 The Pledgor hereby pledges to the Collateral Agent the Pledged Assets (the "**Pledges**").

4.2 The Pledges shall constitute first ranking pledges (*erstrangige Pfandrechte*) over the Pledged Assets and any and all Ancillary Rights and shall, subject to any Permitted Liens (as defined in

the Notes), rank ahead of any other security interest or third-party rights now in existence or created in future in or over any of the Pledged Assets. The validity and effect of the Pledges shall be independent from the validity and effect of any other Pledges created hereunder.

4.3 The Collateral Agent hereby accepts the Pledges.

4.4 The Pledges are in addition and without prejudice to any other security that a Secured Party may now or hereafter hold in respect of the Secured Obligations.

5. DISTRIBUTIONS

5.1 Notwithstanding that the Distributions are pledged hereunder, the Pledgor shall (subject to the terms of the Transaction Documents) be entitled to receive and retain all payments in respect of any Distribution until an Enforcement Event has occurred and is continuing.

5.2 Notwithstanding Clause 5.1 above and if an Enforcement Event has occurred and is continuing, all payments in respect of a Distribution shall be and shall forthwith be delivered to the Collateral Agent to be held as security and shall, if received by the Pledgor, be received as agent of the Collateral Agent and kept segregated from the other property or funds of the Pledgor and be forthwith delivered to the Collateral Agent as security in the same form as so received (with any necessary endorsement).

6. EXERCISE OF VOTING RIGHTS

6.1 Prior to the occurrence of an Enforcement Event which is continuing, the voting rights resulting from the Shares remain with the Pledgor, provided that the Pledgor shall not exercise such voting rights in any manner which would adversely affect the validity and enforceability of the security created by this Agreement.

6.2 The Pledgor shall not take, or participate in, any action which results in the Pledgor's loss of ownership of the Shares or pursue any other transaction which would have the same result as a sale, transfer, encumbrance or other disposal of the Shares or which would for any other reason be inconsistent with the security interest of the Collateral Agent or the security purpose (as described in Clause 3 (*Secured Obligations*) hereof) or defeat, materially impair or circumvent the rights of the Collateral Agent, except pursuant to a transaction expressly foreseen or expressly permitted by the Transaction Documents.

6.3 The Pledgor shall inform the Collateral Agent without undue delay of all matters concerning the Company of which the Pledgor is or becomes aware, which materially adversely affect the validity and enforceability of the security created by this Agreement. The Pledgor shall allow, following the occurrence of an Enforcement Event which is continuing, the Collateral Agent or, as the case may be, its proxy or any other person designated by the Collateral Agent to participate in all such shareholders' meetings (including any written Shareholder's resolutions) of the Company. The

Collateral Agent's right to attend all shareholders' meetings shall lapse immediately once the earlier of the following occurs: (i) discharge by the Collateral Agent or (ii) complete satisfaction of any and all Secured Obligations or (iii) no Enforcement Event is continuing.

7. PERFECTION

7.1 The Company hereby consents to this Agreement and acknowledges the Pledge.

7.2 The Pledgor hereby irrevocably and unconditionally undertakes to make all notices, registrations and filings necessary in relation to this Agreement, in particular with regard to (i) Future Shares acquired by the Pledgor by whatever means and in whatever way, including the merger with other companies, the de-merger of the Company, the conversion of the Company, or the acquisition of other enterprises and (ii) book annotations (*Buchvermerke*) and/or any other acts of publicity in form and substances as, and only if and to the extent they become, required for the perfection of the Pledges under applicable Austrian law in addition to the notification of the Company pursuant to Clause 7.1 above.

7.3 The Pledgor shall, upon request of the Pledgee, provide evidence that all the measures provided for in this Clause 7 (*Perfection*) have been taken.

7.4 The Pledgee shall in no way be obliged to monitor any perfection, marking, recording, specification requirements or other acts to be set by the Pledgor in accordance with this Clause 7 (*Perfection*).

8. ENFORCEMENT OF PLEDGE

8.1 If an Enforcement Event has occurred and is continuing, the Pledgee may in order to enforce the Pledge at any time hereafter avail itself of all rights and remedies that a pledgee (*Pfandgläubiger*) has upon default of the pledgor under the laws of Austria, including without limitation, to enforce the Pledge out of court (*außergerichtliche Pfandverwertung*) without any requirement to receive a title instrument for enforcement (*Exekutionstitel*) or to institute in court enforcement proceedings (*Exekutionsverfahren*) in accordance with the Austrian Enforcement Act (*Exekutionsordnung*).

8.2 The Pledgor herewith grants its express consent that in the case of an Enforcement Event the Collateral Agent shall be entitled to realize without writ, judgement or any other legal court action the Shares by applying in analogy the provisions of sections 466a *et seq.* Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch* – ABGB) and section 368 para 1 Austrian Commercial Code (*Unternehmensgesetzbuch* – UGB) by public auction ("**Public Auction**") or by private sale without the assistance of a court ("**Private Sale**"). In such case the Collateral Agent is obliged to request in writing that the party causing the default and the Pledgor meet their obligations within 1 (one) week of service of such request and shall inform the Pledgor and such party in default in such request that a Public Auction or Private Sale will take place if the relevant obligations are not performed in full. However, such notice is not necessary if an application for the institution of insolvency proceedings or similar proceedings is filed by or against it, if there is reason to believe that observance of the notice period will materially and adversely affect the security interest of the

Collateral Agent and/or the Secured Parties or if otherwise inappropriate. The Public Auction or the Private Sale can take place only after the aforementioned term has elapsed without full performance of the outstanding obligations. The Public Auction or the Private Sale may take place at any place in Austria. The Pledgor herewith expressly agrees that the Collateral Agent is entitled to enforce its rights and remedies under the Pledges in the above manner and it expressly waives any rights of first refusal, option rights, consent requirements and any other rights which it might now or in the future have with respect to the Shares, so that any enforcement of the Pledges may occur freely and without restriction.

8.2.1 Any Private Sale or Public Auction shall only be made upon prior assessment of the Shares by an Austrian independent certified public accountant. If the Pledgor and the Collateral Agent do not reach agreement on the identity of the Austrian independent certified public accountant within 10 (ten) Business Days after the lapse of the aforementioned period of 1 (one) week, such independent certified public accountant shall be appointed by the President of the Chamber of Accountants, Vienna (*Kammer der Wirtschaftstreuhänder, Wien*). The assessment of the shares shall be made by such certified public accountant in accordance with the Rules and Guidelines (KFS BW1) of the Special Committee for Business Management and Organization of the Institute for Business Management, Tax Law and Organization of the Chamber of Certified Public Accountants for the Valuation of Enterprises (*Fachgutachten (KFS BW1) des Fachsenats für Betriebswirtschaft und Organisation des Instituts für Betriebswirtschaft, Steuerrecht und Organisation der Kammer der Wirtschaftstreuhänder über die Unternehmensbewertung*) as may be valid from time to time or in accordance with any appropriate substitute rules and guidelines. Within a period of at least 4 (four) weeks from the date of service of the respective letter of demand, the Collateral Agent shall inform the Pledgor and the party causing the default of the terms and conditions, the place, the time and the Collateral Agent's instructions for the Public Auction or the Private Sale. In case of a Private Sale the Shares must not be transferred at a price which is below the value assessed by the expert. In the first Public Auction, the purchase price shall amount to at least the value assessed by the expert. Should no bidder have offered at least the appraisal value in the first public auction, the minimum price in a second Public Auction shall at least amount to 80% of the value assessed by the expert and shall at least amount to 60% of the appraisal value in a third Public Auction. Each Secured Party, any affiliates of each Secured Party, the Pledgor as well as the Pledgee are entitled to participate in a Public Auction or in a Private Sale.

8.2.2 The Pledgor may notify the Collateral Agent of potential *bona-fide* purchasers willing to acquire the Shares at the price which is at least equal to the price assessed by the expert. A bona-fide purchaser shall only be a person that is able to pay the full price of the Shares immediately in cash.

8.2.3 In the event of a Public Auction or Private Sale, the Pledgor by separate power of attorney irrevocably authorizes and empowers the Collateral Agent to demand and apply for a Public Auction or the Private Sale in the name of the Pledgor and to take all steps necessary to effect such a realization. In the event of a Public Auction or a Private Sale,

the Pledgor hereby grants to the Collateral Agent an irrevocable power of attorney to sign and execute on its behalf a notarial deed on the assignment, in full or in part, of the Shares to one or several purchaser(s) of such Shares in the Public Auction or the Private Sale at a price determined on such occasion and in accordance with Clause 8.2.1 above, to sign all documents and make all legally binding declarations related thereto, in particular to sign one or more assignment deeds in the form of a notarial deed, also in the form of an offer and acceptance deed, to receive the transfer price on the Pledgor's behalf and to determine all conditions of such agreements, in each case acting reasonably. Any representations and warranties shall be limited to the transfer of unencumbered legal title. For the purpose of an enforcement of the Pledges by the Pledgee, the Pledgor shall promptly, but no later than 20 (twenty) Business Days after the date of this Agreement issue a legalised (and, if not legalised in Austria or in another country in case of which Austrian law acknowledges notarial legalisations without superlegalisation, also superlegalised) special power of attorney in the form provided for in **Schedule 1** (*Form of Power of Attorney*). For the avoidance of doubt, the Parties note that while the power of attorney does not reiterate the terms of this Agreement the Pledgee is subject to the terms of this Agreement in making use of such power of attorney.

8.2.4 Within 20 (twenty) Business Days from this Agreement, the Pledgor grants by separate deed an irrevocable power of attorney to the Collateral Agent to represent the Pledgor as shareholder of the Company in shareholders' meetings of the Company and when passing resolutions in writing and to exercise the Pledgor's voting rights (**Schedule 2**) for the purpose of being used in the case of an Enforcement Event and as long as such is continuing, in each case only in order to preserve the Pledges and to prepare any enforcement. For the avoidance of doubt, the Parties note that while the power of attorney does not reiterate the terms of this Agreement the Pledgee is subject to the terms of this Agreement in making use of such power of attorney.

8.3 In case the Pledgee should seek to enforce the Pledges pursuant to, and in accordance with this Clause 8 (*Enforcement of Pledge*), the Pledgor and the Company shall render forthwith all reasonably necessary assistance in order to facilitate the prompt sale of the Shares or any part thereof and/or the exercise by the Collateral Agent of any other right it may have under this Agreement. The Pledgor herewith irrevocably consents to the transfer of the Shares or any part thereof to any third party in accordance with the provisions of this Agreement.

8.4 In the event of the enforcement of the Pledge, no rights of the Collateral Agent shall pass to the Pledgor by subrogation or otherwise unless and until all of the Secured Obligations have been satisfied and discharged finally and in full. Until then, the Collateral Agent shall be entitled to treat all enforcement proceeds as additional collateral for the Secured Obligations or to seek satisfaction from such proceeds at any time.

8.5 The proceeds of enforcement of the Pledges shall be paid to the Pledgee. Any proceeds from the enforcement which exceed the amount of the Secured Obligations, if any, are to be disbursed to the Pledgor.

8.6 The Collateral Agent may determine which of the securities granted pursuant to the Security Documents, if applicable, shall be used to satisfy the Secured Obligations.

8.7 The Pledgor waives to the extent legally permissible its rights of revocation (*Anfechtbarkeit*) and its right to set-off (*Aufrechenbarkeit*).

9. UNDERTAKINGS OF THE PLEDGOR

During the term of this Agreement, the Pledgor undertakes to the Collateral Agent (unless with the prior written consent of the Collateral Agent or unless explicitly permitted by the terms of the Transaction Documents):

9.1.1 to notify the Collateral Agent without undue delay upon becoming aware, by notification in writing to the Collateral Agent, of any encumbrance over the Shares (or part of them). In the case of any attachment (*Pfändung*) in respect of any of the Shares, the Pledgor shall promptly notify the Collateral Agent by notification in writing, such notice to be accompanied by any documents the Collateral Agent requests from the Pledgor to defend itself against any claim of a third party. In particular, the Pledgor shall promptly forward to the Collateral Agent a copy of the attachment order (*Pfändungsbeschluss*), any transfer order (*Überweisungsbeschluss*) and all other documents (in the possession of the Pledgor or that can otherwise be reasonably obtained by the Pledgor) necessary for a defence against the attachment and to promptly inform the attaching creditor of the Collateral Agent's security interests;

9.1.2 in the event of any increase in the capital of the Company, not to allow any party other than the Pledgor to subscribe for any Future Shares;

9.1.3 to effect without undue delay any payments to be made in respect of the Shares. If the Pledgor fails to make any such payment the Collateral Agent may make that payment on behalf of the Pledgor and any sums so paid by the Collateral Agent shall be reimbursed by the Pledgor on demand;

9.1.4 to refrain from any acts or omissions, the purpose or effect of which is or could reasonably be expected to adversely affect the Collateral Agent's ability to enforce the Pledge under this Agreement; and

9.1.5 not to change the articles of association of the Company to the effect that any transfer or pledge of shares and/or dividend rights would require the consent of the shareholders, the shareholders' meeting, any other body of the Company or the Company itself.

10. REPRESENTATIONS AND WARRANTIES OF THE PLEDGOR

10.1 The Pledgor represents and warrants to the Collateral Agent on the date of this Agreement that:

10.1.1 it is not subject to any restriction of any kind with regard to the transfer of, or the granting of a pledge in, or any other disposal of, the relevant Pledged Assets or with regard to the right to receive dividends or profit shares on the relevant Pledged Assets;

10.1.2 there are no silent partnership agreements or similar arrangements by which any third parties are entitled to a participation in the profits or revenue of the Company in respect of which it has granted a pledge;

10.1.3 there are no option rights or other rights outstanding nor is there any other agreement by virtue of which any person is entitled to have issued or transferred to it any share, option, warrant or other interest of whatever nature in the Company;

10.1.4 the Existing Shares have been duly and validly issued and are fully paid in with an amount of EUR 35,000 and there is no obligation for the Pledgor to make additional contributions to the Company;

10.1.5 the Company is duly organised and incorporated and validly existing under the laws of Austria;

10.1.6 the Company is not unable to pay its debts as they fall due (*zahlungsunfähig*) within the meaning of Section 66 of the Austrian Insolvency Code (*Insolvenzordnung* – "**IO**"), over indebted (*überschuldet*) within the meaning of Section 67 of the IO;

10.1.7 no corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company and/or the Pledgor;

10.1.8 no liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Pledgor and/or the Company or their assets has been appointed;

10.1.9 it has the power and legal right to own its property, to conduct its business as currently conducted and to enter into and to perform its obligations under this Agreement;

10.1.10 it has taken all necessary corporate, legal and other action required to authorise the execution and the performance of this Agreement in accordance with its terms;

10.1.11 this Agreement has been duly executed and delivered and, subject to the Legal Reservations, constitutes legal, valid and binding obligations of the Pledgor enforceable in accordance with its terms;

10.1.12 the execution and performance of this Agreement by the Pledgor will, subject to Legal Reservations, not conflict with or result in any breach or violation of (i) any law or regu-

lation or any order of any governmental, judicial or public body or authority, (ii) the constitutive documents, rules and regulations of the Pledgor or (iii) any agreement or other undertaking or instrument to which the Pledgor is a party or which is binding upon the Pledgor or any of its assets;

10.1.13 all consents, licences, notifications, authorisations or approvals of, or filings with, any governmental, judicial and public bodies and authorities of Austria, if any, in connection with the execution, delivery, performance, legality, validity, enforceability and admissibility in evidence of this Agreement have been obtained or effected and are and shall remain in full force and effect;

10.1.14 no event has occurred and is continuing that constitutes, or that, with the giving of notice or the lapse of time, or both, would constitute a default under any agreement or instrument evidencing any indebtedness of the Company, and no such event will occur upon the entering into of this Agreement, in each case to the extent such event could materially adversely affect its ability to perform its obligations under this Agreement;

10.1.15 no claims, suits, proceedings, arbitration or administrative proceedings have been started or threatened against it or with respect to its assets which could materially adversely affect its ability to perform its obligations under this Agreement;

10.1.16 neither the Company nor any of its property has any right of immunity from suit, execution, attachment or other legal process in respect of any action or proceeding relating in any way to this Agreement; and

10.1.17 the Company is in compliance in all material respects with all applicable provisions of law applicable to the business of the Pledgor.

11. INDEMNITY

11.1 The Collateral Agent shall not be liable for any loss or damage suffered by the Pledgor save in respect of such loss or damage which is suffered as a result of the wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of the Collateral Agent.

11.2 The Pledgor will indemnify the Collateral Agent and keep the Collateral Agent indemnified against any and all damages, losses, actions, claims, expenses, demands and liabilities which may be incurred by or made against the Collateral Agent for anything done or omitted in the exercise or purported exercise of the powers contained herein and occasioned by any breach of the Pledgor of any of its obligations or undertakings herein contained except to the extent that such damages, losses, actions, claims, expenses, demands and liabilities have resulted from the wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of the Collateral Agent.

12. DURATION AND INDEPENDENCE

12.1 This Agreement shall remain in full force and effect until complete (unconditional and irrevocable) satisfaction, discharge and/or waiver of the Secured Obligations. The Pledges shall not cease to exist, if the Grantors under the Transaction Documents have only temporarily discharged the Secured Obligations.

12.2 This Agreement shall create a continuing security which means that no change, amendment, supplement or novation whatsoever of the Secured Obligations and/or in the Transaction Documents or in any document or agreement related to the Secured Obligations and/or any of the Transaction Documents shall affect the validity or the scope of this Agreement nor the obligations which are imposed on the Pledgor pursuant hereto.

12.3 This Agreement is independent from any other security or guarantee which may have been or will be given in favour of the Secured Parties. None of such other security or guarantee shall prejudice, or shall be prejudiced by, or shall be merged in any way with this Agreement. For the avoidance of doubt, the Pledgor waives any right it may have of first requiring the Collateral Agent to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Pledgor under this Agreement.

13. COSTS AND EXPENSES / REIMBURSEMENT

13.1 All properly documented reasonable costs, charges, fees and expenses (subject to Clause 13.3, including Austrian stamp duty (*Rechtsgeschäftsgebühren*)) triggered by or in connection with this Agreement or reasonably incurred in connection with its preparation, execution, amendments, waivers, novation, and enforcement (in each case including fees for legal advisers) shall be borne by the Pledgor.

13.2 The Pledgor agrees to pay, or reimburse the Secured Parties and the Collateral Agent for any and all properly documented reasonable fees, costs and expenses (subject to Clause 13.3, including Austrian stamp duty (*Rechtsgeschäftsgebühren*)) incurred in connection with the creation, preservation, or protection of the Pledges and/or the enforcement of this Agreement or the use and/or enforcement of any rights thereunder, including, but not limited to, all reasonable fees and stamp duty fees, payment or discharge of any liens upon or in respect of the Shares and all other reasonable fees, costs and expenses in connection with protecting, maintaining or preserving the Shares and the Secured Parties and the Collateral Agent's interest therein, whether through judicial/arbitral proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Shares, except as explicitly agreed herein to the contrary.

13.3 If any party intentionally or gross negligently transfers an original or a certified copy of this Agreement or intentionally or gross negligently transfers any substitute documentation of this Agreement (*Ersatzbeurkundung und/oder rechtsbezeugende Beurkundung*) into Austria and/or intentionally or gross negligently produces any substitute documentation of this Agreement (*Ersatzbeurkundung und/oder rechtsbezeugende Beurkundung*) in Austria, in each case either phys-

ically or electronically, thereby triggering the payment of Austrian stamp duty (*Rechtsgeschäftsgebühren*), such party shall be liable for the payment of such stamp duty, unless (i) the transfer of any relevant document was necessary for the purpose of compliance with or enforcement of applicable laws or (ii) to effect enforcement of the rights of the Collateral Agent and/or Secured Parties.

13.4 In case of proceedings before a court, arbitral body or governmental authority in Austria each Party undertakes not to:

13.4.1 object to the introduction into evidence of an uncertified copy of this Agreement or any substitute documentation of this Agreement (*Ersatzbeurkundung und/oder rechtsbezeugende Beurkundung*) and accordingly waives its right to request presentation of an original or certified copy of this Agreement or any substitute documentation of this Agreement (*Ersatzbeurkundung und/oder rechtsbezeugende Beurkundung*) (in Austria under section 299 Austrian Civil Procedure Code (*Zivilprozessordnung*));

13.4.2 raise a defence to any action or to the exercise of any remedy on the basis of an original or certified copy of this Agreement or any substitute documentation of this Agreement (*Ersatzbeurkundung und/oder rechtsbezeugende Beurkundung*) not having been introduced into evidence; or

13.4.3 contest the authenticity (*Echtheit*) and conformity to the original (*Übereinstimmung mit dem Original*) of an uncertified copy of this Agreement or any substitute documentation of this Agreement (*Ersatzbeurkundung und/oder rechtsbezeugende Beurkundung*).

14. PARTIAL INVALIDITY

14.1 If at any time, any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, such provision shall as to such jurisdiction, be ineffective to the extent necessary without affecting or impairing the validity, legality and enforceability of the remaining provisions hereof or of such provisions in any other jurisdiction. The invalid or unenforceable provision shall be deemed replaced by such valid, legal or enforceable provision which comes as close as possible to the original intent of the Parties and the invalid, illegal or unenforceable provision.

14.2 No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.

15. AMENDMENTS

Any amendments, changes, variations or waivers to this Agreement may be made only with the agreement of the Pledgor and the Collateral Agent in writing and, if required under Austrian statutory law, in the form of a notarial deed. This applies also to this Clause 15 (*Amendments*).

16. NOTICES

16.1 Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by letter. Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective when received (*zugegangen*), in particular, if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 16.2, if addressed to that department or officer. Any communication or document to be made or delivered to the Pledgee will be effective only when actually received by the Pledgee and then only if it is expressly marked for the attention of the department or officer identified under Clause 16.2 below (or any substitute department or officer as the Pledgee shall specify for this purpose).

16.2 Any communication under this Agreement shall be sent as follows:

(a) If to the Pledgor (acting in its own name and on behalf of the Company):

Fisker Group Inc.
Address: 1888 Rosecrans Avenue, Manhattan Beach, California 90266, United States of America
Attention: Dr. Geeta Gupta-Fisker and Corey MacGillivray
E-mail: legal@fiskerinc.com

(b) If to the Pledgee:

c/o Heights Capital Management
Address: 101 California Street, Suite 3250, San Francisco, CA 94111
Attention: Martin Kobinger, President
E-mail: heightsnotice@sig.com

or to such other address as the recipient may notify or may have notified to the other party in writing, provided that such other address is outside of Austria.

17. PLACE OF PERFORMANCE

The place of performance for all rights and obligations under this Agreement shall be outside of Austria, which particularly means that a Party shall not be entitled to performance of the obligations of another Party under this Agreement in Austria, that payments under this Agreement shall not be effected from and to Austrian bank accounts, and that performance of the obligations of a Party under this Agreement in Austria does not result in discharge of such obligations.

18. MISCELLANEOUS

18.1 Changes and amendments of this Agreement, including the change and amendment of this Clause 18.1 shall be made only in writing.

18.2 Upon the Secured Obligations being discharged in full or explicitly waived in full, the Collateral Agent shall without undue delay, at the request and cost of the Pledgor, cancel the security interests granted by this Agreement and deliver all documents and do all things required in connection with the termination of this Agreement and release of the security interests created hereunder without recourse to, or any representations or warranties by, the Collateral Agent.

18.3 For the purpose of the discharge of any of the Secured Obligations the Collateral Agent may convert any money received, recovered or realised or subject to application by it under this Agreement from one currency to another, which the Collateral Agent considers necessary to cover the obligations and liabilities comprised in the Secured Obligations and any such conversion shall be effected at the Collateral Agent's spot rate of exchange for the time being for obtaining such other currency with the first currency.

18.4 This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Collateral Agent; and references to the Collateral Agent shall include any assignee or successor in title of the Collateral Agent and any person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Collateral Agent under this Agreement or to which, under such laws, those rights and obligations have been transferred.

19. COUNTERPARTS

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 to be an original and all of which taken together shall constitute one and the same Agreement.

20. GOVERNING LAW

This Agreement shall be governed by the laws of Austria without giving effect to any statutory conflict of law provisions.

21. SETTLEMENT OF DISPUTES

21.1 The competent court for commercial matters for the first district in Vienna, Austria, shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement). The Parties agree that the competent court for commercial matters for the first district in Vienna, Austria,

is the most appropriate and convenient court to settle disputes and accordingly no Party will argue to the contrary.

21.2 Clause 21.1 is for the benefit of the Collateral Agent only. As a result, the Collateral Agent shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Collateral Agent may take concurrent proceedings in any number of jurisdictions.

* * * * *

SCHEDULE 1
(*Form of Power of Attorney for Share Transfer*)

Form of Power of Attorney for Share Transfer

SPEZIALVOLLMACHT

Fisker Group Inc, eine nach dem Recht von Delaware errichtete Gesellschaft mit der Geschäftsanschrift 1888 Rosecrans Avenue, Manhattan Beach, California 90266, Vereinigte Staaten von Amerika, bevollmächtigt hiermit:

CVI Investments, Inc.

c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, USA

1. in ihrem Namen und auf ihre Rechnung ihren Geschäftsanteil an der Fisker GmbH, eine nach österreichischem Recht errichtete Gesellschaft mit beschränkter Haftung, mit dem Sitz in Graz, Österreich, und der Geschäftsanschrift Liebenauer Hauptstraße 2-6, 8041 Graz, Österreich, eingetragen im österreichischen Firmenbuch unter der Nummer FN 552387 i, derzeit mit einer zur Gänze geleisteten Stammeinlage von EUR 35.000 zur Gänze oder in Teilen an eine oder mehrere andere Personen abzutreten, sowie alle damit zusammenhängenden Urkunden zu zeichnen sowie sämtliche rechtsgeschäftlichen Erklärungen abzugeben, insbesondere ein oder mehrere notarielle Abtretungsverträge – auch in Form von Anbot und Annahme – zu errichten, den jeweiligen Abtretungspreis oder einen Berechnungsmodus für den Abtretungspreis festzusetzen und alle übrigen Bestimmungen dieser Abtretungsverträge festzulegen.

2. alle sonstigen mit den in Punkt 1. bezeichneten Tätigkeiten verbundenen Handlungen vorzunehmen, Erklärungen abzugeben und zu empfangen, Unterschriften beglaubigt und unbeglaubigt zu

SPECIAL POWER OF ATTORNEY

Fisker Group Inc, a company organized under the laws of Delaware, with its registered offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266, United States of America, herewith authorizes:

CVI Investments, Inc.

c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, USA

1. to assign in its name and on its account its shares in Fisker GmbH, a limited liability company organised under the laws of Austria, with its seat in Graz, Austria, and its business address at Liebenauer Hauptstraße 2-6, 8041 Graz, Austria, registered in the Austrian companies register under file number FN 552387 i, currently having fully paid in an initial contribution of EUR 35,000 in whole or in part to one or more other persons, as well as to sign all documents related thereto as well as to give other expressions and declarations of will, in particular to draw up one or more notarized assignment agreements – also in the form of offer and acceptance – to fix the respective assignment price or the method of calculation for the assignment price, and to determine all remaining provisions of these assignment agreements.

2. to undertake all other actions in connection with the activities mentioned in point 1., to issue and receive statements, to sign with and without notarisation and to set up documents in the form of a notarial deed or a notarial recording or another

leisten, sowie Urkunden in Form eines Notariatsaktes oder einer notariellen Beurkundung oder einer ausländischen Beurkundung (auch in Form eines ausländischen Notariatsaktes) durch einen ausländischen Notar zu errichten.

foreign recording (also in form of a foreign notarial deed) by a foreign notary public.

3. Die Bevollmächtigte ist von dem Verbot des Kontrahierens mit sich selbst auf eigene Rechnung oder als Vertreter eines Dritten befreit; auch ist die Doppelvertretung zulässig.

3. The representative is dispensed from the prohibition of self-contracting with itself on its own account or acting on behalf of a third person; double representation is permissible.

4. Die Bevollmächtigte ist befugt, diese Vollmacht ganz oder zum Teil an Rechtsnachfolger, Mitarbeiter und/oder Rechtsberater der Bevollmächtigten zu übertragen.

4. The representative is authorized to delegate in full or in part this power of attorney to legal successors, employees and/or legal counsels of the representative.

5. Diese Vollmacht wird in Zusammenhang mit einem Anteilsverpfändungsvertrag im ersten Rang zwischen Fisker Group Inc. als Pfandgeber und CVI Investments, Inc. als Pfandnehmer ausgestellt.

5. This power of attorney is made in the context of the First Ranking Share Pledge Agreement between Fisker Group Inc. as pledgor and CVI Investments, Inc. as pledgee.

6. Im Zweifel gilt der deutsche Text.

6. In case of doubt the German text prevails.

7. Diese Vollmacht unterliegt österreichischem Recht.

7. This power of attorney is governed by Austrian law.

_____

Ort/Place, Datum/Date

_____

für/for
Fisker Group Inc.

[*to be notarised and – depending on the place of signing - apostilled*]

* * * * *

SCHEDULE 2
(*Form of Power of Attorney for Exercise of Voting Rights*)

Form of Power of Attorney for Exercise of Voting Rights

SPEZIALVOLLMACHT	**SPECIAL POWER OF ATTORNEY**
Fisker Group Inc, eine nach dem Recht von Delaware errichtete Gesellschaft mit der Geschäftsanschrift 1888 Rosecrans Avenue, Manhattan Beach, California 90266, Vereinigte Staaten von Amerika, bevollmächtigt hiermit:	**Fisker Group Inc**, a company organized under the laws of Delaware, with its registered offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266, United States of America, herewith authorizes:
CVI Investments, Inc. c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, USA	**CVI Investments, Inc.** c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, USA
1. sie als Gesellschafterin der Fisker GmbH, einer nach österreichischem Recht errichteten Gesellschaft mit beschränkter Haftung, mit dem Sitz in Graz, Österreich, und der Geschäftsanschrift Liebenauer Hauptstraße 2-6, 8041 Graz, Österreich, eingetragen im österreichischen Firmenbuch unter der Nummer FN 552387 i, bei Gesellschafterversammlungen dieser jeweiligen Gesellschaft und bei Abstimmungen im schriftlichen Wege zu vertreten und für sie das Stimmrecht auszuüben, insbesondere auch bei Beschlussfassungen über die Zustimmung zur Übertragung und/oder Belastung von Geschäftsanteilen, und auch bei Beschlussfassungen über die Änderung des Gesellschaftsvertrags.	**1.** to represent it as shareholder of Fisker GmbH, a limited liability company organised under the laws of Austria, with its seat in Graz, Austria, and its business address at Liebenauer Hauptstraße 2-6, 8041 Graz, Austria, registered in the Austrian companies register under file number FN 552387 i,, at shareholders' meetings of the respective company and when taking written shareholder resolutions, and to exercise the voting right on its behalf, in particular also when resolving upon the consent to the transfer and/or encumbrance of the shares, and also including resolutions upon changes and amendments to the articles of association.
2. alle sonstigen mit den in Punkt 1. bezeichneten Tätigkeiten verbundenen Handlungen vorzunehmen, Erklärungen abzugeben und zu empfangen, Unterschriften beglaubigt und unbeglaubigt zu leisten, sowie Urkunden in Form eines Notariatsaktes oder einer notariellen Beurkundung oder einer ausländischen Beurkun-	**2.** to undertake all other actions in connection with the activities mentioned in point 1., to issue and receive statements, to sign with and without notarisation and to set up documents in the form of a notarial deed or a notarial recording or another foreign recording (also in form of a foreign notarial deed) by a foreign notary public.

dung (auch in Form eines ausländischen Notariatsaktes) durch einen ausländischen Notar zu errichten.

3. Die Bevollmächtigte ist von dem Verbot des Kontrahierens mit sich selbst auf eigene Rechnung oder als Vertreter eines Dritten befreit; auch ist die Doppelvertretung zulässig.

3. The representative is dispensed from the prohibition of self-contracting with itself on its own account or acting on behalf of a third person; double representation is permissible.

4. Die Bevollmächtigte ist befugt, diese Vollmacht ganz oder zum Teil an Rechtsnachfolger, Mitarbeiter und/oder Rechtsberater der Bevollmächtigten zu übertragen.

4. The representative is authorized to delegate in full or in part this power of attorney to legal successors, employees and/or legal counsels of the representative.

5. Diese Vollmacht wird in Zusammenhang mit einem Anteilsverpfändungsvertrag im ersten Rang zwischen Fisker Group Inc. als Pfandgeber und CVI Investments, Inc. als Pfandnehmer ausgestellt.

5. This power of attorney is made in the context of the First Ranking Share Pledge Agreement between Fisker Group Inc. as pledgor and CVI Investments, Inc. as pledgee.

6. Im Zweifel gilt der deutsche Text.

6. In case of doubt the German text prevails.

7. Diese Vollmacht unterliegt österreichischem Recht.

7. This power of attorney is governed by Austrian law.

_____

Ort/Place, Datum/Date

_____

für/for
Fisker Group Inc.

[*to be notarised and – depending on the place of signing - apostilled*]

* * * * *

EXECUTION PAGE

Share Pledge Agreement Fisker Group Inc.
(shares in Fisker GmbH)

Fisker Group Inc.

SIGNED by: _____

Please print full name: Dr. Geeta Gupta-Fisker

CVI Investments, Inc.

By: Heights Capital Management, Inc., its authorized agent

SIGNED by: _____

Please print full name: _____

Fisker GmbH

SIGNED by: _____

Please print full name: Dr. Geeta Gupta-Fisker

Fisker Inc.

SIGNED by: _____

Please print full name: Dr. Geeta Gupta-Fisker

EXECUTION PAGE

Share Pledge Agreement Fisker Group Inc.

(shares in Fisker GmbH)

Fisker Group Inc.

SIGNED by:_____

Please print full name: _____

CVI Investments, Inc.

By: Heights Capital Management, Inc., its authorized agent

SIGNED by:_____

Please print full name: Martin Kobinger

Fisker GmbH

SIGNED by:_____

Please print full name: _____

Fisker Inc.

SIGNED by:_____

Please print full name: _____

EXHIBIT L

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of May 10, 2024, is by and among Fisker Inc., a Delaware corporation with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**"), and the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**").

RECITALS

A. WHEREAS, the Company desires to issue and sell to each Buyer, and each Buyer desires to purchase the Notes (as defined below) in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933 (as amended from time to time, the "**1933 Act**") on each Closing Date (as defined below);

B. WHEREAS, the Company has authorized the issuance and sale of senior secured notes of the Company, in the aggregate original principal amount of up to (seven million and five hundred thousand dollars) $7,500,000 ("**Maximum Issuance Amount**"), substantially in the form attached hereto as Exhibit A (the "**Notes**"), in one or more tranches (each a "**Tranche**");

C. WHEREAS, each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, at the Initial Closing (as defined below) a Note in the original principal amount set forth opposite such Buyer's name in column (2) (*Initial Tranche*) on the Schedule of Buyers (the "**Initial Notes**");

D. WHEREAS, each Buyer may, at its sole discretion purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, at Additional Closing Date(s) (as defined below) in subsequent Tranche(s) Notes up to the Maximum Issuance Amount in the aggregate;

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 Tranche of Notes. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 1(b)(i), 6(a) and 7(a) below, the Company shall issue and sell to each Buyer, and each Buyer, severally but not jointly, shall purchase from the Company on the Initial Closing Date (as defined below) an Initial Note in the original principal amount as set forth opposite such Buyer's name in column (2) (*Initial Tranche*) on the Schedule of Buyers (the "**Initial Closing**").

(ii) Purchase of Subsequent Tranches of Notes. Subject to the consent of each Buyer in its sole discretion to provide additional funding (which may be withheld for any reason or no reason), the satisfaction (or waiver) of the conditions set forth in Sections 1(b)(ii), 6(b) and 7(b) below and the delivery of a written notice from the Company to the Buyers requesting the Closing of a subsequent Tranche to occur (the "**Additional Closing Notice**"), which notice shall be delivered at least two (2) Business Days prior to the proposed Closing Date and the proposed Closing Date shall not be sooner than five (5) Business Days after the immediately preceding Closing Date, the Company shall issue and sell to each Buyer, and each Buyer, severally but not

jointly, may purchase from the Company on each Additional Closing Dates (as defined below), an additional Note (each, an "**Additional Note**") in such original principal amount as offered by the Company and may be agreed to by such Buyer (each such closing of the purchase of such Additional Note, an "**Additional Closing**").

(b) Closing. Each of the Initial Closing and any Additional Closings (collectively, the "**Closings**") of the purchase of Notes by the Buyers shall occur at the offices of White & Case LLP, 1221 The Avenue of Americas, New York, NY 10020.

(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 1(b)(i), 6(a) and 7(a) below are satisfied or waived (or such other date as is mutually agreed to by the Company and the 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. If the Company has delivered an Additional Closing Notice to the Buyers and the Buyers have consented in writing to such additional funding by countersigning the Additional Closing Notice, the date and time of the applicable Additional Closing (each, an "**Additional Closing Date**," and together with the Initial Closing Date, each, a "**Closing Date**") shall be 10:00 a.m., New York time, on the first (1st) Business Day on which the conditions to such Additional Closing set forth in Section 1(b)(ii), 6(b) and 7(b) below are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer).

(c) Purchase Price. The aggregate purchase price for the Initial Notes (the "**Initial Purchase Price**") to be purchased by a Buyer shall be the amount set forth as the Investment Amount opposite such Buyer's name in column (2) (*Initial Tranche*) on the Schedule of Buyers. The aggregate purchase price for each Additional Note shall be as mutually agreed to between each Buyer and the Company in the relevant Additional Closing Notice (each an "**Additional Purchase Price**" and with the Initial Purchase Price, each a "**Purchase Price**").

(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(h)) 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 (2) (*Initial Tranche*) 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 Closings. On each Additional Closing Date, (i) each Buyer shall pay its respective applicable Additional Purchase Price for such Additional Closing (*less*, in the case of any Buyer, the amounts withheld pursuant to Section 4(h)) to the Company for the Additional Notes to be issued and sold to such Buyer at such Additional Closing, by wire transfer of immediately available funds in accordance with the applicable Additional Flow of Funds Letter (as defined

below) and (ii) the Company shall deliver to each Buyer Additional Notes in the aggregate original principal amount as is set forth in the applicable agreed 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) Validity; Enforcement. This Agreement 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 its 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.

(c) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement 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.

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 (and for purposes of Section 3(z), the Company also represents and warrants as of the date any Information is furnished):

(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, 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 at least 10% of the outstanding capital stock or holds at least 10% of the 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 Notes in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes) have been duly authorized by the Company's board of directors (other than the filing with the SEC of the applicable 8-K Filing (as defined below) (collectively, the "**Required Approvals**")) and no further filing, consent or authorization is required by the Company, its board of directors or its stockholders or other governing body. This Agreement has been, and the other 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. "**Transaction Documents**" means, collectively, this Agreement, the Notes, the US Security Agreement, dated as of the date hereof, made by the Company and each of the undersigned Subsidiaries (as defined therein) of the Company from time to time, in favor of CVI Investment, Inc. (the "**US Security Agreement**"), the Guaranty, the Senior Intercreditor Agreement dated as of the date hereof among the Company, CVI Investment, Inc. (as first lien representative, first lien collateral agent, junior lien representative and junior lien collateral agent) and other parties therein (the "**Intercreditor Agreement**"), the Perfection Certificate in the form attached hereto as Exhibit B (the "**Perfection Certificate**"), and any other Security Documents (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.

"**Security Documents**" means collectively, each and every agreement set forth in Exhibit C hereto, security agreement, pledge agreement, mortgage, deed of trust, Account Control Agreement (as defined in the US Security Agreement) or other collateral security agreement required by or delivered to the Collateral Agent (as defined in the US Security Agreement) from time to time that purport to create a Lien (as defined below) in favor of any of the Collateral Agent as collateral agent for the Holder (as defined in the Notes) of Notes to secure payment or performance of the Obligations (as defined in the Notes) or any portion thereof.

(c) Issuance of Notes. The issuance of the Notes is 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. Upon receipt of the Notes, each of the Buyers will have good and marketable title to the Notes.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes) will not (i) result in a violation of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**") (including, without limitation, any certificate of designation contained therein), the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), 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 New York Stock Exchange (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 Required Approvals), 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, except for such consents, approvals, authorizations, orders and registrations or qualifications as may be required to perfect the Collateral Agent's security interests granted pursuant to the Security Documents and the financing statements and other registrations, lodgments and filings related thereto. 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 such 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. "**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 or (ii) 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 the Buyer's purchase of the Notes. The Company further represents to each Buyer that the Company'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 and its representatives.

(g) Financial Advisory Fees. 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, including, without limitation, financial advisory fees payable in connection with the sale of the Notes. 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 Notes.

(h) No Integrated Offering. 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 Notes to be integrated with other offerings of securities of the Company for purposes of the Securities Act of 1933, as amended, and the rules and regulations thereunder.

(i) Security Documents and Collateral. Upon execution and delivery, the Security Documents will be effective to grant a legal, valid and enforceable Lien on or security title in and security interest in all of the Company's right, title and interest and the right, title and interest of each Subsidiary of the Company party thereto in the Collateral subject to any necessary registrations, lodgments and filings. Upon due and timely filing and/or recording of the financing statements, or other registrations or lodgments in the relevant jurisdiction with respect to the Collateral described in the Security Documents (including deposit accounts in jurisdictions where the security interests over deposit accounts will be perfected by registration), subject to Permitted Liens the security interests granted thereby will constitute valid, perfected first-priority liens on and security interests in the Collateral, to the extent such Liens and security interests can be perfected by the filing and/or recording, as applicable, of financing statements such other registrations, lodgments and filings required thereby in favor of the Collateral Agent, for the benefit of itself, and the holders of the Securities, and such liens and security interests will be enforceable in accordance with the terms contained therein against all creditors of any grantor or mortgagor and subject only to liens expressly permitted to be incurred or exist on the Collateral under the Transaction Documents ("**Permitted Liens**"). The Company and its subsidiaries collectively own, have rights in or have the power and authority to collaterally assign rights in or grant security interests in the Collateral, free and clear of any liens other than the Permitted Liens.

(j) [Intentionally Omitted].

(k) SEC Documents; Financial Statements. Except as disclosed on Schedule 3(k), 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 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. 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 and except as disclosed on Schedule 3(l), 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.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. Except for events, conditions or circumstances disclosed to the Buyer in writing prior to the date hereof, and the continuation or prosecution thereof, 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) could have a material adverse effect on any Buyer's investment hereunder or (ii) 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, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market. During the two years prior to the date hereof, (i) trading in the Common Stock has not been suspended by the SEC and (ii) the Company has received no communication, written or oral, from the SEC regarding the suspension of trading of the Common Stock. 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 of 1977, as amended (the "**FCPA**"), or any other applicable anti-bribery or anti-corruption laws, nor 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. 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) [Intentionally Omitted].

(s) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries, (i) except as disclosed on Schedule 3(s), 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 and any guarantees of any such obligations, (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; (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; and (z) "**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.

(t) Litigation. 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 is outside of the ordinary course of business or individually or in the aggregate material to the Company or any of its Subsidiaries, except as set forth in Schedule 3(t). 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. 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 employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No current (or former) 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, to the knowledge of the Company, 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. 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. 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. 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. 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.

(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) 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) 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, except as otherwise limited by applicable law or any insolvency proceeding currently or anticipated to be commenced with respect to Fisker GmbH (Austria) and Fisker (GB) Limited (United Kingdom).

(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. 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.

(bb) Internal Accounting and Disclosure Controls. Except as set forth in the Company's periodic and current reports filed with the U.S. Securities and Exchange Commission (the "**SEC**"), 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 Company's periodic and current reports filed with the SEC, 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. 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.

(cc) 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.

(dd) Investment Company Status. The Company is not, and upon consummation of the sale of the Notes 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.

(ee) [Intentionally Omitted].

(ff) 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 Notes, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Notes, (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.

(gg) 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 Notes 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.

(hh) [Intentionally Omitted].

(ii) Transfer Taxes. On such Closing Date, all transfer taxes (not including any income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Notes 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.

(jj) 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.

(kk) [Intentionally Omitted].

(ll) 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.

(mm) 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.

(nn) Management. Except as set forth in Schedule 3(nn) 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 stockholder 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.

(oo) 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.

(pp) No Disagreements with Accountants and Lawyers. 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.

(qq) 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.

(rr) Public Utility Holding Company 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 Company Act of 2005.

(ss) 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.

(tt) Ranking of Notes. No Indebtedness of the Company, at such 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 (other than Indebtedness secured by Permitted Liens (as defined in the Notes)).

(uu) 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.

(vv) 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 General Data Protection Regulation of the European Union (GDPR) (Regulation 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.

(ww) [Intentionally Omitted].

(xx) Accuracy of Perfection Certificate. The Perfection Certificate as delivered by the Company pursuant to the terms of Section 7 of this Agreement is or will be, when furnished, true, correct and complete in all material respects.

(yy) [Intentionally Omitted].

(zz) 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 (i) the existence of the transactions contemplated by this Agreement and the other Transaction Documents and (ii) information provided pursuant to that certain Non-Disclosure Agreement, dated April 13, 2024, by and among the Company and one of the Buyers. 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 written information and disclosure furnished or is hereafter furnished to the Buyers by or on behalf of the Company or any of its Subsidiaries (or on their behalf) regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement (other than projections (the "**Projections**") other forward looking information and information of a general economic or general industry nature)(such non-excluded written information being referred to herein collectively as, the "**Information**") is or will be, when furnished, true and correct in all material respects and does not or will not, when furnished, contain any material misstatement of fact or omit to state any material fact necessary in order to make the statements contain therein taken as a whole not materially misleading, in the light of the circumstances under which they were (or hereafter are) made (in each case, after giving effect to all supplements and updates thereto). 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 Projections 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 and that such differences may be material). The Company agrees that if at any time prior to any Closing Date the Company becomes aware that any of the representations and warranties in the Projections would be incorrect in any material respect if the Information were being furnished, and such representations and warranties were being made, at such time, then the Company shall use commercially reasonable efforts to promptly supplement the Information so that such representations and warranties will be correct in all material respects under those circumstances. 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. The Company shall satisfy each of the covenants hereunder and use its best efforts to satisfy the conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Notes Covenants. Until this Agreement has been terminated and all Notes have been redeemed or otherwise satisfied in accordance with their terms, the Company shall comply with each of the covenants set forth in Section 13 of the Notes (regardless of whether any Notes have been issued).

(c) [Intentionally Omitted].

(d) [Intentionally Omitted].

(e) Use of Proceeds. The Company will use the proceeds from the sale of the Notes solely to finance expenses consistent with the Approved Budget (as defined in the Notes), and the proceeds shall be deposited into, and shall remain at all times in, a cash account (the "Segregated Account"), which is subject to a deposit account control agreement (the "Segregated Account DACA") solely for the benefit of the Buyers and in form and substance acceptable to the Buyers (the establishment of such Segregated Account and the implementation of the Segregated Account DACA, the "Segregated Account Arrangements"), provided, that within five (5) Business Days of the Initial Closing, all funds in the Segregated Account shall

be moved to a segregated cash account, which is subject to a deposit account control agreement solely for the benefit of the Buyers and in form and substance acceptable to the Buyers, and thereafter, the term Segregated Account shall refer to such account, the term Segregated Account DACA shall refer to such deposit account control agreement and the term Segregated Account Arrangements shall refer to the establishment of such Segregated Account and the implementation of such Segregated Account DACA.

(f) Financial Information. The Company agrees to send the following to each holder of Notes (each, an "**Investor**") during the Reporting Period (i) unless the following 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 (ii) 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.

(g) [Intentionally Omitted].

(h) Fees. The Company shall pay for and otherwise reimburse the lead Buyer for all reasonable and documented out-of-pocket 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 and due diligence and regulatory filings in connection therewith including, without limitation, for (x) the legal fees and disbursements of White & Case LLP ("White & Case") and Kelley Drye & Warren LLP, counsels to the lead Buyer with respect to each Closing, (y) the fees and disbursements of GHU Associates, LLC ("GHU"), advisor to the lead Buyer, and (z) the fees and disbursements of any outside counsel (including local counsel) and accounting, appraisal, consulting and other advisors (collectively, the "Transaction Expenses"). The Company shall pay, in each case, within two (2) Business Days of receiving an invoice (i) all Transaction Expenses for which invoices (subject to redaction to protect privileges or other confidential communications) have been submitted to the Company, and (ii) all other fees and expenses submitted to the Company and required to be paid or reimbursed pursuant to Section 8(k) of this Agreement or Section 19 of the Notes.

The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby (including, without limitation, any fees or commissions payable to the Financial Advisor, who is the Company's sole financial advisor in connection with the transactions contemplated by this Agreement). 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 Notes to the Buyers.

(i) Pledge of Notes. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Notes 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 Notes. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Notes may reasonably request in connection with a pledge of the Notes to such pledgee by a Buyer.

(j) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction.

(1) Initial Closing. The Company shall, on or before 9:30 a.m., New York time, on the first (1st) Business Day after the date of this Agreement, issue a press release (the "**Initial Press Release**") reasonably acceptable to the Buyers disclosing all the material terms of the transactions contemplated by the Transaction Documents. On or

before 9:30 a.m., New York time, on the the first (1st) Business Day after 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), and the form of Notes (including all attachments), the "**Initial 8-K Filing**"). From and after the filing of the Initial 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 Initial 8-K Filing, 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 (other than those under that certain Non-Disclosure Agreement, dated April 13, 2024, by and among the Company and one of the Buyers).

(2) Additional Closings. The Company shall, on or before 9:30 a.m., New York time, on the first (1st) Business Day after the date on which an Additional Closing Notice delivered by the Company is countersigned by the applicable Buyer, either issue a press release (each, an "**Additional Press Release**" and, together with the Initial Press Release, each a "**Press Release**") or file a Current Report on Form 8-K (each, an "**Additional 8-K Filing**", and together with the Initial 8-K Filing, the "**8-K Filings**"), in each case reasonably acceptable to each Buyer participating in such Additional Closing, disclosing that an Additional Closing Notice has been duly countersigned or an Additional Closing has occurred, as applicable. From and after the filing of the Additional Press Release or Additional 8-K Filing, solely to the extent such Additional Closing Notice constitutes material, non-public information, 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 Additional 8-K Filing, 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 (other than those under that certain Non-Disclosure Agreement, dated April 13, 2024, by and among the Company and one of the Buyers).

(ii) Limitations on Disclosure. Except with respect to the delivery of an Additional Closing Notice, 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, 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; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make the Press Release and any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filings 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 (i) pursuant to that certain Non-Disclosure Agreement, dated April 13, 2024, by and among the Company and one of the Buyers or (ii) 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.

(k) Additional Issuance of Notes. So long as any Buyer beneficially owns any Notes, 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 no Buyer owns any Notes (the "**Restricted Period**"), neither the Company nor any of its Subsidiaries shall directly or indirectly:

(i) amend or modify (whether by an amendment, waiver, exchange of securities, or otherwise) any of the Company's warrants to purchase Common Stock that are outstanding as of the date hereof; or

(ii) 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 Convertible Securities, any debt, any preferred stock 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(k) shall not apply in respect of the issuance of (A) shares of 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 (x) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the date hereof pursuant to this clause (A) do not, in the aggregate, exceed more than 5% of the Common Stock issued and outstanding immediately prior to the date

hereof and (y) 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; (B) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) 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 Convertible Security is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Convertible Security that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) above) is not lowered, none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (A) above) are otherwise materially changed in any manner that adversely affects any of the Buyers; and (C) any shares of Common Stock, warrants or options issued or issuable in connection with any bona fide strategic or commercial alliances, acquisitions, mergers, licensing arrangements, and strategic partnerships, provided, that (x) the primary purpose of such issuance is not to raise capital as reasonably determined, and (y) the purchaser or acquirer or recipient of the securities in such issuance solely consists of either (I) the actual participants in such strategic or commercial alliance, strategic or commercial licensing arrangement or strategic or commercial partnership, (II) the actual owners of such assets or securities acquired in such acquisition or merger or (III) the stockholders, partners, employees, consultants, officers, directors or members of the foregoing Persons, in each case, which is, itself or through its subsidiaries, an operating company or an owner of an asset, in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, and (z) the number or amount of securities issued to such Persons by the Company shall not be disproportionate to each such Person's actual participation in (or fair market value of the contribution to) such strategic or commercial alliance or strategic or commercial partnership or ownership of such assets or securities to be acquired by the Company, as applicable (each of the foregoing in clauses (A) through (C), collectively the "**Excluded Securities**"). "**Approved Stock Plan**" means any employee benefit plan, including stock incentive plans, which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of 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.

(l) [Intentionally Omitted].

(m) 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.

(n) Other Notes; Variable Securities. So long as any Notes remain outstanding, 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. "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities 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

Convertible Securities, 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 Convertible Securities 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.

(o) Participation Right. At any time on or prior to the first anniversary of the Commitment Date, neither the Company nor any of its Subsidiaries shall, directly or indirectly, effect any Subsequent Placement or Subsequent Financing (as defined below) unless the Company shall have first complied with this Section 4(o). The Company acknowledges and agrees that the right set forth in this Section 4(o) is a right granted by the Company, separately, to each Buyer.

(i) At least five (5) Business 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) Business 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) Business 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 25% 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(o) 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 (5^{th}) 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(o)(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(o)(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(o) 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(o)(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(o)(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(o) 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(o) 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 relating to a transaction with respect to the Offered Securities, by the fifth (5^{th}) Business Day following delivery of the Offer Notice. If by such fifth (5^{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 relating to a transaction with respect to the Offered Securities. 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(o). 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(o)(ii).

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

(x) In respect of Subsequent Indebtedness, Company shall deliver to each Buyer a written notice (each such notice, a "**Pre-Financing Notice**") at least ten (10) Business Days prior to such Subsequent Financing, which Pre-Financing Notice shall not contain any information (including, without limitation, material, non-public information) other than whether such Buyer wants to review the details of such financing. The Company shall, within one (1) Business Day provide the terms of the Subsequent Financing to any Buyer that has elected to review such terms. Each Buyer shall have the right, in its sole discretion, to elect to review the terms of the Subsequent Financing and participate in financing up to an amount of the Subsequent Financing equal to 25% of the Subsequent Financing on the same terms, conditions and price provided for in the Subsequent Financing. "**Subsequent Financing**" means the incurrence of borrowed money by the Company in an amount exceeding $1,000,000, other than through a Subsequent Placement.

(p) Additional Collateral; Perfection of Security Interests. The Company and each Subsidiary party to a Security Document (i) shall complete all filings and other similar actions required in connection with the pledge and perfection of security interests in the Collateral as and to the extent contemplated by the Security Documents within 10 days of the Closing Date, (ii) shall take all actions necessary to execute and deliver additional Security Documents reasonably requested by the Collateral Agent from time to time after the Closing Date (including but not limited to the documents set forth in Exhibit D) and (iii) shall take all actions necessary to maintain such security interests and to perfect security interests in any Collateral

acquired after the Closing Date or any Security Document entered into after the Closing Date, in each case as and to the extent contemplated by the Security Documents.

(q) 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.

(r) 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.

(s) 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.

(t) Stock Splits. Until the Notes and all notes issued pursuant to the terms thereof are no longer outstanding, the Company shall not effect any stock combination, reverse stock split or other similar transaction (or make any public announcement or disclosure with respect to any of the foregoing) without the prior written consent of the Required Holders (as defined below).

(u) [Intentionally Omitted].

(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.

5. REGISTER; 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 Notes), 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) and the principal amount 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) [Intentionally Omitted].

(c) Legends. Buyer understands that, until such time as the Notes may be sold pursuant to Rule 144 under the 1933 Act ("**Rule 144**"), any certificates representing the Notes, whether maintained in a book entry system or otherwise, will bear one or more legends in substantially the following form and substance:

> "THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER APPLICABLE SECURITIES LAWS AND HAVE BEEN ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO A TRANSACTION WHICH IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE

SECURITIES LAWS, AND, IN THE CASE OF A TRANSACTION EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THE SECURITIES EVIDENCED BY THIS CERTIFICATE FROM IT OF SUCH RESALE RESTRICTIONS."

In addition, any certificates, whether maintained in a book entry system or otherwise, representing the Notes may contain any legend required by the blue sky laws of any state to the extent such laws are applicable to the sale of such Notes hereunder. The Company shall use its commercially reasonable efforts to help facilitate the removal of such legend when it is legally permitted to do so under Rule 144, and to facilitate any transfer of the Notes under Rule 144 that may be requested by Notes but shall not be obligated to incur any material costs or expenses in making such efforts other than as set forth herein.

(d) Restricted Securities. Each Buyer understands that the Notes are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such Notes may be resold without registration under the Securities Act only in certain limited circumstances. Accordingly, such Buyer represents that it is familiar with Rule 144 of the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

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 Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(h)) for the Initial Notes being purchased by such Buyer at the Initial Closing by wire transfer of immediately available funds in accordance with the 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 Additional Notes to each Buyer at the applicable 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 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 applicable Additional Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant

to Section 4(h)) for the Additional Notes being purchased by such Buyer at such 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 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 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 such Additional Closing Date.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

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

(i) The Company shall have duly executed and delivered to such Buyer each of the following (which shall remain in full force and effect as of the Initial Closing Date):

(A) the Security Documents set forth in Exhibit C;

(B) the Intercreditor Agreement;

(C) the Guaranty;

(D) the Perfection Certificate; and

(E) the Initial Notes (in such original principal amount as is set forth across from such Buyer's name in column (2) (*Initial Tranche*) of the Schedule of Buyers) being purchased by such Buyer at the Initial Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinions of Orrick Herrington & Sutcliffe LLP, the Company's counsel in connection with the Security Documents executed and delivered by the Company pursuant to the terms of Section 7(a)(i) of this Agreement, dated as of the Initial Closing Date, in the form acceptable to the Buyer.

(iii) The Company shall have delivered to such Buyer:

(A) a certificate evidencing the formation and good standing of the Company in 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;

(B) a certificate evidencing the Company'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 conducts business and is required to so qualify, as of a date within ten (10) days of the Initial Closing Date; and

(C) a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Initial Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form

reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Initial Closing.

(iv) The Company shall have delivered to such Buyer's Designated Adviser (as specified for such Buyer in the Schedule of Buyers) an Approved Budget (as defined in the Notes) current as of the Initial Closing Date.

(v) [Intentionally Omitted].

(vi) Each and every representation and warranty of the Company shall be true and correct in all material respects on and 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 an 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.

(vii) 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.

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

(ix) No Event of Default (as defined in the Notes) or event which, with the giving of notice, the lapse of time, or both, would constitute an Event of Default, shall have occurred and be continuing (i) on such Initial Closing Date or (ii) immediately after giving effect to the issuance of the Initial Notes or the sale of the Initial Notes to such Buyer.

(x) [Intentionally Omitted].

(xi) 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.

(xii) The Company shall be in compliance with the Approved Budget.

(b) The obligation of each Buyer hereunder to purchase the applicable Additional Notes at the applicable 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) Each Transaction Document shall be in full force and effect and, in the case of the Perfection Certificate, shall be true, correct and complete in all material respects;

(ii) The Company shall have duly executed and delivered to such Buyer such Additional Notes being purchased by such Buyer at such Additional Closing pursuant to this Agreement.

(iii) Such Buyer shall have received the opinions of Orrick Herrington & Sutcliffe LLP, the Company's counsel, and of such other counsel as may be requested by such Buyer in connection with any additional Security Documents executed and delivered by the Company pursuant to the terms of this Agreement in the form acceptable to the Buyer.

(iv) The Company shall have delivered to such Buyer:

(A) a certificate evidencing the formation and good standing of the Company in 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; and

(B) a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of such Additional Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at such Additional Closing.

(v) Each and every representation and warranty of the Company shall be true and correct in all material respects 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.

(vi) 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.

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

(viii) Such Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company with respect to such Additional Closing (each, an "**Additional Flow of Funds Letter**").

(ix) No Event of Default (as defined in the Notes) or default under any of the Transaction Documents shall have occurred and be continuing (i) on such Additional Closing Date or (ii) immediately after giving effect to the issuance of such Additional Notes or the sale of the Additional Notes to such Buyer.

(x) [Intentionally Omitted].

(xi) The Company shall be in compliance with the Approved Budget in effect as of such Additional Closing Date.

(xii) 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. 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 New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably and unconditionally (A) submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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; provided, however, that each Buyer shall be entitled to assert jurisdiction over the Company and its property in any court in which jurisdiction may be laid over the Company or its property, (B) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any such New York State or Federal court, as the case may be, (C) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court, and (D) 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. **THE COMPANY 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 AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY**.

(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 to 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 the 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 the 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 8(e) shall be binding on all Buyers and holders of Notes, 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 Notes 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). 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 8(e) shall be binding on all Buyers and holders of Notes, 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 Notes 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 (other than the Company and its Subsidiaries) and 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 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 such 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) prior to the Initial Closing Date, each Buyer entitled to purchase Notes at the Closing and (II) on or after the Initial Closing Date, holders of a majority of the Notes.

(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) on the day it is sent, 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:

Fisker Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Telephone: (833) 434-7537
Attention: Geeta Gupta-Fisker, Chief Financial Officer and Chief Operating Officer
E-Mail: legal@fiskerinc.com

With a copy (for informational purposes only) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue

New York, NY 10017
Telephone: (212) 450-4213
Attention: Brian Resnick
E-Mail: brian.resnick@davispolk.com.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:

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: (212) 819-8980
Attention: Andrew Weisberg
E-mail: aweisberg@whitecase.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 White & Case 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 (as defined in the Notes) (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 Notes 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 referred to in Section 8(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the 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 Notes 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 Notes 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 Notes, (C) any disclosure properly made by such Buyer pursuant to Section 4(j), or (D) the status of such Buyer or holder of the Notes 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 8(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 8(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 8(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 8(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 Notes, 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 be 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 8(p) referred to as the "**Judgment Currency**") an amount due in U.S. Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Business 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 8(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 8(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 U.S. 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 Notes 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 the Buyer's investment in the Notes 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 Notes 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.

9. RELEASE; NON-DISPARAGEMENT.

(a) Release. The Company, on behalf of itself, each Subsidiary and each of their past and/or present, officers, directors, employees, predecessors, successors, assigns, affiliates, parents and subsidiaries (together, the "**Fisker Releasing Parties**") fully, irrevocably and generally releases each Buyer and each of its past and present parents, subsidiaries, affiliates, successors, assigns, owners, officers, directors, trustees, shareholders, unitholders, members, partners, employees, contractors, agents, insurers, attorneys, investment bankers, advisors, auditors, accountants, partners, general partners, heirs, executors, administrators, and representatives (collectively the "**Released Parties**"), from any and all claims (whether direct, class, derivative, representative or otherwise), actions, suits, liabilities, damages (whether compensatory, punitive or otherwise), losses, costs, expenses, and rights and causes of action, known or Unknown Claims (as defined below), that they now have or have ever had or may ever have in the future, whether resulting from any action or inaction with respect to, based upon, arising with respect to, or directly or indirectly relating to, as applicable, the Notes and/or the Transaction Documents (the "**Released Claims**"). Released Claims shall not include claims to enforce this Agreement or for breach of this Agreement. "**Unknown Claims**" means claims which the Fisker Releasing Parties do not know or do or do not suspect to exist in their favor at the time of the release of the Released Claims, which, if known by them might have affected their release of the Released Claims, or might have affected their decision(s) with respect to this Agreement. With respect to any and all Released Claims, the Fisker Releasing Parties stipulate and agree that they expressly waive, the provisions, rights, and benefits of California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OTHER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Fisker Releasing Parties hereby further waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Fisker Releasing Parties acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but expressly fully, finally and forever waive, compromise, settle, discharge, extinguish and release fully, finally and forever, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories or authorities. The Fisker Releasing Parties acknowledge that the foregoing waiver was separately bargained for and is an essential element of this Agreement.

(b) Non-Disparagement. The Company, on behalf of itself, its Subsidiaries, and each of the other Fisker Releasing Parties, agrees that it will not at any time make, publish or communicate (whether made or given orally, in writing, in any digital medium, in any filing with any Governmental Entity or in any other manner) to any Person, any Disparaging (defined below) remarks, comments or statements concerning any of the Released Parties or any of the Transaction Documents. For purposes of this Agreement, "**Disparaging**" remarks, comments or statements are those that impugn, or threaten to impugn, the character, honesty, integrity, morality, legality, business acumen or abilities of the individual or Person or Transaction Document being disparaged, as applicable. Disparaging remarks shall expressly include, but not be limited to, any suggestion that any of the Released Parties violates or operates in contravention of federal or state securities laws, that any term or condition of any of the Transaction Documents are void or invalid, or any other remark, comment or statement that undermines any of the Released Parties' reputation or the validity or enforceability of any of the Transaction Documents (whether made or given orally, in writing, in any digital medium, in any filing with any Governmental Entity or in any other manner to any Person). The Company further agrees that it should be jointly and severally liable under this Section 9 for any Disparaging remarks, comments or statements of any of the Fisker Releasing Parties. The Fisker Releasing Parties acknowledge that the foregoing non-disparagement agreement was separately bargained for and is an essential element of this Agreement.

[*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:

FISKER INC.

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

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:

CVI INVESTMENTS, INC.
By: Heights Capital Management, Inc., its authorized agent

By: _____
Name: Martin Kobinger
Title: President

SCHEDULE OF BUYERS

(1)	(2)				
Buyer	**Initial Tranche**				
Lead Buyer **CVI Investments, Inc.** **Mailing Address and E-mail Address** c/o Heights Capital Management 101 California Street Suite 3250 San Francisco, CA 94111 Attention: Martin Kobinger, President E-Mail: heightsnotice@sig.com **Legal Representative's Mailing Address and E-mail Address** White & Case LLP 1221 Avenue of the Americas New York, NY 10020 Telephone: (212) 819-8980 Attention: Andrew Weisberg	**Original Principal Amount of Notes:** $3,456,000.00 **Investment Amount:** $7,500,000.00				

DISCLOSURE SCHEDULES TO
SECURITIES PURCHASE AGREEMENT

DISCLOSURE SCHEDULES TO
SECURITIES PURCHASE AGREEMENT

These Disclosure Schedules (the "**Disclosure Schedules**") are the Disclosure Schedules referred to in that certain Securities Purchase Agreement, dated as of May 10, 20243, by and among Fisker Inc, and the investors listed on the Schedule of Buyers attached thereto (the "**Agreement**"). Unless otherwise indicated, all capitalized terms contained herein shall have the same meaning ascribed to such terms in the Agreement.

Except as expressly provided herein or in the Agreement, information and disclosures contained in the Disclosure Schedules are made as of the date of the Agreement and the Closing Date, and the accuracy of such information and disclosures is confirmed only as of the date of the Agreement and the Closing Date and not any time thereafter.

Disclosures made in any section of the Disclosure Schedules shall be deemed to be disclosed for purposes of, and shall qualify, the corresponding section or subsection of this Agreement.

The information disclosed in the Disclosure Schedules is disclosed in furtherance of, and should not be used for any purpose except in furtherance of, the transactions contemplated in the Agreement and each party's enforcement of their respective rights granted under the Agreement.

SCHEDULE 3(a)

COMPANY SUBSIDIARIES

1. Fisker Group Inc.
2. Fisker Belgium B.V.
3. Fisker Canada Ltd.
4. Fisker (Shanghai) Motors Ltd.
5. Fisker Denmark ApS
6. Fisker France SAS
7. Fisker GmbH (Germany)
8. Fisker GmbH (Austria)
9. Fisker Vigyan India Private Limited
10. Fisker Ireland Limited
11. Ocean E.V., S. de R.L. de C.V.
12. Fisker Netherlands B.V.
13. Fisker Netherlands Sales B.V.
14. Fisker Norway AS
15. Fisker Spain, SL
16. Fisker Sweden AB
17. Fisker Switzerland IP GmbH
18. Fisker Switzerland Sales GmbH
19. Fisker (GB) Limited
20. Platinum IPR LLC.
21. Terra Energy Inc.
22. Fisker TN LLC

23. Blue Current Holding LLC

SCHEDULE 3(k)

SEC DOCUMENTS

1. Form 10-Q for the fiscal quarter ended September 30, 2023.

2. Form 10-K for the fiscal year ended December 31, 2023.

SCHEDULE 3(l)

ABSENCE OF CERTAIN CHANGES

None.

SCHEDULE 3(s)

INDEBTEDNESS

1. $662,996,665 in aggregate unpaid principal amount of 2.50% convertible senior notes due in September 2026.

2. $183,050,000 in aggregate unpaid principal amount of Series A-1 Senior Convertible Notes Due 2025 and Series B-1 Senior Convertible Notes Due 2025.

SCHEDULE 3(t)

LITIGATION

1. **Gilbert v. Fisker Inc., et al., No. 2023-0824-NAC (Del.)**
    - On August 11, 2023, a class action lawsuit asserting claims under section 242(b)(2) of the Delaware General Corporation Law was filed in in the Delaware Court of Chancery, naming the Company, Henrik Fisker, Geeta Gupta-Fisker, Wendy J. Greuel, Mark E. Hickson, William R. McDermott, Roderick K. Randall, Nadine I. Watt, and Mitch Zulkie as defendants. The plaintiffs allege that an amendment to the charter violated the fiduciary duties of the Board and its controlling stockholders. By stipulation with the plaintiff, the Company has not filed the amendment until the litigation is resolved. The motion to dismiss is pending.

2. ***Zahabi v. Fisker Inc., et al*., No. 2:23-cv-09976-FLA (KSx) (C.D. Cal.)**
    - On November 27, 2023, a putative class action lawsuit asserting claims under the federal securities laws was filed in the United States District Court for the Central District of California, naming the Company, Henrik Fisker, Geeta Gupta-Fisker and John Finnucan as defendants. The plaintiff purports to assert claims under Section 10(b) and 20(a) of the Securities Exchange Act on behalf of a putative class of persons and entities who purchased or otherwise acquired the Company's securities during the period between August 4, 2023 and November 20, 2023 (the "Class Period"). The plaintiff alleges that, as a result of the defendants' allegedly false and/or misleading statements and/or omissions concerning the Company's business, including statements and/or omissions concerning the Company's operations, prospects, and internal controls over financial reporting, the Company's securities traded at artificially inflated prices during the Class Period. Multiple movants have filed motions seeking appointment as lead plaintiff, and a hearing on those motions had been scheduled for February 23, 2024 but has been postponed indefinitely. The deadline for defendants to respond to the complaint has been stayed pending the appointment of a lead plaintiff and the subsequent filing of an amended complaint.

3. ***Hanna v. Fisker, et al.*, No. 2:23-cv-10713-FLA (KSx) (C.D. Cal.)**
    - On December 21, 2023, this shareholder derivative action was filed in the United States District Court for the Central District of California, purportedly on behalf of the Company. The plaintiff in the *Hanna* action asserts claims against certain of the Company's officers and directors for alleged breaches of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and violations of the Securities Exchange Act. The defendants have stipulated with the plaintiff to extend the deadline to respond to the complaint. The response is now due within 30 days following the Court's ruling on the motion for consolidation of the California derivative actions and appointment of a lead plaintiff.

4. ***Uvaydov v. Fisker, et al.*, No. 1:24-cv-00133-JLH (D. Del.)**

- On February 1, 2024, this shareholder derivative action was filed in the United States District Court for the District of Delaware, purportedly on behalf of the Company. The plaintiff in the *Uvaydov* action asserts claims against certain of the Company's officers and directors for alleged breaches of fiduciary duty, aiding and abetting breaches of fiduciary duty, unjust enrichment, waste, and violations of the Securities Exchange Act. The parties stipulated to extend the deadline to respond to the complaint, and Defendants' response is now due on July 18, 2024.

5. ***Roy v. Fisker, et al.*, No. 2:24-cv-01551-FLA (KSx) (C.D. Cal.)**
   - On February 24, 2024, this shareholder derivative action was filed in the United States District Court for the Central District of California, purportedly on behalf of the Company. The plaintiff in the *Roy* action asserts claims against certain of the Company's officers and directors for alleged breaches of fiduciary duty and violations of the Securities Exchange Act. The complaint has not yet been served on the Company.

6. ***Azizi v. Fisker, et al.*, No. 2:24-cv-01619-FLA (KSx) (C.D. Cal.)**
   - On February 27, 2024, this shareholder derivative action was filed in the United States District Court for the Central District of California, purportedly on behalf of the Company. The plaintiff in the *Azizi* action asserts claims against certain of the Company's officers and directors for alleged breaches of fiduciary duty, unjust enrichment, waste of corporate assets, and violations of the Securities Exchange Act. The complaint has not yet been served on the Company.

7. ***Karamian v. Fisker, et al.*, No. 2:24-cv-01867-FLA (KSx) (C.D. Cal.)**
   - On March 7, 2024, this shareholder derivative action was filed in the United States District Court for the Central District of California, purportedly on behalf of the Company. The plaintiff in the *Karamian* action asserts claims against certain of the Company's officers and directors for alleged breaches of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and violations of the Securities Exchange Act. The complaint has not yet been served on the Company.

SCHEDULE 3(nn)

MANAGEMENT

None.

EXHIBIT A

Form of Note

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER APPLICABLE SECURITIES LAWS AND HAVE BEEN ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO A TRANSACTION WHICH IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS, AND, IN THE CASE OF A TRANSACTION EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THE SECURITIES EVIDENCED BY THIS CERTIFICATE FROM IT OF SUCH RESALE RESTRICTIONS.

FISKER INC.

SENIOR SECURED NOTE DUE 2024

Issuance Date: May 10, 2024 Original Principal Amount: U.S. $3,456,000

FOR VALUE RECEIVED, Fisker Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of CVI Investments, Inc. or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption or otherwise, the "**Principal**") when due, whether upon the Maturity Date, or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and interest and default interest thereon, as set forth below. This Senior Secured Note due 2024 (including all Senior Secured Notes due 2024 issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Secured Notes (collectively, the "**Notes**", and such other Senior Secured Notes, the "**Other Notes**") issued pursuant to Section 1 of that certain Securities Purchase Agreement, dated as of May 10, 2024 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (the "**Securities Purchase Agreement**"). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Except as prohibited by applicable law, not later than 5:00 p.m. (Eastern Time) on the last Business Day of each calendar week, the Company shall repay to the Holder an amount in cash equal to the positive Net Cash Flow for such week (calculated in the same manner as used for the Approved Budget), if any, up to the amount of the then-outstanding Obligations. Notwithstanding anything herein to the contrary, with respect to any redemption or repayment hereunder, as applicable, the Company shall redeem or repay, as applicable, First, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document, Second, all accrued and unpaid Interest, if any, hereunder and under any Other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any Other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any Other Notes held by such Holder, in each case, allocated pro rata among this Note and such Other Notes held by such Holder.

2. INTEREST; DEFAULT RATE. Interest (including post-petition interest in any

proceeding under any Bankruptcy Law) on this Note ("Interest") shall accrue hereunder beginning on the Issuance Date at a rate equal to the three-month Secured Overnight Financing Rate plus twelve percent (12.00%) per annum (the "Interest Rate") and shall be computed on the basis of a 360-day year and twelve 30-day months, shall be payable in arrears on the last Business Day of each calendar week (each an "Interest Payment Date"), provided, that, the Company shall pay Interest (including post-petition Interest in any proceeding under any Bankruptcy Law) on overdue Principal at the rate equal to three percent (3%) per annum in excess of the Interest Rate otherwise payable on the Notes to the extent lawful (the "Default Rate"), provided further, that, the Company shall pay Interest (including post-petition Interest in any proceeding under any Bankruptcy Law) on overdue Interest at the Default Rate to the extent lawful. Interest shall be paid in kind, shall accrue daily and shall be capitalized and added to the outstanding Principal on each Interest Payment Date. From and after each applicable Interest Payment Date, the outstanding Principal shall without further action by any party hereto be deemed to be increased by the aggregate amount of Interest that is paid in kind so capitalized and added to the Principal in accordance with the immediately preceding sentence. Accrued and unpaid Interest and Late Fees, if any, shall also be payable by way of inclusion of such Interest and Late Fees in the Redemption Amount (as defined below) upon any redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below).

3. RESERVED.

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) [Reserved];

(ii) [Reserved];

(iii) [Reserved];

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby;

(v) [Reserved];

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $10,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to (i) any Other Notes or (ii) solely during the Forbearance Period (as defined in the Forbearance Agreement) (A) any default under, redemption of or acceleration of the 2025 Notes as a result of any Specified Defaults (as defined in the Forbearance Agreement) or (B) any default under or acceleration of the Company's 2.50% Convertible Senior Notes due 2026 existing on the Issuance Date;

(vii) 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, provided, that the foregoing shall not apply with respect to Fisker GmbH (Austria) or Fisker (GB) Limited (United Kingdom);

(viii) 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 against the assets of the Company or any Subsidiary, provided, that the foregoing shall not apply with respect to Fisker GmbH (Austria) or Fisker (GB) Limited (United Kingdom);

(ix) 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;

(x) a final judgment or judgments for the payment of money aggregating in excess of $10,000 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 $10,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the 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;

(xi) 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 $10,000 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 (ii) is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of $10,000, which breach or violation (i) results in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constitutes a failure to pay the principal or interest of any such debt when due and payable (after giving effect to any applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, except, in each case, solely during the Forbearance Period (as defined in the Forbearance Agreement) with respect to (A) any default under, redemption of or acceleration of the 2025 Notes as a result of any Specified Defaults (as defined in the Forbearance Agreement) or (B) any default under or acceleration of the Company's 2.50% Convertible Senior Notes due 2026 existing on the Issuance Date;

(xii) other than as specifically set forth in another clause of this Section 4(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;

(xiii) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company;

(xiv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13 of this Note;

(xv) any Event of Default (as defined in the Other Notes) occurs and is continuing with respect to any Other Notes;

(xvi) any provision of any Transaction Document (including, without limitation) the Security Documents or the Guaranty 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 parties thereto, or the validity or enforceability thereof shall be contested 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 Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including, without limitation, the Security Documents and the Guaranty);

(xvii) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (as defined in the Securities Purchase Agreement) on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent (as defined in the Securities Purchase Agreement) or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental

authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xviii) failure to comply with the Approved Budget in any respect;

(xix) termination or expiration of the Forbearance Agreement;

(xx) there occurs any uninsured loss to any material portion of the Collateral.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) calendar day deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the product of (A) the sum of (x) such portion of the Principal to be redeemed, (y) all accrued and unpaid Interest with respect to such portion of the Principal amount, and (z) accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any (such sum, the "**Redemption Amount**"), multiplied by (B) the Redemption Premium (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the 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 the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) 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 Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes reasonably satisfactory to the Required Holders, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having equal or greater security to the Notes and having similar ranking to the Notes. 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions.

(b) Notice of a Change of Control; Redemption Right. No later than ten (10) Business Days prior to the consummation of a Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on twenty (20) Business 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, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company, which Change of Control Redemption Notice shall indicate the Redemption Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the product of (w) the Change of Control Redemption Premium multiplied by (y) the Redemption Amount being redeemed (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 5(b), the 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 the Holder. Accordingly, any Redemption Premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. RESERVED.

7. RESERVED.

8. RESERVED.

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

10. RESERVED.

11. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within one (1) Business Day after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within one (1) Business Day after the Company's receipt of such notice otherwise. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Redemption Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Redemption Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Redemption Amount and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Redemption Amount submitted for redemption. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Redemption Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence

substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. RESERVED.

13. COVENANTS. Until all of the Notes have been redeemed or otherwise satisfied in accordance with their terms:

(a) Rank; Guaranty; Collateral. The Company shall designate all payments due under this Note as senior secured Indebtedness, and (a) the Notes shall rank *pari passu* with all Other Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries. The Notes shall be guaranteed as set forth in the Guaranty. The Notes and the Guaranty shall be secured by a priming first priority lien on the Collateral on the terms and subject to the conditions set forth in the Security Agreement.

(b) Incurrence of Indebtedness. Except with the prior express written consent of the Required Holder, 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 (i) the Indebtedness evidenced by this Note and the Other Notes, (ii) the Existing Notes and (iii) Permitted 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 convertible, exchangeable, exercisable or otherwise linked to the Company's Common Stock, or any other equity security of the Company, except the Existing Notes.

(c) 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.

(d) Restricted Payments. Without limiting the generality of Section 13(v), the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, (i) redeem, defease, repurchase, repay, prepay 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 than the Notes) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness (A) prior to the due date or (B) if at the time such payment with respect to such Indebtedness is due or is otherwise made or, after giving effect to such payment, (I) an event constituting an Event of Default has occurred and is continuing or (II) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing, or (ii) elect to accelerate, prepay or redeem early any Indebtedness.

(e) Restricted Investments. Without limiting the generality of Section 13(v), the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, make any Restricted Investments.

(f) Restriction on Redemption and Cash Dividends. Without limiting the generality of Section 13(v), 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.

(g) Restriction on Transfer of Assets. Without limiting the generality of Section 13(v), 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 (including any Collateral) whether in a single transaction or a series of related transactions, other than a repayment of the Obligations or a Permitted Asset Disposition, and the proceeds from any sale, disposition or other monetization of any assets or rights of the Company or any Subsidiary owned or hereafter acquired shall be deposited directly into the Segregated Account.

(h) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date; except, solely during the Forbearance Period (as defined in the Forbearance Agreement) with respect to (A) any maturity, redemption or acceleration of the 2025 Notes as a result of any Specified Defaults (as defined in the Forbearance Agreement) or (B) any default under or acceleration of the Company's 2.50% Convertible Senior Notes due 2026 existing on the Issuance Date.

(i) 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 Subscription 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 other than for tax or other general corporate purposes that are not meant to (and do not) (i) change the nature of the business of the Company currently conducted as of the Issuance Date or (ii) affect in any way the perfection of the Collateral Agent's Liens on any of the Collateral.

(j) Accounting Matters. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, make any significant change in accounting treatment or reporting practices, except as required by GAAP; or establish a fiscal year different than the Fiscal Year.

(k) 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.

(l) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to 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.

(m) 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 (as defined in the Securities Purchase Agreement) 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.

(n) 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 (including, without limitation, and for the avoidance of doubt, at least $5,000,000 in director's and officer's insurance), in each case, in accordance with the Approved Budget.

(o) Transactions with Affiliates. Without limiting the generality of Section 13(v), 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.

(p) Restricted Issuances. Without limiting the generality of Section 13(v), the Company shall not, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(q) Reserved.

(r) Reserved.

(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 Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(t) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries), in each case, in accordance with the Approved Budget. 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, in each case, in accordance with the Approved Budget.

(u) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with

the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note 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 (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(v) Approved Budget.

(i) At all times that any Notes are outstanding, the Company shall, and the Company shall cause each of its Subsidiaries to, act in accordance with an Approved Budget.

(ii) The Company shall, and the Company shall cause each of its Subsidiaries to, comply with the then-current Approved Budget in all respects.

(iii) The Company shall, beginning on the Thursday of the first week following the end of the First Test Period, deliver on a weekly basis (by 5:00pm (Eastern Time) on the Thursday of each week) to the Holder and the Holder's advisors an Approved Budget Variance Report.

(iv) The Company's advisors shall hold weekly meetings with the Holder's advisors to discuss the applicable Approved Budget Variance Report.

(w) Sales of Vehicles. The Company shall, and the Company shall cause each of its Subsidiaries to, continue to sell vehicles at auction and through dealers and direct-to-consumer channels consistent with the Approved Budget. All proceeds from any sale or disposition or other monetization of any vehicles (through any channels) by the Company or any of its Subsidiaries shall be deposited directly into the Segregated Account.

(x) Chief Restructuring Officer. Except as otherwise agreed in writing by the Holder, the Company and its Subsidiaries shall continue to retain a Chief Restructuring Officer ("**CRO**") satisfactory to the Holder in its sole discretion, on terms and conditions and with a scope of services acceptable to Holders in its sole discretion, including without limitation, access to all financial and other information of the Company and its Subsidiaries. Each of the Company's and its Subsidiaries' officers and all other executive management members shall inform the CRO of any

actions or decisions taken or to be taken, including, without limitation, any proposals to be made or discussed with the board of directors of the Company or any of its Subsidiaries.

(y) Liquidation Plan. The Company shall deliver to the Holder and its advisors a proposed liquidation plan, in form and substance acceptable to the Holder, on or before May 23, 2024.

14. RESERVED.

15. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Company and the Holder shall be required for any change, waiver or amendment to this Note.

16. TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject to satisfaction of applicable securities law.

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 17(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 17(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, following redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note. The Company shall execute such new Note and deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 17(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 17(a) or Section 17(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND

INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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 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 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 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 Note.

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note and/or any other Transaction Document or to enforce the provisions of this Note and/or any other Transaction Document or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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.

22. RESERVED.

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 8(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note 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 Note, 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).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note or any other Transaction Documents have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 or operate to preclude the Holder from (A) asserting jurisdiction over the Company and its property in any court in which jurisdiction may be laid over the Company or its property or (B) bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY 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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

27. JUDGMENT CURRENCY.

(a) 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 Note, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(i) 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

(ii) 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**").

(b) 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 U.S. 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.

(c) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

(b) "**2025 Notes**" means, collectively, the Company's Series A-1 and Series B-1 Senior Secured Convertible Notes due 2025.

(c) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(d) "**Approved Budget**" means a customary three-week budget and cash flow forecast for the Company and its Subsidiaries delivered to the Holder and the Holder's advisors, containing line items of sufficient detail to reflect the consolidated receipts and disbursements (including all professional fees) of the Company and its Subsidiaries broken down by week (including anticipated uses of the proceeds of the Notes for such period), in form and substance acceptable to the Holder in its sole discretion, a copy of which is attached hereto as Exhibit I, which budget and cash flow forecast may be amended from time to time with the consent of the Holder in its sole discretion.

(e) "**Approved Budget Variance Report**" means (i) a weekly budget variance report/reconciliation for each Test Period immediately preceding the date of each such delivery setting forth in reasonable detail, actual operating receipts, operating disbursements, non-operating disbursements, and any other receipts and disbursements of the Company on an individual line item basis and aggregate basis for such Test Period to receipts and disbursements for such Test Period as set forth in the Approved Budget, and (ii) a statement certifying compliance with the Approved Budget and explaining in reasonable detail all variances from the Approved Budget. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, reasonably satisfactory to the Holder (or its advisors).

(f) "**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

(g) "**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.

(h) "**cash**" of the Company and its Subsidiaries on any date shall be determined from such Persons' books maintained in accordance with GAAP, and means, without duplication, the cash, cash equivalents and Eligible Marketable Securities accrued by the Company and its wholly owned Subsidiaries on a consolidated basis on such date.

(i) "**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 and in substantially the same proportions, 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.

(j) "**Change of Control Redemption Premium**" means 125%.

(k) "**Collateral**" shall have the meaning ascribed to such term in the Security Agreement.

(l) "**Collateral Agent**" shall have the meaning ascribed to such term in the Security Agreement.

(m) "**Common Stock**" means (i) the Company's shares of Class A common stock, $0.00001 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.

(n) "**Eligible Market**" means the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market.

(o) "**Eligible Marketable Securities**" as of any date means marketable securities which would be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared as of such date in accordance with GAAP, and which are permitted under the Company's investment policies as in effect on the Issuance Date or approved thereafter by the Company's Board of Directors.

(p) "**Existing Notes**" means the 2025 Notes and the Company's 2.50% Convertible Senior Notes due 2026.

(q) "**Fiscal Year**" means the fiscal year adopted by the Company for financial reporting purposes as of the date hereof that ends on December 31.

(r) "**Forbearance Agreement**" means the Forbearance Agreement, dated as of April 21, 2024, by and among the Company, certain Subsidiaries of the Company and the Holder, as amended by that certain Amendment No. 1 to Forbearance Agreement, dated as of May 1, 2024, by and among the Company, certain Subsidiaries of the Company and the Holder, and as may be amended or extended from time to time, with the consent of the Holder in its sole discretion.

(s) "**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 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 Note 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.

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

(u) "**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.

(v) "**Guarantor**" means each Subsidiary of the Company, wherever located (or formed, as applicable) and whether now existing or thereafter acquired; provided that (i) as of the Subscription Date, only the Subsidiaries of the Company that are incorporated or organized under the laws of the United States, any state thereof or the District of Columbia, the United Kingdom, the Federal Republic of Germany and France shall be required to be a Guarantor, (ii) any other Subsidiaries of the Company party to a Security Document or otherwise reasonably requested by the Collateral Agent to become Guarantors shall be required to be joined as Guarantors within 3 Business Days after the Subscription Date (in the case of such Subsidiaries party to a Security Document) or 5 Business Days after the date of request by the Collateral Agent (and, if applicable, such joinder documents shall include or be subject to any necessary local law limitations or requirements) and (iii) notwithstanding the foregoing, in no event shall any Subsidiary of the Company be required to be joined as a Guarantor at any time (x) if such Subsidiary is incorporated or organized in India or China or any political subdivision thereof, (y) if joining such Subsidiary as a Guarantor would reasonably be expected to result in material adverse tax consequences to the Company or its Subsidiaries as determined by the Company and the Buyers in good faith or (z) the burden or cost of joining such Subsidiary as a Guarantor outweighs the benefits afforded, as determined by the Company and the Buyers in good faith.

(w) "**Guaranty**" means each guaranty now or hereafter executed by a Guarantor with respect to any of the Obligations.

(x) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(y) "**Initial Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(z) "**Issuance Date**" means the date set forth above as the issuance date.

(aa) "**Maturity Date**" shall mean June 24, 2024.

(bb) "**Obligations**" shall mean all Obligations as that term is defined in the Security Agreement plus, without duplication, all Principal, Interest or other amounts when and as due under the Notes (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby.

(cc) "**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.

(dd) "**Permitted Asset Disposition**" means a sale and disposition made in the ordinary course of business on arm's length terms and for fair market value or in accordance with the Approved Budget; provided that proceeds from any such sale and disposition shall be deposited into the Segregated Account.

(ee) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date and (iii) Indebtedness incurred in the ordinary course of business and in accordance with the Approved Budget; provided, that (A) all Permitted Indebtedness must be subordinate to the terms of the Notes (other than Permitted Indebtedness secured by Permitted Liens), and (B) no Permitted Indebtedness shall prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to any prohibition on any payment of cash by the Company in respect of any obligation under the Notes.

(ff) "**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 and (iii) 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.

(gg) "**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.

(hh) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices, and the Change of Control Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(ii) "**Redemption Premium**" means 125%.

(jj) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices and the Change of Control Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

(kk) "**Required Holders**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(ll) "**Restricted Investment**" means any investment other than: (i) investments existing on the date of the Securities Purchase Agreement and (ii) investments in cash or cash equivalents (provided that they shall be held in the Segregated Account).

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

(nn) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.

(oo) "**Security Agreement**" means that certain Security and Pledge Agreement, dated as of May 10, 2024, between the Company and its Subsidiaries that are party thereto and the Collateral Agent.

(pp) "**Security Documents**" shall have the meaning ascribed to such term in the Security Agreement.

(qq) "**Segregated Account**" means a cash account, which is subject to a deposit account control agreement solely for the benefit of the Buyers and in form and substance acceptable to the Buyers, provided, that within five (5) Business Days of the Subscription Date, all funds in the Segregated Account shall be moved to a segregated cash account, which is subject to a deposit account control agreement solely for the benefit of the Buyers and in form and substance acceptable to the Buyers, and thereafter, the term "**Segregated Account**" shall refer to such account.

(rr) "**Significant Subsidiaries**" or "**Significant Subsidiary**" means, as of any time of determination, any of the "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) of the Company as of such time of determination.

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

(tt) "**Subsidiaries**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

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

(vv) "**Test Period**" means (i) initially, the one-week period beginning with the first day of the week during which the Issuance Date occurs (the "**First Test Period**"), (ii) then, the one-week period beginning with the first day of the week during which the Approved Budget Variance Report for the First Test Period was delivered, and (iii) thereafter, any one week period ended on the last day of the week immediately prior to the week during which the applicable Approved Budget Variance Report is required to be delivered.

(ww) "**Transaction Documents**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

31. DISCLOSURE. The Company shall comply with the terms of the Non-Disclosure Agreement, dated April 13, 2024, by and among the Company, the Holder and Heights Capital Management, Inc. (as amended, the "**Non-Disclosure Agreement**") in delivering any notice to the Holder in accordance with the terms of this Note. Nothing contained in this Section 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(l) of the Securities Purchase Agreement or pursuant to the Non-Disclosure Agreement.

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

33. SECURITY. This Note and the Other Notes are secured and guaranteed to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement, the other Security Documents and the Guaranty).

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: _____
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

EXHIBIT B

Form of Perfection Certificate

PERFECTION CERTIFICATE

May 10, 2024

The undersigned, Fisker Inc., a Delaware corporation with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**"), has entered into that certain Security and Pledge Agreement, dated on or around the date hereof (the "**Pledge Agreement**"; and capitalized terms used herein but not defined herein shall have the meaning assigned to such term in the Pledge Agreement) in favor of CVI Investments, Inc. (the "**Investor**"), and in connection with the Pledge Agreement and after due investigation, the Company, on behalf of itself and each of its Subsidiaries (together with the Company, each a "**Transaction Party**" and collectively, the "**Transaction Parties**"), does hereby certify to the Investor as follows:

1. Persons. Schedule I sets forth for each Transaction Party (a) the full and correct legal name and jurisdiction of incorporation or organization of such Transaction Party (in each case as it appears on its certificate or articles, as the case may be, of incorporation or organization or similar document of organization), (b) to the extent applicable, (i) the federal employer identification number for such Transaction Party, (ii) the organizational identification number for such Transaction Party and (iii) each state where such Transaction Party is qualified to do business and (c) to the extent applicable, the correct filing office(s) for filing UCC financing statements against each Transaction Party.

2. Other Names. Schedule II sets forth for each Transaction Party (a) all names (including trade names and similar appellations) presently used by such Transaction Party or any of its divisions or other business units, (b) all names (including former legal names and trade names or similar appellations) used by such Transaction Party or any of its divisions or other business units during the past five years, (c) the names of any business or organization to which any Transaction Party became the successor by merger, consolidation, acquisition (whether of equity interests or assets or otherwise) or change in form, nature, jurisdiction of organization or otherwise, in each case, at any time within the past five years, and (d) all changes to each Transaction Party's jurisdiction of organization or corporate or other form within the past five years.

3. Locations. Schedule III sets forth for each Transaction Party (a) the location of its chief executive office, (b) the location of its principal place of business, (c) each location where its books and records are maintained, (d) each location where inventory, equipment or other assets of such Transaction Party are maintained by such Transaction Party and (e) each location previously maintained by such Transaction Party during the past four months for any of the purposes listed above.

4. Property in Possession of Warehousemen, Bailees and other Third Parties. Schedule IV sets forth for each Transaction Party (a) the name and location of each person or entity (other than a Transaction Party) that has possession of any inventory, equipment or other assets of such Transaction Party and (b) the name and location of each person or entity (other than a Transaction Party) that has previously had possession of any inventory, equipment or other assets of such Transaction Party during the past four months.

5. Deposit Accounts. Schedule V sets forth for each Transaction Party all deposit accounts, including demand, time, savings, passbooks or similar accounts maintained with banks, savings and loan associations, or other financial institutions of such Transaction Party and whether such account is (or is required to be) subject to a control agreement.

6. Securities Accounts and Commodity Accounts. Schedule VI sets forth for each Transaction Party all securities accounts and commodity accounts maintained with any securities intermediary or commodity intermediary.

7. Instruments; Chattel Paper; Letters of Credit. Schedule VII sets forth for each Transaction Party all promissory notes, instruments (other than checks to be deposited in the ordinary course of business), tangible chattel paper, electronic chattel paper (each of the foregoing as defined in the UCC, as applicable) and other evidence of indebtedness, including any intercompany notes, held by or on behalf of, and all letters of credit issued in favor of, such Transaction Party.

8. Intellectual Property. Schedule VIII sets forth for each Transaction Party (a) all trademarks registered and trademark applications pending with the United States Patent and Trademark Office (or any equivalent office or registrar outside of the United States), (b) all copyrights registered and copyright applications pending with the United States Copyright Office (or any equivalent office or registrar outside of the United States), (c) all patents registered and patent applications pending with the United States Patent and Trademark Office (or any equivalent office or registrar outside of the United States), (d) all material licenses and material contracts in respect of any of the foregoing, (e) all material unpublished patent and design applications and (f) all domain names.

9. Real Property. Schedule IX sets forth for each Transaction Party (a) all real property owned or leased by such Transaction Party, (b) if such property is leased, the landlord and the term of the lease, and (c) if such property is held in fee, the holder of any lien on such real property.

10. Extraordinary Transactions. Except for those purchases, acquisitions and other transactions described on Schedule X attached hereto, all of the collateral has been originated by each Transaction Party in the ordinary course of business or consists of goods which have been acquired by each Transaction Party in the ordinary course of business from a person in the business of selling goods of that kind.

11. Stock Ownership and other Equity Interests. Attached hereto as Schedule XI are (a) a true and correct list of all the issued and outstanding stock, partnership interests, limited liability company membership interests or other equity interest of each Transaction Party (excluding financial assets credited to securities accounts) and the record and beneficial owners of such stock, partnership interests, membership interests or other equity interests and (b) a true and correct organizational chart for the Transaction Parties and their subsidiaries.

12. Motor Vehicles; Titled Equipment. Attached hereto as Schedule XII is a true and correct list of all motor vehicles or other titled equipment owned and/or leased to each Transaction Party (other than finished good inventory).

13. Commercial Tort Claims. Attached hereto as Schedule XIII is a true and correct list of all commercial tort claims held by each Transaction Party, including a brief description thereof.

14. Completeness of Information Presented. No Transaction Party owns any material assets, except as set forth in the Schedules described above.

15. Acknowledgment. The undersigned acknowledges that this Perfection Certificate is provided in connection with the Pledge Agreement and that the Investor will rely upon the information contained herein. The undersigned further acknowledges and agrees that the information contained herein shall be deemed to be a representation and warranty, on behalf of the Transaction Parties, under the Pledge Agreement, and that any material misstatements or material omissions contained herein may constitute a default under the Pledge Agreement.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Perfection Certificate as of the date first written above.

FISKER INC.

By: _____
Name: [●]
Title: [●]

SCHEDULE I

Persons

Transaction Party Name	Jurisdiction of Organization	Foreign Jurisdiction(s)	Federal Employer I.D.	Organizational I.D./Registration Number	UCC Filing Office
Fisker Inc.	Delaware	California	82-3100340	6577789	Delaware Secretary of State
Fisker Group Inc.	Delaware	Arizona, California, Florida, Maryland, New York, Oklahoma, Georgia	81-3883342	6136073	Delaware Secretary of State
Terra Energy Inc.	Delaware	N/A	87-3980739	6183618	Delaware Secretary of State
Platinum IPR LLC	Delaware	N/A	Unknown	6014839	Delaware Secretary of State
Fisker TN LLC	Tennessee	N/A	93-3466212	001439513	Tennessee Secretary of State

Blue Current Holding LLC	Delaware	N/A	N/A	6183618	Delaware Secretary of State
Fisker GmbH	Austria	N/A	N/A	FN 552387 I	D.C. Recorder of Deeds
Fisker GmbH	Germany	N/A	N/A	HRB 260452	D.C. Recorder of Deeds
Fisker Vigyan Indian Private Limited	India	N/A	N/A	U72900TG2021FTC152210	D.C. Recorder of Deeds
Fisker (GB) Limited	United Kingdom	N/A	N/A	11706245	D.C. Recorder of Deeds
Fisker Belgium B.V.	Belgium	N/A	N/A	0789997692	D.C. Recorder of Deeds
Fisker Canada Ltd.	Canada	N/A	N/A	730189107 RT0001	D.C. Recorder of Deeds
Fisker Denmark ApS	Denmark	N/A	N/A	43177796	D.C. Recorder of Deeds
Fisker France SAS	France	N/A	N/A	401 899 349	D.C. Recorder of Deeds
Fisker Norway AS	Norway	N/A	N/A	928 236 528	D.C. Recorder of Deeds

Fisker Sweden AB	Sweden	N/A	N/A	559320-8118	D.C. Recorder of Deeds
Fisker Switzerland IP GmbH	Switzerland	N/A	N/A	CHE-362.734.845	D.C. Recorder of Deeds
Fisker Switzerland Sales GmbH	Switzerland	N/A	N/A	CHE-330.696.755	D.C. Recorder of Deeds
Fisker Netherlands B.V.	Netherlands	N/A	N/A	N/A	D.C. Recorder of Deeds
Fisker Netherlands Sales B.V.	Netherlands	N/A	N/A	N/A	D.C. Recorder of Deeds
Fisker Ireland Limited	Ireland	N/A	N/A	724054	D.C. Recorder of Deeds
Fisker (Shanghai) Motors Ltd.	China	N/A	N/A	N/A	D.C. Recorder of Deeds
Ocean EV, S. de R.L. de C.V.	Mexico	N/A	N/A	87901188	D.C. Recorder of Deeds
Fisker Spain SL	Spain	N/A	N/A	B44815561	D.C. Recorder of Deeds

SCHEDULE II

Other Names

Transaction Party	Present Names	Former Names	Other Names
Fisker Inc.	Fisker Inc.	Spartan Energy Acquisition Corp.	N/A
Fisker Group Inc.	Fisker Group Inc.	Fisker Inc.	N/A

Former Jurisdictions

None.

SCHEDULE III

Locations

Transaction Party	Chief Executive Office	Principal Place of Business	Books and Records	Inventory, Equipment, Etc.
Fisker Inc.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Group Inc.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Terra Energy Inc.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Platinum IPR LLC	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker TN LLC	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Blue Current Holding LLC	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker GmbH (Austria)	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623

Fisker GmbH (Germany)	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Vigyan Indian Private Limited	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker (GB) Limited	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Belgium B.V.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Canada Ltd.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Denmark ApS	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker France SAS	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Norway AS	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623

Fisker Sweden AB	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Switzerland IP GmbH	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Switzerland Sales GmbH	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Netherlands B.V.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Netherlands Sales B.V.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Ireland Limited	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker (Shanghai) Motors Ltd.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Ocean EV, S. de R.L. de C.V.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623

Fisker Spain SL	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623

SCHEDULE IV

Property in Possession of Warehousemen, Bailees and other Third Parties

Manufacturing facility located Liebenauer Hauptstraße 2-6, 8041 Graz, Austria, operated by Magna Steyr Fahrzeugtechnik AG & Co KG ("**Magna Steyr**").

In addition to the manufacturing facility operated by Magna Steyr in Graz, Austria, Fisker owns tooling and other equipment and parts that are located with various suppliers throughout the world.

SCHEDULE V

Deposit Accounts

Transaction Party	Bank	Country	Account No.	Type or Purpose of Account	Control Agreement [Yes/No]
Fisker Group Inc.	JPM	United States	627869867	Checking - Corporate	Yes
Fisker Group Inc.	JPM	United States	705026539	Checking - Payroll	No
Fisker Group Inc.	JPM	United States	627869933	Checking - Reserved Cars	No
Fisker Group Inc.	JPM	United States	3835007809	MM - Corporate	Yes
Fisker Group Inc.	JPM	United States	3835007965	MM - Reserved Cars	No
Fisker Group Inc.	JPM	United States	3929058759	MM - L/C	No
Fisker Group Inc.	JPM	United States	901658333	US Revenue	Yes
Fisker Group Inc.	JPM	United States	3968272188	MM - Chase Auto	No
Fisker Group Inc.[1]	JPM	United States	567227106	Checking – Corporate	Yes

[1] NTD: Account formerly owned by Fisker TN LLC.

Transaction Party	Bank	Country	Account No.	Type or Purpose of Account	Control Agreement [Yes/No]
Fisker Group Inc.	Bank of America	United States	1453955220	L/C	No
Fisker GmbH	JPM	Germany	6161551681	Austrian US$ payment account	Yes
Fisker GmbH	JPM	Germany	6161543829	Austrian Euro payment account	Yes
Fisker GmbH	JPM	Germany	6161556813	Austria Payroll	No
Fisker GmbH	JPM	Germany	6161559098	Austria Revenue	Yes
Terra Energy Inc.	JPM	United States	788769856	Checking (Dormant)	Yes
Fisker (Shanghai) Motors Ltd.	JP Morgan Chase China CO LTD Shanghai	China	3907165801	US$ Payment Account	No
Fisker (Shanghai) Motors Ltd.	JPMorgan Chase China Co Ltd Shanghai	China	3907165793	CNY Payment Account	No
Fisker Vigyan India Private LIII	JP Morgan Chase Bank, NA Devanahalli	India	5622418639	INR Payment Account	No
Ocean EV, S. de R.L. de C.V.		Mexico	77646900	MXN Payment Account	No

Transaction Party	Bank	Country	Account No.	Type or Purpose of Account	Control Agreement [Yes/No]
Fisker Belgium B.V.	J.P. Morgan SE	Belgium	549001093282	Belgium Euro Payment Account	No
Fisker Belgium B.V.	J.P. Morgan SE	Belgium	549100967617	Belgium Revenue	No
Fisker France SAS	J.P. Morgan	France	609001940	France Euro Payment Account	Yes
Fisker France SAS	J.P. Morgan	France	609002037	France Revenue	Yes
Fisker GmbH (Germany)	J.P. Morgan	Germany	6161543795	Germany payment account	Yes
Fisker GmbH (Germany)	J.P. Morgan	Germany	6161559114	Germany revenue	Yes
Fisker GmbH (Germany)	J.P. Morgan	Germany	6161556821	Payroll	No
Fisker Netherlands B.V.	J.P. Morgan SE	Netherlands	626002404	Payments	No
Fisker Netherlands B.V.	J.P. Morgan SE	Netherlands	626003335	Revenue	No
Fisker Netherlands Sales B.V.	J.P. Morgan SE	Netherlands	626003725	Payments	No

Transaction Party	Bank	Country	Account No.	Type or Purpose of Account	Control Agreement [Yes/No]
Fisker Netherlands Sales B.V.	J.P. Morgan SE	Netherlands	626003726	Payments	No
Fisker Ireland Limited	J.P. Morgan SE	Ireland	79610237	Payments	No
Fisker (GB) Limited	JP Morgan Chase Bank, NA London	UK	40066323	Payments	Yes
Fisker (GB) Limited	JP Morgan Chase Bank, NA London	UK	76973212	Revenue	Yes
Fisker Canada Ltd.	JP Morgan Chase Bank, NA Canada	Canada	4011771608	Payments	No
Fisker Canada Ltd.	JP Morgan Chase Bank, NA Canada	Canada	4011772009	Revenue	No
Fisker Norway AS	J.P. Morgan SE	Norway	55009196	Payments	Yes
Fisker Norway AS	J.P. Morgan SE	Norway	55009269	Revenue	Yes
Fisker Denmark ApS	J.P. Morgan SE	Denmark	55009197	Payments	Yes
Fisker Denmark ApS	J.P. Morgan SE	Denmark	55009273	Revenue	Yes
Fisker Sweden AB	J.P. Morgan SE	Sweden	55009198	Payments	No

Transaction Party	Bank	Country	Account No.	Type or Purpose of Account	Control Agreement [Yes/No]
Fisker Sweden AB	J.P. Morgan SE	Sweden	55009270	Revenue	No
Fisker Switzerland IP GmbH	JPMorgan Chase Bank, NA Zurich	Switzerland	8770000987	Payments	No
Fisker Switzerland Sales GmbH	JPMorgan Chase Bank, NA Zurich	Switzerland	8770000988	Payments	No
Fisker Switzerland IP GmbH	JPMorgan Chase Bank, NA Zurich	Switzerland	8770001159	Revenue	No

SCHEDULE VI

Securities Accounts and Commodity Accounts

Securities Accounts

Transaction Party	Bank or Broker	Country	Account No.	Control Agreement [Yes/No]
Fisker Group Inc.	JP Asset Mgmt	United States	5024563	Yes

Commodity Accounts

None.

SCHEDULE VII

Instruments; Chattel Paper; Letters of Credit

None.

SCHEDULE VIII

Intellectual Property

Utility Patents and Patent Applications owned by Fisker Inc.

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
29512447	US	HEADLAMPS FOR A VEHICLE	12/18/2014	Issued			07/05/2016	D760930
29619730	US	EXTERIOR LIGHTING	10/01/2017	Issued			9/24/2019	D861201
29582466	US	AUTOMOTIVE VEHICLE	10/27/2016	Issued			02/13/2018	D809972
29627626	US	AUTOMOTIVE VEHICLE	11/28/2017	Issued			11/06/2018	D832742
	US	29630931AUTOMOTIVE VEHICLE	12/23/2017	Issued			02/19/2019	D840874
29664312	US	EXTERIOR LIGHTING FOR AN AUTOMOTIVE VEHICLE	09/24/2018	Issued			12/10/2019	D869710

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
29735838	US	AUTOMOTIVE VEHICLE BODY	05/25/2020	Issued			02/22/2022	D944119
16951981	US	Automobile Having Retractable Rear Quarter Windows	11/18/2020	Issued	20210155084	05/27/2021	03/01/2022	11260729
29762488	US	WHEEL	12/16/2020	Issued			11/22/2022	D970412
17245826	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/30/2021	Issued			01/11/2022	11220182
29790197	US	VEHICLE STEERING WHEEL	11/10/2021	Issued			07/04/2023	D991112
29790235	US	INSTRUMENT PANEL	11/12/2021	Issued			10/03/2023	D1000338

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
29790238	US	DESIGN FOR WHEEL	11/12/2021	Issued			10/24/2023	D1002483
17455620	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	11/18/2021	Issued	20220348079	11/03/2022	10/11/2022	11465502
218956241	EP	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	11/18/2021	Published	4247654	09/27/2023		
17580376	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Published	20220144048	05/12/2022		
17580474	US	AUTOMOBILE HAVING RETRACTABLE	01/20/2022	Published	20220144359	05/12/2022		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
		REAR QUARTER WINDOWS						
17580538	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Published	20220144049	05/12/2022		
29791932	US	WHEEL	02/18/2022	Issued			03/05/2024	D1016709
202280031 4321	CN	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/29/2022	Published	CN117279804A	12/22/2023		
227968435	EP	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY	04/29/2022	Published	4330083	03/06/2024		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
		BUTTONS AND TOUCH BAR						
17931076	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	09/09/2022	Issued	US 2023-0001792 A1	01/05/2023	01/30/2024	11884157
PCTUS227 8828	WO	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	10/27/2022	Published	WO 2023077035	05/04/2023		
PCTUS227 9728	WO	SUN VISOR METHOD AND APPARATUS	11/11/2022	Published	WO 2023086947	05/19/2023		
PCTUS236 1629	WO	SYSTEMS, METHODS, AND DEVICES FOR	01/31/2023	Published	WO 2023/147575	08/03/2023		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
		GRAPHICAL USER INTERFACES						
18471428	US	VEHICLE HAVING RETRACTABLE REAR GATE	09/21/2023	Published	US 2024-0010057 A1	01/11/2024		
18472957	US	SYSTEMS AND METHODS FOR A VEHICLE INTERACTIVE DISPLAY	09/22/2023	Published	US 2024-0100950 A1	03/28/2024		
18473095	US	VEHICLE HAVING FRONT STORAGE	09/22/2023	Published	US 2024-0010131 A1	01/11/2024		
18486908	US	SYSTEMS, METHODS, AND DEVICES FOR VEHICLE TRAYS	10/13/2023	Published	US 2024-0123907 A1	04/18/2024		
202311339 9663	CN	SYSTEMS, METHODS, AND DEVICES FOR VEHICLE TRAYS	10/16/2023	Published	117885625	04/16/2024		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
232039123	EP	SYSTEMS, METHODS, AND DEVICES FOR VEHICLE TRAYS	10/16/2023	Published	4353534	04/17/2024		

Design Patents and Patent Applications owned by Fisker Inc.

APPLICATION NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	REGISTRATION NUMBER	GRANT DATE
0053220210001	**EM**	**Automotive Vehicle**	**06/23/2018**	**Issued**	**005322021-0001**	**08/31/2018**
0053220210002	**EM**	**Automotive Vehicle**	**06/23/2018**	**Issued**	**005322021-0002**	**08/31/2018**
005322047	**EM**	**Automotive Vehicle**	**06/23/2018**	**Issued**	**005322047-0001**	**07/03/2018**

007985304	**EM**	**Automotive Vehicle**	**06/04/2020**	**Issued**	**007985304-0001**	**04/07/2021**
007985304	**EM**	**Automotive Vehicle**	**06/04/2020**	**Issued**	**007985304-0002**	**04/07/2021**
007985304	**EM**	**Automotive Vehicle**	**06/04/2020**	**Issued**	**007985304-0003**	**04/07/2021**
2020303235768	**CN**	**AUTOMOTIVE VEHICLE**	**06/22/2020**	**Issued**	**ZL202030323576.8**	**03/30/2021**
2022302696766	**CN**	**VEHICLE DOOR**	**05/09/2022**	**Issued**	**ZL202230269676.6**	**01/02/2024**
2022302699745	**CN**	**Main body of STEERING WHEEL**	**05/09/2022**	**Issued**	**ZL202230269974.5**	**12/19/2023**
0014864500001	**EM**	**SEAT**	**05/10/2022**	**Issued**	**001486450-0001**	**05/10/2022**
0014864500002	**EM**	**SEAT**	**05/10/2022**	**Issued**	**001486450-0002**	**05/10/2022**
0090214210001	**EM**	**WHEEL**	**05/10/2022**	**Issued**	**009021421-0001**	**05/10/2022**
0090214210002	**EM**	**WHEEL COVER**	**05/10/2022**	**Issued**	**009021421-0002**	**05/10/2022**

0090214210003	**EM**	**VENT**	**05/10/2022**	**Issued**	**009021421-0003**	**05/10/2022**
0090214210004	**EM**	**STEERING WHEEL**	**05/10/2022**	**Issued**	**009021421-0004**	**05/10/2022**
0090214210005	**EM**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**009021421-0005**	**05/10/2022**
0090214210006	**EM**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**009021421-0006**	**05/10/2022**
0090214210009	**EM**	**INSTRUMENT PANEL**	**05/10/2022**	**Issued**	**009021421-0009**	**05/10/2022**
2022302700475	**CN**	**SEAT**	**05/10/2022**	**Issued**	**ZL 202230270047.5**	**02/23/2024**
2022302703026	**CN**	**Main body of WHEEL COVER**	**05/10/2022**	**Issued**	**ZL202230270302.6**	**12/12/2023**
2022302709450	**CN**	**Upper panel of INSTRUMENT PANEL**	**05/10/2022**	**Issued**	**ZL202230270945.0**	**01/23/2024**
2022302710138	**CN**	**VENT**	**05/10/2022**	**Issued**	**ZL 202230271013.8**	**03/01/2024**

202230271387X	**CN**	**FRONT PANEL OF WHEEL**	**05/10/2022**	**Issued**	**ZL 202230271387.X**	**02/06/2024**
6207156	**GB**	**WHEEL**	**05/10/2022**	**Issued**	**6207156**	**05/10/2022**
6207157	**GB**	**WHEEL COVER**	**05/10/2022**	**Issued**	**6207157**	**05/10/2022**
6207158	**GB**	**VENT**	**05/10/2022**	**Issued**	**6207158**	**05/10/2022**
6207159	**GB**	**STEERING WHEEL**	**05/10/2022**	**Issued**	**6207159**	**05/10/2022**
6207160	**GB**	**SEAT**	**05/10/2022**	**Issued**	**202230270047.5**	**05/10/2022**
6207161	**GB**	**SEAT**	**05/10/2022**	**Issued**	**6207161**	**05/10/2022**
6207162	**GB**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**6207162**	**05/10/2022**
6207163	**GB**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**6207163**	**05/10/2022**
6207164	**GB**	**INSTRUMENT PANEL**	**05/10/2022**	**Issued**	**6207164**	**05/10/2022**
0090970740001	**EM**	**WHEEL**	**07/25/2022**	**Issued**	**009097074-0001**	**08/04/2022**

0090970740002	**EM**	**WHEEL COVER**	**07/25/2022**	**Issued**	**009097074-0002**	**08/04/2022**
6221250	**GB**	**WHEEL**	**07/25/2022**	**Issued**	**6221250**	**08/20/2022**
6221251	**GB**	**WHEEL COVER**	**07/25/2022**	**Issued**	**6221251**	**08/20/2022**
2022305186267	**CN**	**AERO WHEEL COVER DESIGN**	**08/10/2022**	**Issued**	**ZL 202230518626.7**	**12/05/2023**
2022305254283	**CN**	**FRONT PANEL OF WHEEL**	**08/12/2022**	**Issued**	**ZL 202230525428.3**	**02/06/2024**
0150120350001	**EM**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**015012035-0001**	**07/27/2023**
0150120350002	**EM**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**015012035-0002**	**07/27/2023**
6263512	**GB**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**6263512**	**03/06/2023**

6263513	**GB**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**6263513**	**03/06/2023**
0150157690001	**EM**	**Seat trays for vehicles**	**03/24/2023**	**Issued**	**015015769-0001**	**04/11/2023**
0150157690002	**EM**	**Seat trays for vehicles**	**03/24/2023**	**Issued**	**015015769-0002**	**09/25/2023**
6271194	**GB**	**Extendable Tray**	**03/24/2023**	**Issued**	**6271194**	**05/24/2023**
6271195	**GB**	**Console Tray**	**03/24/2023**	**Issued**	**6271195**	**03/29/2023**
0150271230001	**EM**	**WHEEL**	**07/05/2023**	**Issued**	**015027123-0001**	**07/13/2023**
6294559	**GB**	**WHEEL**	**07/05/2023**	**Issued**	**6294559**	**09/20/2023**
0150321530001	**EM**	**AUTOMOTIVE VEHICLE BODY**	**08/24/2023**	**Issued**	**015032153-0001**	**10/18/2023**
6305336	**GB**	**Automotive Vehicle Body**	**08/24/2023**	**Issued**	**6305336**	**09/04/2023**
6335002	**GB**	**AUTOMOTIVE VEHICLE**	**12/21/2023**	**Issued**	**6335002**	**01/08/2024**

6335003	**GB**	**AUTOMOTIVE VEHICLE**	**12/21/2023**	**Issued**	**6335003**	**01/08/2024**
6335004	**GB**	**AUTOMOTIVE WHEEL**	**12/21/2023**	**Issued**	**6335004**	**01/08/2024**
6335005	**GB**	**AUTOMOTIVE WHEEL**	**12/21/2023**	**Issued**	**6335005**	**01/08/2024**
6335006	**GB**	**AUTOMOTIVE WHEEL**	**12/21/2023**	**Issued**	**6335006**	**01/24/2024**
0150455950001	**EM**	**AUTOMOTIVE VEHICLE**	**12/22/2023**	**Issued**	**015045595-0001**	**02/27/2024**
0150455950002	**EM**	**AUTOMOTIVE VEHICLE**	**12/22/2023**	**Issued**	**015045595-0002**	**02/27/2024**
0150455950003	**EM**	**AUTOMOTIVE WHEEL**	**12/22/2023**	**Issued**	**015045595-0003**	**02/27/2024**
0150455950004	**EM**	**AUTOMOTIVE WHEEL**	**12/22/2023**	**Issued**	**015045595-0004**	**02/27/2024**
0150455950005	**EM**	**AUTOMOTIVE WHEEL**	**12/22/2023**	**Issued**	**015045595-0005**	**02/27/2024**

Trademarks and Trademark Applications owned by Fisker Inc.

TITLE	COUNTRY	DATE FILED	APPLICATION NUMBER	STATUS	REGISTRATION DATE	REGISTRATION NO.
FISKER	AU	05/04/2010	1359523	Registered	12/06/2012	1359523
FISKER	AU	05/04/2010	1359524	Registered	12/07/2010	1359524
FISKER	AU	05/04/2010	1359525	Registered	12/23/2010	1359525
FISKER	AU	05/04/2010	1359527	Registered	12/23/2010	1359527
FISKER & Design	AU	06/08/2010	1053827	Registered	06/24/2013	1392175
FISKER & Design	AU	05/19/2020	1539118	Registered	04/27/2022	2100654
FISKER & Design (word and design)	BR	10/19/2010	830772294	Registered	11/13/2018	830772294
FISKER & Design (word and design)	BR	10/19/2010	830772308	Registered	08/05/2014	830772308

FISKER & Design (word and design)	**BR**	**10/19/2010**	**830772316**	**Registered**	**11/13/2018**	**830772316**
FISKER & Design (word and design)	**BR**	**10/19/2010**	**830772324**	**Registered**	**11/13/2018**	**830772324**
FISKER & Design	**BR**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
FISKER ALASKA	**CA**	**11/30/2023**	**2296295**	**Pending**		
FISKER	**CA**	**02/01/2024**	**2308361**	**Pending**		
FISKER RONIN	**CA**	**02/01/2024**	**2308359**	**Pending**		
FISKER	**CA**	**05/04/2010**	**1479582**	**Registered**	**08/25/2015**	**TMA912350**
FISKER & Design	**CA**	**05/04/2010**	**1479583**	**Registered**	**08/25/2015**	**TMA912349**
FISKER	**CH**	**05/31/2010**	**554562010**	**Registered**	**09/16/2010**	**605443**
FISKER	**CH**	**05/31/2010**	**554572010**	**Registered**	**09/16/2010**	**605444**
FISKER	**CH**	**05/31/2010**	**554582010**	**Registered**	**09/14/2010**	**605226**

FISKER	**CH**	**05/31/2010**	**554592010**	**Registered**	**09/14/2010**	**605227**
Fisker & Design	**CH**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**CN**	**05/13/2010**	**8292870**	**Registered**	**09/21/2011**	**8292870**
FISKER	**CN**	**05/13/2010**	**8292871**	**Registered**	**08/07/2011**	**8292871**
FISKER	**CN**	**05/13/2010**	**8292886**	**Registered**	**07/14/2011**	**8292886**
FISKER & Design	**CN**	**05/13/2010**	**8292885**	**Registered**	**07/14/2011**	**8292885**
FISKER & Design	**CN**	**05/13/2010**	**8292887**	**Registered**	**09/21/2011**	**8292887**
FISKER & Design	**CN**	**05/13/2010**	**8292888**	**Registered**	**08/07/2011**	**8292888**
FISKER	**CN**	**02/21/2014**	**14055689**	**Registered**	**06/21/2017**	**14055689**
FISKER in Chinese 菲斯科 (Fei Si Ke)	**CN**	**07/05/2016**	**20532914**	**Registered**	**08/28/2017**	**20532914**
FISKER	**CN**	**09/02/2016**	**21186653**	**Registered**	**06/14/2020**	**21186653**
FISKER & Design	**CN**	**05/19/2020**	**1539118**	**Pending**		

FISKER & Design	**DK**	**06/08/2010**	**1053827**	**Registered**	**02/16/2012**	**1053827**
FISKER	**DK**	**06/14/2010**	**VA201001883**	**Registered**	**08/31/2010**	**VR201002264**
FISKER	**DK**	**06/14/2010**	**VA201001884**	**Registered**	**08/31/2010**	**VR201002261**
FISKER	**DK**	**06/14/2010**	**VA201001885**	**Registered**	**08/31/2010**	**VR201002262**
FISKER	**DK**	**06/14/2010**	**VA201001886**	**Registered**	**08/31/2010**	**VR201002263**
RONIN	**EM**	**05/04/2022**	**018696994**	**Pending**		
KAYAK (Stylized)	**EM**	**11/16/2023**	**018952135**	**Published**		
FISKER & Design	**EM**	**06/13/2008**	**969292**	**Registered**	**06/13/2008**	**969292**
FISKER	**EM**	**05/21/2010**	**9123589**	**Registered**	**11/30/2010**	**9123589**
FISKER	**EM**	**05/21/2010**	**9124066**	**Registered**	**11/16/2010**	**9124066**
FISKER	**EM**	**05/21/2010**	**9124108**	**Registered**	**11/17/2010**	**9124108**
FISKER	**EM**	**05/21/2010**	**9124124**	**Registered**	**11/08/2010**	**9124124**
FISKER & Design	**EM**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**

FISKER & Color Design	**EM**	**03/18/2016**	**15232011**	**Registered**	**07/28/2016**	**15232011**
FISKER EMOTION	**EM**	**03/09/2017**	**016450249**	**Registered**	**03/19/2019**	**016450249**
ORBIT	**EM**	**01/03/2018**	**017655929**	**Registered**	**06/14/2018**	**017655929**
FISKER & Design	**EM**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
emotion	**EM**	**01/03/2018**	**017655937**	**Total Provisional Refusal**		
FISKER & Design	**GB**	**06/13/2008**	**UK00800969292**	**Registered**	**08/10/2009**	**UK00800969292**
FISKER	**GB**	**05/21/2010**	**UK00909123589**	**Registered**	**11/30/2010**	**UK00909123589**
FISKER	**GB**	**05/21/2010**	**UK00909124066**	**Registered**	**11/16/2010**	**UK00909124066**
FISKER	**GB**	**05/21/2010**	**UK00909124108**	**Registered**	**11/17/2010**	**UK00909124108**
FISKER	**GB**	**05/21/2010**	**UK00909124124**	**Registered**	**11/08/2010**	**UK00909124124**
FISKER & Design	**GB**	**06/08/2010**	**UK00801053827**	**Registered**	**09/06/2011**	**UK00801053827**

FISKER & Design (in color)	**GB**	**03/18/2016**	**UK00915232011**	**Registered**	**07/28/2016**	**UK00915232011**
FISKER EMOTION	**GB**	**03/09/2017**	**00916450249**	**Registered**	**03/19/2019**	**00916450249**
ORBIT	**GB**	**01/03/2018**	**00917655929**	**Registered**	**06/14/2018**	**00917655929**
FISKER & Design	**GB**	**05/19/2020**	**UK00801539118**	**Registered**	**11/24/2020**	**UK00801539118**
KAYAK (Stylized)	**GB**	**11/16/2023**	**UK00003980550**	**Registered**	**02/16/2024**	**UK00003980550**
FISKER	**HK**	**04/30/2010**	**301603016AA**	**Registered**	**10/13/2010**	**301603016AA**
FISKER & Design	**HK**	**04/30/2010**	**301603052AA**	**Registered**	**11/09/2010**	**301603052AA**
FISKER & Design	**HR**	**06/08/2010**	**1053827**	**Registered**	**11/11/2010**	**1053827**
FISKER	**HR**	**06/11/2010**	**Z20101111A**	**Registered**	**07/15/2011**	**Z20101111**
FISKER	**HR**	**06/11/2010**	**Z20101112A**	**Registered**	**07/15/2011**	**Z20101112**
FISKER	**HR**	**06/11/2010**	**Z20101113A**	**Registered**	**07/15/2011**	**Z20101113**
FISKER	**HR**	**06/11/2010**	**Z20101114A**	**Registered**	**07/15/2011**	**Z20101114**

FISKER OCEAN	**IB**	**01/11/2024**	**A0143132**	**Registered**	**01/11/2024**	**1784012**
FISKER & Design	**IB**	**06/13/2008**	**969292**	**Registered**	**06/13/2008**	**969292**
FISKER & Design	**IB**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER & Design	**IB**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
FISKER	**IN**	**05/06/2010**	**1961371**	**Registered**	**04/15/2011**	**1961371**
FISKER	**IN**	**05/06/2010**	**1961372**	**Registered**	**04/15/2011**	**1961372**
FISKER	**IN**	**05/06/2010**	**1961373**	**Registered**	**02/29/2016**	**1961373**
FISKER	**IN**	**05/06/2010**	**1961374**	**Registered**	**04/18/2011**	**1961374**
FISKER & Design	**IN**	**05/06/2010**	**1961367**	**Registered**	**06/07/2013**	**1961367**
FISKER & Design	**IN**	**05/06/2010**	**1961368**	**Registered**	**04/15/2011**	**1961368**
FISKER & Design	**IN**	**05/06/2010**	**1961369**	**Registered**	**04/15/2011**	**1961369**

FISKER & Design	**IN**	**05/06/2010**	**1961370**	**Registered**	**04/18/2011**	**1961370**
FISKER & Design	**IN**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**4557790**
FISKER	**JP**	**05/12/2010**	**201036753**	**Registered**	**10/29/2010**	**5364000**
FISKER	**JP**	**05/12/2010**	**201036754**	**Registered**	**09/10/2010**	**5352615**
FISKER	**JP**	**05/12/2010**	**201036755**	**Registered**	**08/20/2010**	**5347041**
FISKER	**JP**	**05/12/2010**	**201036756**	**Registered**	**09/10/2010**	**5352616**
FISKER & Design	**JP**	**05/12/2010**	**201036757**	**Registered**	**10/29/2010**	**5364001**
FISKER & Design	**JP**	**05/12/2010**	**201036758**	**Registered**	**09/10/2010**	**5352617**
FISKER & Design	**JP**	**05/12/2010**	**201036759**	**Registered**	**08/20/2010**	**5347042**
FISKER & Design	**JP**	**05/12/2010**	**201036760**	**Registered**	**09/10/2010**	**5352618**
FISKER & Design	**JP**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**

FISKER	**KR**	**05/03/2010**	**4020100023668**	**Registered**	**02/13/2012**	**4009042900000**
FISKER	**KR**	**05/03/2010**	**4120100011461**	**Registered**	**02/02/2012**	**4102256320000**
FISKER	**KR**	**05/03/2010**	**4120100011462**	**Registered**	**12/05/2011**	**4102224670000**
FISKER	**KR**	**05/03/2010**	**4120100011463**	**Registered**	**10/07/2011**	**4102186450000**
FISKER & Design	**KR**	**05/03/2010**	**4020100023669**	**Registered**	**02/13/2012**	**4009042510000**
FISKER & Design	**KR**	**05/03/2010**	**4120100011464**	**Registered**	**02/02/2012**	**4102256440000**
FISKER & Design	**KR**	**05/03/2010**	**4120100011465**	**Registered**	**12/05/2011**	**4102224960000**
FISKER & Design	**KR**	**05/03/2010**	**4120100011466**	**Registered**	**02/02/2012**	**4102256200000**
FISKER & Design	**KR**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
Fisker & Design	**MC**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**MC**	**08/04/2010**	**29658**	**Registered**	**09/01/2010**	**1028061**
FISKER	**MC**	**08/04/2010**	**29659**	**Registered**	**01/09/2010**	**1028062**

FISKER	**MC**	**08/04/2010**	**29660**	**Registered**	**09/01/2010**	**1028063**
FISKER	**MC**	**08/04/2010**	**29661**	**Registered**	**09/01/2010**	**1028064**
FISKER & Design	**MX**	**05/19/2020**	**1539118**	**Registered**	**09/27/2021**	**2303671**
FISKER	**MX**	**07/14/2021**	**2581304**	**Registered**	**09/30/2021**	**2306179**
FISKER	**MX**	**07/14/2021**	**2581305**	**Registered**	**09/30/2021**	**2306180**
FISKER	**MX**	**07/14/2021**	**2581306**	**Registered**	**09/30/2021**	**2306181**
FISKER	**MX**	**07/14/2021**	**2581308**	**Registered**	**10/20/2021**	**2312883**
FISKER & Design	**MX**	**07/14/2021**	**2581310**	**Registered**	**10/22/2021**	**2314941**
FISKER & Design	**MX**	**07/14/2021**	**2581312**	**Registered**	**10/20/2021**	**2313371**
FISKER & Design	**MX**	**07/14/2021**	**2581314**	**Registered**	**10/20/2021**	**2312884**
FISKER & Design	**MX**	**07/14/2021**	**2581315**	**Registered**	**10/22/2021**	**2314942**
FISKER	**NO**	**05/10/2010**	**201004926**	**Registered**	**05/11/2011**	**259954**

FISKER	**NO**	**05/10/2010**	**201004927**	**Registered**	**12/09/2011**	**262954**
Fisker	**NO**	**05/10/2010**	**201004928**	**Registered**	**09/30/2010**	**256950**
Fisker	**NO**	**05/10/2010**	**201004929**	**Registered**	**09/30/2010**	**256951**
FISKER & Design	**NO**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**201011449**
FISKER	**NZ**	**01/27/2011**	**836427**	**Registered**	**07/27/2011**	**836427**
FISKER & Design	**NZ**	**01/27/2011**	**836423**	**Registered**	**07/27/2011**	**836423**
FISKER & Design	**RS**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**RS**	**06/14/2010**	**201001062**	**Registered**	**09/07/2011**	**63185**
FISKER	**RS**	**06/14/2010**	**201001063**	**Registered**	**11/19/2010**	**61934**
FISKER	**RS**	**06/14/2010**	**201001064**	**Registered**	**11/19/2010**	**61935**
FISKER	**RS**	**06/14/2010**	**201001065**	**Registered**	**09/19/2011**	**63236**
FISKER	**RU**	**05/07/2010**	**2010715114**	**Registered**	**03/21/2011**	**432836**
FISKER	**RU**	**05/07/2010**	**2010715115**	**Registered**	**07/13/2011**	**440975**

FISKER	**RU**	**05/07/2010**	**2010715116**	**Registered**	**03/21/2011**	**432837**
FISKER	**RU**	**05/07/2010**	**2010715118**	**Registered**	**03/21/2011**	**432838**
Fisker & Design	**RU**	**06/08/2010**	**1053827**	**Registered**	**09/15/2011**	**1053827**
FISKER & Design	**RU**	**05/19/2020**	**1539118**	**Registered**	**10/20/2020**	**1539118**
FISKER	**SG**	**05/07/2010**	**T1005806E**	**Registered**	**08/06/2010**	**T1005806E**
FISKER	**SG**	**05/07/2010**	**T1005807C**	**Registered**	**11/24/2010**	**T1005807C**
FISKER	**SG**	**05/07/2010**	**T1005808A**	**Registered**	**08/12/2010**	**T1005808A**
FISKER	**SG**	**05/07/2010**	**T1005809Z**	**Registered**	**02/21/2011**	**T1005809Z**
FISKER & Design	**SG**	**06/08/2010**	**1053827**	**Registered**	**09/20/2011**	**T1014558H**
FISKER & Design	**TR**	**06/08/2010**	**1053827**	**Registered**	**08/10/2012**	**201074355**
FISKER	**TR**	**08/19/2010**	**201054305**	**Registered**	**10/20/2011**	**201054305**
FISKER	**TR**	**08/19/2010**	**201054306**	**Registered**	**10/20/2011**	**201054306**
FISKER	**TR**	**08/19/2010**	**201054307**	**Registered**	**03/01/2012**	**201054307**

FISKER	**TR**	**08/19/2010**	**201054308**	**Registered**	**03/01/2012**	**201054308**
Fisker & Design	**UA**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**UA**	**06/10/2010**	**m201008966**	**Registered**	**06/10/2011**	**140078**
FISKER	**UA**	**06/10/2010**	**m201008967**	**Registered**	**06/10/2011**	**140079**
FISKER	**UA**	**06/10/2010**	**m201008968**	**Registered**	**06/10/2011**	**140080**
FISKER	**UA**	**06/10/2010**	**m201008969**	**Registered**	**06/10/2011**	**140081**
CALIFORNIA MODE & Design	**US**	**11/28/2019**	**88710076**	**Pending**		
RONIN	**US**	**05/04/2022**	**97394583**	**Pending**		
ALASKA	**US**	**08/15/2023**	**98132870**	**Pending**		
PEAR	**US**	**01/15/2024**	**98358018**	**Pending**		
FISKER	**US**	**04/13/2010**	**85012432**	**Registered**	**01/04/2011**	**3899607**
FISKER	**US**	**04/27/2010**	**85024473**	**Registered**	**12/28/2010**	**3896838**
FISKER	**US**	**04/27/2010**	**85024490**	**Registered**	**07/03/2012**	**4168418**
FISKER	**US**	**04/27/2010**	**85024495**	**Registered**	**11/20/2012**	**4246405**

FISKER & Design	**US**	**04/27/2010**	**85024481**	**Registered**	**11/23/2010**	**3880033**
FISKER & Design	**US**	**04/27/2010**	**85024509**	**Registered**	**11/13/2012**	**4242403**
FISKER & Design	**US**	**04/27/2010**	**85024511**	**Registered**	**07/03/2012**	**4168419**
FISKER	**US**	**04/22/2016**	**87011307**	**Registered**	**03/17/2020**	**6013877**
FISKER & Design	**US**	**05/02/2016**	**87022120**	**Registered**	**07/18/2017**	**5247488**
FISKER & Design	**US**	**05/02/2016**	**87022124**	**Registered**	**08/08/2017**	**5262153**
FISKER & Design	**US**	**05/02/2016**	**87022125**	**Registered**	**07/11/2017**	**5242662**
EMOTION (Stylized)	**US**	**07/06/2017**	**87518475**	**Registered**	**07/17/2018**	**5517053**
FISKER & Design	**US**	**10/16/2019**	**88657179**	**Registered**	**10/06/2020**	**6171096**
FISKER OCEAN	**US**	**10/24/2019**	**88668176**	**Registered**	**09/26/2023**	**7176431**
FI-PILOT	**US**	**01/02/2021**	**90445783**	**Registered**	**11/14/2023**	**7219211**

FISKER design	**VN**	**09/10/2019**	**4201939679**	**Pending**		
FISKER	**ZA**	**04/30/2010**	**201009117**	**Registered**	**10/25/2013**	**201009117**
FISKER	**ZA**	**04/30/2010**	**201009120**	**Registered**	**06/14/2012**	**201009120**
FISKER	**ZA**	**04/30/2010**	**201009121**	**Registered**	**06/14/2012**	**201009121**
FISKER	**ZA**	**04/30/2010**	**201009122**	**Registered**	**06/14/2012**	**201009122**
FISKER	**ZA**	**04/30/2010**	**201009123**	**Registered**	**06/14/2012**	**201009123**
FISKER & Design	**ZA**	**04/30/2010**	**201009116**	**Registered**	**10/25/2013**	
FISKER & Design	**ZA**	**04/30/2010**	**201009118**	**Registered**	**10/25/2013**	
FISKER & Design	**ZA**	**04/30/2010**	**201009119**	**Registered**	**10/25/2013**	**201009119**

Trademarks and Trademark Applications Owned by Platinum IPR LLC

TITLE	COUNTRY	DATE FILED	APPLICATION NUMBER	STATUS	REGISTRATION DATE	REGISTRATION NO.
FISKER	HR	06/11/2010	Z20101112A	Registered	07/15/2011	Z20101112
FISKER	HR	06/11/2010	Z20101114A	Registered	07/15/2011	Z20101114
FISKER	SG	05/07/2010	T1005808A	Registered	08/12/2010	T1005808A
FISKER	SG	05/07/2010	T1005809Z	Registered	02/21/2011	T1005809Z

Copyrights and Copyright Applications owned by Fisker Inc.

COUNTRY	TITLE	REGISTRATION DATE	REGISTRATION NUMBER
US	Fisker Logo	08/24/2021	VA0002266552
US	Fisker Ocean Ultra	01/26/2022	VA0002295401

Material unpublished patent and design applications

See attached list (strictly confidential).

Material Licenses and Material Contracts in respect of Intellectual Property

All supplier and development agreement contain IP-related terms and conditions. The Company also licenses certain trademarks in connection with advertising partnerships.

Domain Names

www.fiskerinc.com

Patent Schedule of Pending and Allowed Marks:

App Number	Country	Title	STATUS
29512447	US	HEADLAMPS FOR A VEHICLE	Allowed
29582466	US	AUTOMOTIVE VEHICLE	Allowed
29619730	US	EXTERIOR LIGHTING	Allowed
29627626	US	AUTOMOTIVE VEHICLE	Allowed
29630931	US	AUTOMOTIVE VEHICLE	Allowed
29664312	US	EXTERIOR LIGHTING FOR AN AUTOMOTIVE VEHICLE	Allowed
29735838	US	AUTOMOTIVE VEHICLE BODY	Pending
16951981	US	Automobile Having Retractable Rear Quarter Windows	Pending
29762488	US	WHEEL	Pending
17245826	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
29790196	US	VEHICLE DOOR	Pending

App Number	Country	Title	STATUS
29790197	US	VEHICLE STEERING WHEEL	Pending
29790218	US	SEAT	Pending
29790235	US	INSTRUMENT PANEL	Pending
29790237	US	VENT	Pending
29790238	US	DESIGN FOR WHEEL	Pending
29790240	US	WHEEL COVER	Pending
17455620	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
2021800806711	CN	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
218956241	EP	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
17580376	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
17580474	US	AUTOMOBILE HAVING RETRACTABLE	Pending

App Number	Country	Title	STATUS
		REAR QUARTER WINDOWS	
17580538	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
29824377	US	REAR BUMPER OF AN AUTOMOTIVE VEHICLE BODY	Pending
29791932	US	WHEEL	Pending
29791933	US	WHEEL COVER	Pending
2022800314321	CN	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
227968435	EP	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
29866240	US	VEHICLE LIGHT PATTERN	Pending
17931076	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY	Pending

App Number	Country	Title	STATUS
		BUTTONS AND TOUCH BAR	
29867242	US	EXTENDABLE TRAY	Pending
29867243	US	CONSOLE TRAY	Pending
	CN	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	Pending
228885166	EP	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	Pending
PCTUS2278828	WO	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	Pending
	CN	SUN VISOR METHOD AND APPARATUS	Pending
	US	SUN VISOR METHOD AND APPARATUS	Pending
228938809	EP	SUN VISOR METHOD AND APPARATUS	Pending

App Number	Country	Title	STATUS
PCTUS2279728	WO	SUN VISOR METHOD AND APPARATUS	Pending
29869643	US	WHEEL	Pending
PCTUS2361629	WO	SYSTEMS, METHODS, AND DEVICES FOR GRAPHICAL USER INTERFACES	Pending
29871702	US	AUTOMOTIVE VEHICLE BODY	Pending
29512447	US	HEADLAMPS FOR A VEHICLE	STATUS
29582466	US	AUTOMOTIVE VEHICLE	Allowed
29619730	US	EXTERIOR LIGHTING	Allowed
29627626	US	AUTOMOTIVE VEHICLE	Allowed

Design Registration Schedule of Pending Marks:

App Number	Country	Title	Status
2020013436	JP	Automotive Vehicle	Pending
2023300687004	CN	VEHICLE LIGHT PATTERN	Pending
202330166760X	CN	EXTENDABLE TRAY	Pending
2023301669041	CN	CONSOLE TRAY	Pending

App Number	Country	Title	Status
2023305440436	CN	AUTOMOTIVE VEHICLE BODY	Pending
2023308654723	CN	OUTER END OF AUTOMOTIVE WHEEL	Pending
2023308654742	CN	MAIN BODY OF AUTOMOTIVE VEHICLE	Pending
2023308654846	CN	MAIN BODY OF AUTOMOTIVE VEHICLE	Pending
2023308669057	CN	OUTER END OF AUTOMOTIVE WHEEL	Pending
2024300237469	CN	OUTER END PORTION OF AUTOMOTIVE WHEEL	Pending

SCHEDULE IX

Real Property

Transaction Party	Location	Lessor	Lease Term
Fisker Group Inc.	1717 E. Curry Road, Tempe, AZ	RED 1000 LLC	87 months
Fisker Group Inc.	11837-11845 Teale Street, Culver City, CA	3G Teale LLC	65 months
Fisker Group Inc.	1442 Astronautics Dr, Huntington Beach, CA	14422 Astronautics APG LLC	61 months
Fisker Group Inc.	14 Centerpointe Drive, La Palma, CA	Shamrock (La Palma) Properties II, LLC	84 months
Fisker Group Inc.	189 The Grove Drive, Los Angeles, CA	The Grove LLC	60 months
Fisker Group Inc.	1888 Rosecrans Avenue, Manhattan Beach, CA	Continental 830 Nash LLC and Continental Rosecrans Aviation LP	66 months
Fisker Group Inc.	3030 17th Street, San Francisco, CA	Cosmo Co.USA Inc	42 months
Fisker Group Inc.	1715 Hacienda Drive, Vista, CA	Vistacal Luxury Imports Inc	80 months
Fisker Group Inc.	2085 Tamiami Trail East, Naples, FL	2085 Tamiami Trail East LLC	61 months
Fisker Group Inc.	501 Northpoint Parkway, Acworth, GA	501 NORTHPOINT PARKWAY, LLC,	85 months

Transaction Party	Location	Lessor	Lease Term
Fisker Group Inc.	10 Music Fair Road, Owings Mills, MD	DIAMOND AUTOMOTIVE SERVICES INC	61 months
Fisker Group Inc.	38-50 21st Street, Long Island City, NY	Queens Plaza Ventures LLC	21 months
Fisker Group Inc.	4701 United Drive, Oklahoma City, OK	FSC CES Oklahoma City OK, LLC	64 months
Fisker Group Inc.	1641 Westgate Circle, Brentwood, TN	Jeffrey A. Greenberg, as Trustee of The Jeffrey A. Greenberg Separate Property Trust	86 months
Fisker GmbH	EZ 3208, KG 01107 Simmering, Vienna, Austria[2]	Benda GmbH	120 months
Fisker (GB) Limited	Unit 2032, Westfield London Shopping Centre, Ariel Way, London W12 7GF	CRI Commerz Real Investmentgesellschaft mbH	36 months
Fisker Sweden AB	Mätarvagen 23, S-196 37 Kungsängen, Sweden	Fastighets AB Mätarvägen	72 months
Fisker Netherlands Sales B.V.	Driemanssteeweg 700, 3084CB Rotterdam, Netherlands	Beheersmaatschappij D.B. Baris B.V. & Mr. D.B. Baris	60 months
Fisker Vigyan India Pvt Ltd	Floor 9, Survey No. 31/5/1, Amar Tech Park, Near Nicmar University, Pune, Maharashtra, 411045	Tablespace Technologies Private Limited	41 months

[2] Under insolvency procedures.

Transaction Party	Location	Lessor	Lease Term
Fisker Vigyan India Pvt Ltd	Office 1, 8th Floor, Knowledge Park, Plot No 16, Survey No 83/1, Plot No 2, Serilingampally Mandal, Raidurg, Ranga Reddy District, Hyderabad, Telangana 500081.	People Tech IT Consultancy Pvt Ltd	40 months
Fisker GmbH (Germany)	Kaufingerstasse 12, D-80331 Munich, Germany	Ganther Rid Foundation for Bavarian Retailers	68 months
Fisker GmbH (Germany)	Motorworld: Fisker, Am Ausbesserungswerk 8, D-80939 München, Germany		60 months
Fisker France SAS	638, Avenue Roland Garros, F-78530 Buc, France	SINCE VALORISATION	62 months

SCHEDULE X

Extraordinary Transactions

None.

SCHEDULE XI

Stock Ownership and other Equity Interests

Transaction Party	Owner/Issuer Name	Ownership Percentage	Certificate #
Fisker Inc.	Public Company	N/A	Uncertificated
Fisker Group Inc.	Fisker Inc.	100%	Uncertificated
Terra Energy Inc.	Fisker Group Inc.	100%	Uncertificated
Platinum IPR LLC	Fisker Group Inc.	100%	Uncertificated
Fisker TN LLC	Fisker Group Inc.	100%	Uncertificated
Blue Current Holding LLC	Fisker Group Inc.	100%	Uncertificated
Fisker GmbH (Austria)	Fisker Group Inc.	100%	Uncertificated
Fisker GmbH (Germany)	Fisker Group Inc.	100%	Uncertificated
Fisker Vigyan Indian Private Limited	Fisker Group Inc.	99.99%	Uncertificated
Fisker (GB) Limited	Fisker Group Inc.	100%	Uncertificated
Fisker Belgium B.V.	Fisker Group Inc.	100%	Uncertificated
Fisker Canada Ltd.	Fisker Group Inc.	100%	Uncertificated
Fisker Denmark ApS	Fisker Group Inc.	100%	Uncertificated
Fisker France SAS	Fisker Group Inc.	100%	Uncertificated
Fisker Norway AS	Fisker Group Inc.	100%	Uncertificated
Fisker Sweden AB	Fisker Group Inc.	100%	Uncertificated
Fisker Switzerland IP GmbH	Fisker Group Inc.	100%	Uncertificated
Fisker Switzerland Sales GmbH	Fisker Group Inc.	100%	Uncertificated
Fisker Netherlands B.V.	Fisker Group Inc.	100%	Uncertificated
Fisker Netherlands Sales B.V.	Fisker Group Inc.	100%	Uncertificated
Fisker Ireland Limited	Fisker Group Inc.	100%	Uncertificated
Fisker (Shanghai) Motors Ltd.	Fisker Group Inc.	100%	Uncertificated

Ocean EV, S. de R.L. de C.V.	Fisker Inc. Fisker Group Inc.	99% 1%	Uncertificated
Fisker Spain SL	Fisker Group Inc.	100%	Uncertificated

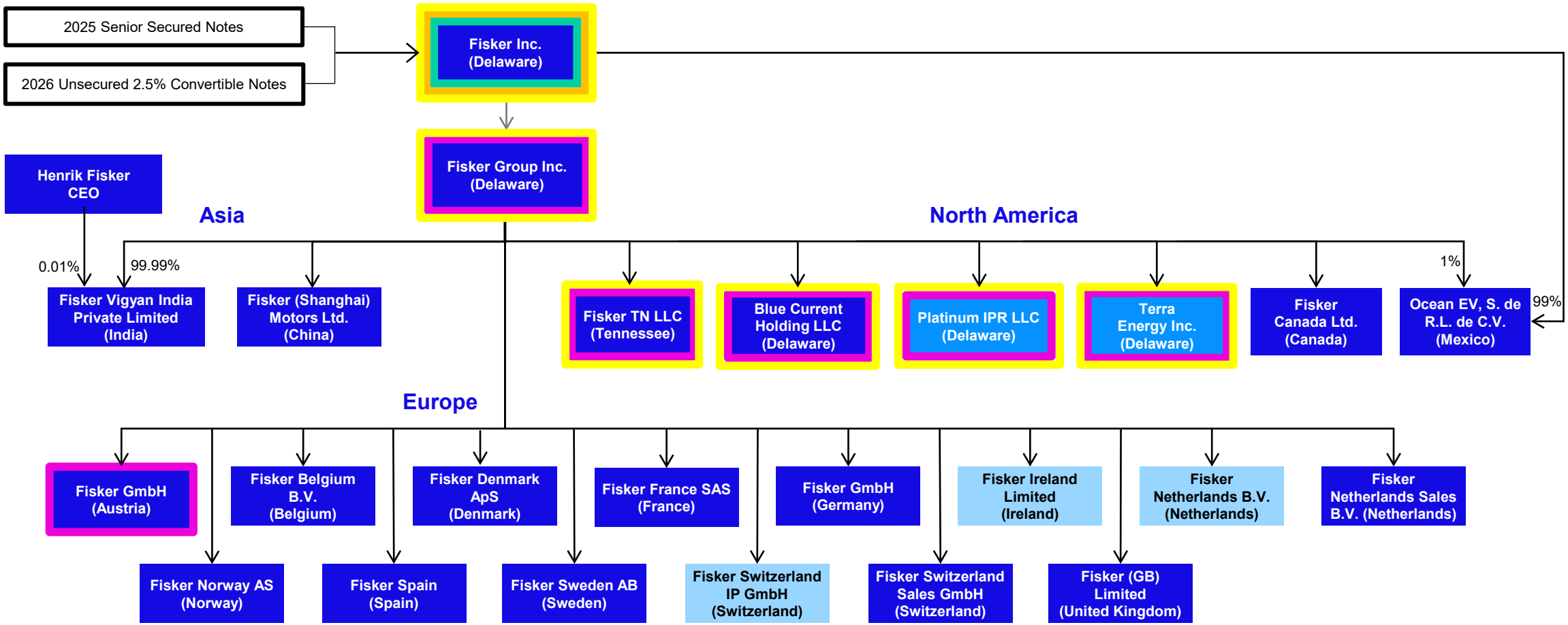
Organizational Chart

See attached.

Fisker – Organizational Chart

Ownership is 100% unless otherwise indicated

Active
Dormant
Active/Non-Operational
Indebtedness
Chapter 11 Debtor
Issuer of 2025 Notes
Issuer of 2026 Notes
Guarantor of 2025 Notes



SCHEDULE XII

Motor Vehicles; Titled Equipment

Street address	Postal code	City
1309 Bay Marina Drive	91950	San Diego
Hans Kiærs gate 1A	3041	Drammen
Terminalgatan 18	211 24	Malmö
401 East Pratt Street	21202	Baltimore
Simmeringer Hauptstraße 1	1110	Vienna
Schiessstattgasse 65	8010	Graz
Gewerbeparkstraße 11	1220	Wien
Landstraße 2b	5020	Salzburg
Welserstraße 54	4060	Linz-Leonding
Langer Weg 12	6020	Innsbruck
Sint Jozefstraat 12	2840	Rumst
55 Auction Lane	L6T 5V8	Brampton
7111 No. 8 Road	V6W 1L9	Richmond
200 North Main St	8835	Manville
Chemin de l'Esparcette 6	1023	Crissier
Kantonsstrasse 2	6246	Altishofen
Industriestrasse 6	6252	Dagmersellen
Gustav-Adolf Strasse 135	90441	Nürnberg
Borsigallee 12	60388	Frankfurt
Am Ausbesserungswerk 8	80939	München
An der Hammer Brücke 5	41460	Neuss
Taastrup Hovedgade 176	2630	Taastrup
Bugattivej 9	7100	Vejle
Ydunsvej 8	3400	Hillerød
638 Avenue Roland Garros	78530	BUC
Rue du 1 er Septembre 1990	67390	Marckolsheim
161 Route De Labege	31400	Toulouse
10 Rue Louis Blanc	69200	Vénissieux
Tickford Roundabout, London Rd	MK16 0RE	Newport Pagnell

Street address	Postal code	City
Herbert Walker Ave	SO15 1HJ	Southampton
Unit 2032, Floor 1, Westfield	W12 7GF	London
West Bay Road	SO15 1HF	Southampton Docks
Driemanssteeweg 700	3084 CB	Rotterdam
Verpetveien 30	1543	Vestby
Mätarvägen 23	196 37	Kungsängen
43375 Old Ox Road	20166	Dulles
6233 Blacktop Road	95673	Rio Linda
14 Centerpointe Drive	90623	La Palma
1717 East Curry Rd	85288	Tempe
5055 Oakley Industrial Blvd	30213	Fairburn
9700 Galena Street	92509	Riverside
4701 United Dr.	73179	Oklahoma City
2785 Beverly Road	60169	Hoffman Estates
Liebenauer Hauptstraße 2-6	8041	Graz
1715 Hacienda Dr.	92081	Vista
501 Northpoint Pkwy	30102	Acworth
400 N. Beck Avenue	85226	Chandler
38-50 21st St	11101	Long Island City
P. Vandammehuis, Isabellalaan	8380	Zeebrugge
14422 Astronautics Lane	92647	Huntington Beach
CTP	21117	Owings Mills
Harbour House, Sundkrogsgade 2	2100	Copenhagen
3 boulevard de Sébastopol	75001	Paris
9th Floor, 107 Cheapside	EC2V 6DN	London
Munkedamsveien 59B	270	Oslo
P.O. Box 162 85	103 25	Stockholm
1618 Redwood Highway	94925	Corte Madera
7666 Greenwood Road	71119	Shreveport
Feldkirchenstraße 22	8401	Kalsdorf
1100 Bay Street	31520	Brunswick
11837 - 11845 Teale St	90230	Culver City
Lenbachplatz 6	80333	Munich

Street address	Postal code	City
Rue du Port	33350	Bassens
26 Park Rose Industrial Estate	B66 2DZ	Smethwick
Kokstadflaten 51	5257	Bergen

SCHEDULE XIII

Commercial Tort Claims

None.

EXHIBIT C

SECURITY DOCUMENTS

1. US Security Agreement
2. UK Account Pledge Agreement
3. German Account Pledge Agreement
4. French Account Pledge Agreement
5. German Security Trust Agreement
6. UK Share Charge

EXHIBIT D

POST-CLOSING DELIVERABLES

1. Within 5 Business Days of the Initial Closing Date (or such longer period as the Buyer may agree in its reasonable discretion), deliver each document listed below

    a. Separate Luxembourg Account Pledge Agreements for (i) Fisker Norway AS, (ii) Fisker Denmark ApS and (iii) Fisker Sweden AB.

    b. Belgian Account Pledge Agreement

    c. French Share Charge

    d. German Share Charge

    e. Belgian Share Charge

    f. Legal opinion(s) of such counsel as may be requested by such Buyer in connection with the Security Documents executed and delivered by the Company and its Subsidiaries pursuant to the terms of this Agreement, in the form acceptable to the Buyer.

    g. Deposit account control agreements as may be requested by such Buyer in connection with the Security Documents executed and delivered by the Company and its Subsidiaries pursuant to the terms of this Agreement, in the form acceptable to the Buyer.

EXHIBIT M

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER APPLICABLE SECURITIES LAWS AND HAVE BEEN ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO A TRANSACTION WHICH IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS, AND, IN THE CASE OF A TRANSACTION EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION, THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THE SECURITIES EVIDENCED BY THIS CERTIFICATE FROM IT OF SUCH RESALE RESTRICTIONS.

FISKER INC.

SENIOR SECURED NOTE DUE 2024

Issuance Date: May 10, 2024 Original Principal Amount: U.S. $3,456,000

FOR VALUE RECEIVED, Fisker Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of CVI Investments, Inc. or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption or otherwise, the "**Principal**") when due, whether upon the Maturity Date, or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and interest and default interest thereon, as set forth below. This Senior Secured Note due 2024 (including all Senior Secured Notes due 2024 issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Secured Notes (collectively, the "**Notes**", and such other Senior Secured Notes, the "**Other Notes**") issued pursuant to Section 1 of that certain Securities Purchase Agreement, dated as of May 10, 2024 (the "**Subscription Date**"), by and among the Company and the investors (the "**Buyers**") referred to therein, as amended from time to time (the "**Securities Purchase Agreement**"). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Except as prohibited by applicable law, not later than 5:00 p.m. (Eastern Time) on the last Business Day of each calendar week, the Company shall repay to the Holder an amount in cash equal to the positive Net Cash Flow for such week (calculated in the same manner as used for the Approved Budget), if any, up to the amount of the then-outstanding Obligations. Notwithstanding anything herein to the contrary, with respect to any redemption or repayment hereunder, as applicable, the Company shall redeem or repay, as applicable, First, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document, Second, all accrued and unpaid Interest, if any, hereunder and under any Other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any Other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any Other Notes held by such Holder, in each case, allocated pro rata among this Note and such Other Notes held by such Holder.

2. INTEREST; DEFAULT RATE. Interest (including post-petition interest in any

proceeding under any Bankruptcy Law) on this Note ("Interest") shall accrue hereunder beginning on the Issuance Date at a rate equal to the three-month Secured Overnight Financing Rate plus twelve percent (12.00%) per annum (the "Interest Rate") and shall be computed on the basis of a 360-day year and twelve 30-day months, shall be payable in arrears on the last Business Day of each calendar week (each an "Interest Payment Date"), provided, that, the Company shall pay Interest (including post-petition Interest in any proceeding under any Bankruptcy Law) on overdue Principal at the rate equal to three percent (3%) per annum in excess of the Interest Rate otherwise payable on the Notes to the extent lawful (the "Default Rate"), provided further, that, the Company shall pay Interest (including post-petition Interest in any proceeding under any Bankruptcy Law) on overdue Interest at the Default Rate to the extent lawful. Interest shall be paid in kind, shall accrue daily and shall be capitalized and added to the outstanding Principal on each Interest Payment Date. From and after each applicable Interest Payment Date, the outstanding Principal shall without further action by any party hereto be deemed to be increased by the aggregate amount of Interest that is paid in kind so capitalized and added to the Principal in accordance with the immediately preceding sentence. Accrued and unpaid Interest and Late Fees, if any, shall also be payable by way of inclusion of such Interest and Late Fees in the Redemption Amount (as defined below) upon any redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below).

3. RESERVED.

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) [Reserved];

(ii) [Reserved];

(iii) [Reserved];

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby;

(v) [Reserved];

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of $10,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to (i) any Other Notes or (ii) solely during the Forbearance Period (as defined in the Forbearance Agreement) (A) any default under, redemption of or acceleration of the 2025 Notes as a result of any Specified Defaults (as defined in the Forbearance Agreement) or (B) any default under or acceleration of the Company's 2.50% Convertible Senior Notes due 2026 existing on the Issuance Date;

(vii) 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, provided, that the foregoing shall not apply with respect to Fisker GmbH (Austria) or Fisker (GB) Limited (United Kingdom);

(viii) 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 against the assets of the Company or any Subsidiary, provided, that the foregoing shall not apply with respect to Fisker GmbH (Austria) or Fisker (GB) Limited (United Kingdom);

(ix) 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;

(x) a final judgment or judgments for the payment of money aggregating in excess of $10,000 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 $10,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the 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;

(xi) 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 $10,000 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 (ii) is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of $10,000, which breach or violation (i) results in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constitutes a failure to pay the principal or interest of any such debt when due and payable (after giving effect to any applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, except, in each case, solely during the Forbearance Period (as defined in the Forbearance Agreement) with respect to (A) any default under, redemption of or acceleration of the 2025 Notes as a result of any Specified Defaults (as defined in the Forbearance Agreement) or (B) any default under or acceleration of the Company's 2.50% Convertible Senior Notes due 2026 existing on the Issuance Date;

(xii) other than as specifically set forth in another clause of this Section 4(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;

(xiii) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company;

(xiv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13 of this Note;

(xv) any Event of Default (as defined in the Other Notes) occurs and is continuing with respect to any Other Notes;

(xvi) any provision of any Transaction Document (including, without limitation) the Security Documents or the Guaranty 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 parties thereto, or the validity or enforceability thereof shall be contested 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 Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including, without limitation, the Security Documents and the Guaranty);

(xvii) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (as defined in the Securities Purchase Agreement) on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent (as defined in the Securities Purchase Agreement) or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental

authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xviii) failure to comply with the Approved Budget in any respect;

(xix) termination or expiration of the Forbearance Agreement;

(xx) there occurs any uninsured loss to any material portion of the Collateral.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) calendar day deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured) all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the product of (A) the sum of (x) such portion of the Principal to be redeemed, (y) all accrued and unpaid Interest with respect to such portion of the Principal amount, and (z) accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any (such sum, the "**Redemption Amount**"), multiplied by (B) the Redemption Premium (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the 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 the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) 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 Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes reasonably satisfactory to the Required Holders, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having equal or greater security to the Notes and having similar ranking to the Notes. 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions.

(b) Notice of a Change of Control; Redemption Right. No later than ten (10) Business Days prior to the consummation of a Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on twenty (20) Business 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, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company, which Change of Control Redemption Notice shall indicate the Redemption Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the product of (w) the Change of Control Redemption Premium multiplied by (y) the Redemption Amount being redeemed (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. In the event of a partial redemption of this Note pursuant hereto, the Principal amount redeemed shall be deducted from the Principal outstanding hereunder as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any portion of this Note under this Section 5(b), the 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 the Holder. Accordingly, any Redemption Premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. RESERVED.

7. RESERVED.

8. RESERVED.

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

10. RESERVED.

11. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within one (1) Business Day after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within one (1) Business Day after the Company's receipt of such notice otherwise. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Redemption Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Redemption Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Redemption Amount and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Redemption Amount submitted for redemption. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Redemption Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence

substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. RESERVED.

13. COVENANTS. Until all of the Notes have been redeemed or otherwise satisfied in accordance with their terms:

(a) Rank; Guaranty; Collateral. The Company shall designate all payments due under this Note as senior secured Indebtedness, and (a) the Notes shall rank *pari passu* with all Other Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries. The Notes shall be guaranteed as set forth in the Guaranty. The Notes and the Guaranty shall be secured by a priming first priority lien on the Collateral on the terms and subject to the conditions set forth in the Security Agreement.

(b) Incurrence of Indebtedness. Except with the prior express written consent of the Required Holder, 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 (i) the Indebtedness evidenced by this Note and the Other Notes, (ii) the Existing Notes and (iii) Permitted 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 convertible, exchangeable, exercisable or otherwise linked to the Company's Common Stock, or any other equity security of the Company, except the Existing Notes.

(c) 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.

(d) Restricted Payments. Without limiting the generality of Section 13(v), the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, (i) redeem, defease, repurchase, repay, prepay 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 than the Notes) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness (A) prior to the due date or (B) if at the time such payment with respect to such Indebtedness is due or is otherwise made or, after giving effect to such payment, (I) an event constituting an Event of Default has occurred and is continuing or (II) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing, or (ii) elect to accelerate, prepay or redeem early any Indebtedness.

(e) Restricted Investments. Without limiting the generality of Section 13(v), the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, make any Restricted Investments.

(f) Restriction on Redemption and Cash Dividends. Without limiting the generality of Section 13(v), 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.

(g) Restriction on Transfer of Assets. Without limiting the generality of Section 13(v), 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 (including any Collateral) whether in a single transaction or a series of related transactions, other than a repayment of the Obligations or a Permitted Asset Disposition, and the proceeds from any sale, disposition or other monetization of any assets or rights of the Company or any Subsidiary owned or hereafter acquired shall be deposited directly into the Segregated Account.

(h) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date; except, solely during the Forbearance Period (as defined in the Forbearance Agreement) with respect to (A) any maturity, redemption or acceleration of the 2025 Notes as a result of any Specified Defaults (as defined in the Forbearance Agreement) or (B) any default under or acceleration of the Company's 2.50% Convertible Senior Notes due 2026 existing on the Issuance Date.

(i) 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 Subscription 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 other than for tax or other general corporate purposes that are not meant to (and do not) (i) change the nature of the business of the Company currently conducted as of the Issuance Date or (ii) affect in any way the perfection of the Collateral Agent's Liens on any of the Collateral.

(j) Accounting Matters. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, make any significant change in accounting treatment or reporting practices, except as required by GAAP; or establish a fiscal year different than the Fiscal Year.

(k) 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.

(l) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to 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.

(m) 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 (as defined in the Securities Purchase Agreement) 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.

(n) 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 (including, without limitation, and for the avoidance of doubt, at least $5,000,000 in director's and officer's insurance), in each case, in accordance with the Approved Budget.

(o) Transactions with Affiliates. Without limiting the generality of Section 13(v), 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.

(p) Restricted Issuances. Without limiting the generality of Section 13(v), the Company shall not, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(q) Reserved.

(r) Reserved.

(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 Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(t) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries), in each case, in accordance with the Approved Budget. 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, in each case, in accordance with the Approved Budget.

(u) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with

the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note 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 (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(v) Approved Budget.

(i) At all times that any Notes are outstanding, the Company shall, and the Company shall cause each of its Subsidiaries to, act in accordance with an Approved Budget.

(ii) The Company shall, and the Company shall cause each of its Subsidiaries to, comply with the then-current Approved Budget in all respects.

(iii) The Company shall, beginning on the Thursday of the first week following the end of the First Test Period, deliver on a weekly basis (by 5:00pm (Eastern Time) on the Thursday of each week) to the Holder and the Holder's advisors an Approved Budget Variance Report.

(iv) The Company's advisors shall hold weekly meetings with the Holder's advisors to discuss the applicable Approved Budget Variance Report.

(w) Sales of Vehicles. The Company shall, and the Company shall cause each of its Subsidiaries to, continue to sell vehicles at auction and through dealers and direct-to-consumer channels consistent with the Approved Budget. All proceeds from any sale or disposition or other monetization of any vehicles (through any channels) by the Company or any of its Subsidiaries shall be deposited directly into the Segregated Account.

(x) Chief Restructuring Officer. Except as otherwise agreed in writing by the Holder, the Company and its Subsidiaries shall continue to retain a Chief Restructuring Officer ("**CRO**") satisfactory to the Holder in its sole discretion, on terms and conditions and with a scope of services acceptable to Holders in its sole discretion, including without limitation, access to all financial and other information of the Company and its Subsidiaries. Each of the Company's and its Subsidiaries' officers and all other executive management members shall inform the CRO of any

actions or decisions taken or to be taken, including, without limitation, any proposals to be made or discussed with the board of directors of the Company or any of its Subsidiaries.

(y) Liquidation Plan. The Company shall deliver to the Holder and its advisors a proposed liquidation plan, in form and substance acceptable to the Holder, on or before May 23, 2024.

14. RESERVED.

15. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Company and the Holder shall be required for any change, waiver or amendment to this Note.

16. TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject to satisfaction of applicable securities law.

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 17(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 17(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, following redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note. The Company shall execute such new Note and deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 17(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 17(a) or Section 17(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND

INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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 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 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 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 Note.

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note and/or any other Transaction Document or to enforce the provisions of this Note and/or any other Transaction Document or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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.

22. RESERVED.

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 8(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note 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 Note, 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).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note or any other Transaction Documents have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 or operate to preclude the Holder from (A) asserting jurisdiction over the Company and its property in any court in which jurisdiction may be laid over the Company or its property or (B) bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY 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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

27. JUDGMENT CURRENCY.

(a) 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 Note, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(i) 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

(ii) 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**").

(b) 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 U.S. 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.

(c) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the Securities Purchase 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

(b) "**2025 Notes**" means, collectively, the Company's Series A-1 and Series B-1 Senior Secured Convertible Notes due 2025.

(c) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(d) "**Approved Budget**" means a customary three-week budget and cash flow forecast for the Company and its Subsidiaries delivered to the Holder and the Holder's advisors, containing line items of sufficient detail to reflect the consolidated receipts and disbursements (including all professional fees) of the Company and its Subsidiaries broken down by week (including anticipated uses of the proceeds of the Notes for such period), in form and substance acceptable to the Holder in its sole discretion, a copy of which is attached hereto as Exhibit I, which budget and cash flow forecast may be amended from time to time with the consent of the Holder in its sole discretion.

(e) "**Approved Budget Variance Report**" means (i) a weekly budget variance report/reconciliation for each Test Period immediately preceding the date of each such delivery setting forth in reasonable detail, actual operating receipts, operating disbursements, non-operating disbursements, and any other receipts and disbursements of the Company on an individual line item basis and aggregate basis for such Test Period to receipts and disbursements for such Test Period as set forth in the Approved Budget, and (ii) a statement certifying compliance with the Approved Budget and explaining in reasonable detail all variances from the Approved Budget. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, reasonably satisfactory to the Holder (or its advisors).

(f) "**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

(g) "**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.

(h) "**cash**" of the Company and its Subsidiaries on any date shall be determined from such Persons' books maintained in accordance with GAAP, and means, without duplication, the cash, cash equivalents and Eligible Marketable Securities accrued by the Company and its wholly owned Subsidiaries on a consolidated basis on such date.

(i) "**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 and in substantially the same proportions, 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.

(j) "**Change of Control Redemption Premium**" means 125%.

(k) "**Collateral**" shall have the meaning ascribed to such term in the Security Agreement.

(l) "**Collateral Agent**" shall have the meaning ascribed to such term in the Security Agreement.

(m) "**Common Stock**" means (i) the Company's shares of Class A common stock, $0.00001 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.

(n) "**Eligible Market**" means the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market.

(o) "**Eligible Marketable Securities**" as of any date means marketable securities which would be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared as of such date in accordance with GAAP, and which are permitted under the Company's investment policies as in effect on the Issuance Date or approved thereafter by the Company's Board of Directors.

(p) "**Existing Notes**" means the 2025 Notes and the Company's 2.50% Convertible Senior Notes due 2026.

(q) "**Fiscal Year**" means the fiscal year adopted by the Company for financial reporting purposes as of the date hereof that ends on December 31.

(r) "**Forbearance Agreement**" means the Forbearance Agreement, dated as of April 21, 2024, by and among the Company, certain Subsidiaries of the Company and the Holder, as amended by that certain Amendment No. 1 to Forbearance Agreement, dated as of May 1, 2024, by and among the Company, certain Subsidiaries of the Company and the Holder, and as may be amended or extended from time to time, with the consent of the Holder in its sole discretion.

(s) "**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 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 Note 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.

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

(u) "**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.

(v) "**Guarantor**" means each Subsidiary of the Company, wherever located (or formed, as applicable) and whether now existing or thereafter acquired; provided that (i) as of the Subscription Date, only the Subsidiaries of the Company that are incorporated or organized under the laws of the United States, any state thereof or the District of Columbia, the United Kingdom, the Federal Republic of Germany and France shall be required to be a Guarantor, (ii) any other Subsidiaries of the Company party to a Security Document or otherwise reasonably requested by the Collateral Agent to become Guarantors shall be required to be joined as Guarantors within 3 Business Days after the Subscription Date (in the case of such Subsidiaries party to a Security Document) or 5 Business Days after the date of request by the Collateral Agent (and, if applicable, such joinder documents shall include or be subject to any necessary local law limitations or requirements) and (iii) notwithstanding the foregoing, in no event shall any Subsidiary of the Company be required to be joined as a Guarantor at any time (x) if such Subsidiary is incorporated or organized in India or China or any political subdivision thereof, (y) if joining such Subsidiary as a Guarantor would reasonably be expected to result in material adverse tax consequences to the Company or its Subsidiaries as determined by the Company and the Buyers in good faith or (z) the burden or cost of joining such Subsidiary as a Guarantor outweighs the benefits afforded, as determined by the Company and the Buyers in good faith.

(w) "**Guaranty**" means each guaranty now or hereafter executed by a Guarantor with respect to any of the Obligations.

(x) "**Indebtedness**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(y) "**Initial Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(z) "**Issuance Date**" means the date set forth above as the issuance date.

(aa) "**Maturity Date**" shall mean June 24, 2024.

(bb) "**Obligations**" shall mean all Obligations as that term is defined in the Security Agreement plus, without duplication, all Principal, Interest or other amounts when and as due under the Notes (including, without limitation, the Company's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby.

(cc) "**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.

(dd) "**Permitted Asset Disposition**" means a sale and disposition made in the ordinary course of business on arm's length terms and for fair market value or in accordance with the Approved Budget; provided that proceeds from any such sale and disposition shall be deposited into the Segregated Account.

(ee) "**Permitted Indebtedness**" means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 3(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date and (iii) Indebtedness incurred in the ordinary course of business and in accordance with the Approved Budget; provided, that (A) all Permitted Indebtedness must be subordinate to the terms of the Notes (other than Permitted Indebtedness secured by Permitted Liens), and (B) no Permitted Indebtedness shall prohibit or limit in any manner any term or condition under the Transaction Documents and/or any amendment, or modification or waiver hereunder or thereunder, as applicable, including, but not limited to any prohibition on any payment of cash by the Company in respect of any obligation under the Notes.

(ff) "**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 and (iii) 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.

(gg) "**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.

(hh) "**Redemption Notices**" means, collectively, the Event of Default Redemption Notices, and the Change of Control Redemption Notices, and each of the foregoing, individually, a "**Redemption Notice**."

(ii) "**Redemption Premium**" means 125%.

(jj) "**Redemption Prices**" means, collectively, Event of Default Redemption Prices and the Change of Control Redemption Prices, and each of the foregoing, individually, a "**Redemption Price**."

(kk) "**Required Holders**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(ll) "**Restricted Investment**" means any investment other than: (i) investments existing on the date of the Securities Purchase Agreement and (ii) investments in cash or cash equivalents (provided that they shall be held in the Segregated Account).

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

(nn) "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.

(oo) "**Security Agreement**" means that certain Security and Pledge Agreement, dated as of May 10, 2024, between the Company and its Subsidiaries that are party thereto and the Collateral Agent.

(pp) "**Security Documents**" shall have the meaning ascribed to such term in the Security Agreement.

(qq) "**Segregated Account**" means a cash account, which is subject to a deposit account control agreement solely for the benefit of the Buyers and in form and substance acceptable to the Buyers, provided, that within five (5) Business Days of the Subscription Date, all funds in the Segregated Account shall be moved to a segregated cash account, which is subject to a deposit account control agreement solely for the benefit of the Buyers and in form and substance acceptable to the Buyers, and thereafter, the term "**Segregated Account**" shall refer to such account.

(rr) "**Significant Subsidiaries**" or "**Significant Subsidiary**" means, as of any time of determination, any of the "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) of the Company as of such time of determination.

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

(tt) "**Subsidiaries**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

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

(vv) "**Test Period**" means (i) initially, the one-week period beginning with the first day of the week during which the Issuance Date occurs (the "**First Test Period**"), (ii) then, the one-week period beginning with the first day of the week during which the Approved Budget Variance Report for the First Test Period was delivered, and (iii) thereafter, any one week period ended on the last day of the week immediately prior to the week during which the applicable Approved Budget Variance Report is required to be delivered.

(ww) "**Transaction Documents**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

31. DISCLOSURE. The Company shall comply with the terms of the Non-Disclosure Agreement, dated April 13, 2024, by and among the Company, the Holder and Heights Capital Management, Inc. (as amended, the "**Non-Disclosure Agreement**") in delivering any notice to the Holder in accordance with the terms of this Note. Nothing contained in this Section 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(l) of the Securities Purchase Agreement or pursuant to the Non-Disclosure Agreement.

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

33. SECURITY. This Note and the Other Notes are secured and guaranteed to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement, the other Security Documents and the Guaranty).

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

FISKER INC.

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

EXHIBIT I

APPROVED BUDGET

Fisker Inc.

U.S. Only 3-Week Cash Flow Forecast

May 6, 2024

CONFIDENTIAL, DRAFT, & SUBJECT TO MATERIAL REVISION

FISKER

U.S. Only 3-Week Cash Flow Forecast

U.S Only 3-Week Cash Flow Forecast (USD 000s)

Week	Week 1	Week 2	Week 3	Total
Actual/Forecast	Forecast	Forecast	Forecast	3-Weeks
Week Ending	10-May-24	17-May-24	24-May-24	
Projected Cash Receipts:				
Receipts from Customers	$ 908	$ 4,874	$ 8,475	$ 14,257
One Time EU Emission Credit Sale	-	-	-	-
Total Receipts	**$ 908**	**$ 4,874**	**$ 8,475**	**$ 14,257**
Projected Cash Disbursements:				
Employee Payroll & Benefits	$ (4,264)	$ (251)	$ (2,942)	$ (7,458)
Taxes / Regulatory	(438)	(375)	(375)	(1,188)
IT / Software	(1,573)	(631)	(156)	(2,360)
After Sales Service	(18)	(18)	(18)	(54)
Professional Services	(175)	(175)	(175)	(524)
Rent	-	-	-	-
Insurance	(100)	(589)	-	(689)
Freight & Other	(457)	(382)	(382)	(1,220)
Other	(170)	(170)	(170)	(510)
Total Operating Disbursements	**$ (7,194)**	**$ (2,590)**	**$ (4,218)**	**$ (14,002)**
Net Operating Cash Flow / (Deficit)	**$ (6,287)**	**$ 2,284**	**$ 4,257**	**$ 254**
Non Operating:				
Restructuring Related	$ (1,100)	$ (800)	$ (800)	$ (2,700)
Total Non Operating	($1,100)	($800)	($800)	($2,700)
Net Cash Flow / (Deficit)	**($7,387)**	**$1,484**	**$3,457**	**($2,446)**
Beginning Cash Balance	$ 11,416	$ 4,029	$ 5,513	$ 11,416
Net Cash Flow / (Deficit), from above	(7,387)	1,484	3,457	(2,446)
Ending Total Cash Balance	**$ 4,029**	**$ 5,513**	**$ 8,971**	**$ 8,971**
Less Restricted / Trapped Cash:				
Cash Collateralized LCs	**$ (6,488)**	**$ (6,488)**	**$ (6,488)**	**$ (6,488)**
Deposits Relating to Imperfected Liens	(997)	(997)	(997)	(997)
Ending Total Cash, Unrestricted	**$ (3,456)**	**$ (1,972)**	**$ 1,485**	**$ 1,485**

Note: The forecast does not contemplate any further cash requirements outside this period (which may include, but are not limited to, any incremental costs which may arise from potential sale transaction or litigation, incremental deposits being asserted by JPM with respect to imperfected liens or any one-time severance costs which may arise from additional RIFs beyond those contemplated in this forecast.

FORECAST ASSUMPTIONS

Key Takeaway

- The forecast anticipates an incremental cash requirement of **$3.5M** through week-ending May 10th, 2024. Under the current sales assumptions, it is anticipated that sufficient cash proceeds will be generated in Weeks 2 and 3 to cover expected expenses.
- Note: The forecast does not contemplate any further cash requirements outside this period and is highly dependent upon the realization of Ocean passenger vehicle sale proceeds. Further, this forecast does not contemplate any incremental costs which may arise from potential sale transaction or litigation, incremental deposits being asserted by JPM with respect to imperfected liens or any severance costs which may arise from additional RIFs beyond those contemplated in this forecast),

Cash Receipts

- Receipts from vehicles sales: Includes projected sales from DTC, dealers, and auctions for remaining periods using the following assumptions in Weeks 1-3:
  - **DTC (Extreme & Ultra Models Sold)**:
    - Week 1: 10 cars/week at an average of $41.5K/car net proceeds.
    - Weeks 2&3: 50 cars/week at an average of $35K/car net proceeds.
  - **Dealers (Extreme & Ultra Models Sold):**
    - Week 1: 3 cars/week at an average of $29.9K/car net proceeds.
    - Weeks 2&3: 60 cars/week at an average of $25K/car net proceeds.
  - **Auctions (Ocean One Models Sold):**
    - Week 1: 56 cars/week at an average of $29K/car net proceeds and 1-week delay in cash receipt collection.
    - Weeks 2&3: 190 cars/week at an average of $27.5K/car net proceeds and 1-week delay in cash receipt collection.
- Note: While limited test-auctions to date have been promising, substantial risks exists that the price/car may decrease materially as the number of cars in the market at auction increase or that not all cars may sell.

FISKER

U.S. Only 3-Week Cash Flow Forecast

U.S Only 3-Week Cash Flow Forecast (USD 000s)

Week	Week 1	Week 2	Week 3	Total
Actual/Forecast	Forecast	Forecast	Forecast	3-Weeks
Week Ending	10-May-24	17-May-24	24-May-24	
Projected Cash Receipts:				
Receipts from Customers	$ 908	$ 4,874	$ 8,475	$ 14,257
One Time EU Emission Credit Sale	-	-	-	-
Total Receipts	**$ 908**	**$ 4,874**	**$ 8,475**	**$ 14,257**
Projected Cash Disbursements:				
Employee Payroll & Benefits	$ (4,264)	$ (251)	$ (2,942)	$ (7,458)
Taxes / Regulatory	(438)	(375)	(375)	(1,188)
IT / Software	(1,573)	(631)	(156)	(2,360)
After Sales Service	(18)	(18)	(18)	(54)
Professional Services	(175)	(175)	(175)	(524)
Rent	-	-	-	-
Insurance	(100)	(589)	-	(689)
Freight & Other	(457)	(382)	(382)	(1,220)
Other	(170)	(170)	(170)	(510)
Total Operating Disbursements	**$ (7,194)**	**$ (2,590)**	**$ (4,218)**	**$ (14,002)**
Net Operating Cash Flow / (Deficit)	**$ (6,287)**	**$ 2,284**	**$ 4,257**	**$ 254**
Non Operating:				
Restructuring Related	$ (1,100)	$ (800)	$ (800)	$ (2,700)
Total Non Operating	($1,100)	($800)	($800)	($2,700)
Net Cash Flow / (Deficit)	**($7,387)**	**$1,484**	**$3,457**	**($2,446)**
Beginning Cash Balance	$ 11,416	$ 4,029	$ 5,513	$ 11,416
Net Cash Flow / (Deficit), from above	(7,387)	1,484	3,457	(2,446)
Ending Total Cash Balance	**$ 4,029**	**$ 5,513**	**$ 8,971**	**$ 8,971**
Less Restricted / Trapped Cash:				
Cash Collateralized LCs	**$ (6,488)**	**$ (6,488)**	**$ (6,488)**	**$ (6,488)**
Deposits Relating to Imperfected Liens	(997)	(997)	(997)	(997)
Ending Total Cash, Unrestricted	**$ (3,456)**	**$ (1,972)**	**$ 1,485**	**$ 1,485**

Note: The forecast does not contemplate any further cash requirements outside this period (which may include, but are not limited to, any incremental costs which may arise from potential sale transaction or litigation, incremental deposits being asserted by JPM with respect to imperfected liens or any one-time severance costs which may arise from additional RIFs beyond those contemplated in this forecast.

FORECAST ASSUMPTIONS

Disbursements

- Taxes & Regulatory: Tax payments relating to registration of imperfected titles.
- Employee Payroll: Payroll (reduced to account for the recent RIF of ~105 employees) and related employee benefits (i.e., health insurance and employee 401k payments). Also includes final payroll to the employees impacted by RIF. Assumes a further reduction of ~114 FTEs during Week 2 which will begin to be reflected in a Week 3 lower payroll.
- IT / Software: Includes critical software necessary for the business as well as overdue AP payments ($1.4M for SAP and $0.6M for Salesforce, vendors who have stated they plan to discontinue service without payment). Management and Huron are actively engaged in negotiations to reduce spend on critical IT platforms.
- After Sales Service: Estimate for servicing of customer cars and payments to certain out of term payables to limit further customer disruption.
- Professional Services: Ordinary course professionals primarily consisting of legal fees.
- Rent: Assumes the May rent payments of 7 properties that are needed due to vehicles in the process of being moved or the property containing critical licenses (such as a dealer or service license) were made prior week. Further rationalization of the leased footprint is in process.
- Insurance: Auto, general liability, property, and umbrella insurance.
- Freight & Other: Freight costs for auctions and moving cars between facilities.

FISKER

U.S. Only 3-Week Cash Flow Forecast

U.S Only 3-Week Cash Flow Forecast (USD 000s)

Week	Week 1	Week 2	Week 3	Total
Actual/Forecast	Forecast	Forecast	Forecast	3-Weeks
Week Ending	10-May-24	17-May-24	24-May-24	
Projected Cash Receipts:				
Receipts from Customers	$ 908	$ 4,874	$ 8,475	$ 14,257
One Time EU Emission Credit Sale	-	-	-	-
Total Receipts	**$ 908**	**$ 4,874**	**$ 8,475**	**$ 14,257**
Projected Cash Disbursements:				
Employee Payroll & Benefits	$ (4,264)	$ (251)	$ (2,942)	$ (7,458)
Taxes / Regulatory	(438)	(375)	(375)	(1,188)
IT / Software	(1,573)	(631)	(156)	(2,360)
After Sales Service	(18)	(18)	(18)	(54)
Professional Services	(175)	(175)	(175)	(524)
Rent	-	-	-	-
Insurance	(100)	(589)	-	(689)
Freight & Other	(457)	(382)	(382)	(1,220)
Other	(170)	(170)	(170)	(510)
Total Operating Disbursements	**$ (7,194)**	**$ (2,590)**	**$ (4,218)**	**$ (14,002)**
Net Operating Cash Flow / (Deficit)	**$ (6,287)**	**$ 2,284**	**$ 4,257**	**$ 254**
Non Operating:				
Restructuring Related	$ (1,100)	$ (800)	$ (800)	$ (2,700)
Total Non Operating	($1,100)	($800)	($800)	($2,700)
Net Cash Flow / (Deficit)	**($7,387)**	**$1,484**	**$3,457**	**($2,446)**
Beginning Cash Balance	$ 11,416	$ 4,029	$ 5,513	$ 11,416
Net Cash Flow / (Deficit), from above	(7,387)	1,484	3,457	(2,446)
Ending Total Cash Balance	**$ 4,029**	**$ 5,513**	**$ 8,971**	**$ 8,971**
Less Restricted / Trapped Cash:				
Cash Collateralized LCs	**$ (6,488)**	**$ (6,488)**	**$ (6,488)**	**$ (6,488)**
Deposits Relating to Imperfected Liens	(997)	(997)	(997)	(997)
Ending Total Cash, Unrestricted	**$ (3,456)**	**$ (1,972)**	**$ 1,485**	**$ 1,485**

Note: The forecast does not contemplate any further cash requirements outside this period (which may include, but are not limited to, any incremental costs which may arise from potential sale transaction or litigation, incremental deposits being asserted by JPM with respect to imperfected liens or any one-time severance costs which may arise from additional RIFs beyond those contemplated in this forecast.

Forecast Assumptions

Non-Operating

- Restructuring Related: Include restructuring professional fees relating to Davis Polk, Huron, Uzzi & Lall, and C Street. Ongoing lender legal professionals are assumed paid outside the forecast period.
  - See below for restructuring fee breakout.

Week	Week 1	Week 2	Week 3	Total
Actual/Forecast	Forecast	Forecast	Forecast	3-Weeks
Week Ending	10-May-24	17-May-24	24-May-24	
Company Professionals				
Davis Polk & Wardwell LLP	(125)	(125)	(125)	(375)
Huron	(250)	(250)	(250)	(750)
C Street	(100)	(50)	(50)	(200)
Total	**(475)**	**(425)**	**(425)**	**(1,325)**
2025 Notes Professionals				
White & Case LLP	(350)	(200)	(200)	(750)
Kelley Drye & Warren LLP	(100)	-	-	(100)
Uzzi & Lall	(175)	(175)	(175)	(525)
Total	**(625)**	**(375)**	**(375)**	**(1,375)**
Total Professional Fees	**$ (1,100)**	**$ (800)**	**$ (800)**	**$ (2,700)**

  - Note: After the application of April's invoices, the remaining retainer balance of Davis Polk and FTI are $554K and $189K, respectively.

Restricted Cash / Deposits

- LCs: $6.5M includes $3.6M for insurance/risk management policy, $0.4M associated with the JPM company credit card and LCs with 5 international vendors.
- Deposit: JPM holding $1.0M in deposits related to ~40 imperfected vehicle titles, of which certain instances the company disputes. As noted above, JPM asserts this deposit may be ~$2.5M insufficient.

EXHIBIT N

GUARANTY

This GUARANTY, dated as of May 10, 2024 (this "**Guaranty**"), is made by each of the undersigned (each a "**Guarantor**", and collectively, the "**Guarantors**"), in favor of CVI Investments, Inc., in its capacity as collateral agent (in such capacity, the "**Collateral Agent**") for the Noteholders (as defined below).

W I T N E S S E T H:

WHEREAS, Fisker Inc., a company organized under the laws of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**") and each party listed as a " Investor" on the Schedule of Investors attached thereto (collectively, the "**Investors**") are parties to the Securities Purchase Agreement, dated as of May 10, 2024 (as amended, restated, extended, replaced or otherwise modified from time to time, the "**Securities Purchase Agreement**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future be required or have the right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, restated, extended, replaced or otherwise modified from time to time in accordance with the terms thereof, collectively, the "**Notes**," and the holders of the Notes at any time, the "**Noteholders**");

WHEREAS, the Securities Purchase Agreement requires that the Guarantors execute and deliver to the Collateral Agent, (i) a guaranty guaranteeing all of the obligations of the Company under the Securities Purchase Agreement, the Notes and the other Transaction Documents (as defined below); (ii) with respect to the Guarantors formed in the United States, a Security and Pledge Agreement, dated as of the date hereof, granting the Collateral Agent a lien on and security interest in all of their assets and properties that constitute Collateral (the "**US Security Agreement**") and (iii) such other Security Documents as are entered into on or after the date hereof granting the Collateral Agent a Lien on and security interest in the assets and properties that constitute Collateral as more particularly set forth therein; and

WHEREAS, each Guarantor has determined that the execution, delivery and performance of this Guaranty directly benefits, and is in the best interest of, such Guarantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Guarantor hereby agrees with each Noteholder as follows:

SECTION 1 Definitions. Reference is hereby made to the Securities Purchase Agreement and the Notes for a statement of the terms thereof. All terms used in this Guaranty and the recitals hereto which are defined in the Securities Purchase Agreement or the Notes, and which are not otherwise defined herein shall have the same meanings herein as set forth therein. In addition, the following terms when used in the Guaranty shall have the meanings set forth below:

"**Bankruptcy Code**" means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

"**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in New York City 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.

"**Capital Stock**" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

"**Collateral Agent**" shall have the meaning set forth in the recitals hereto.

"**Company**" shall have the meaning set forth in the recitals hereto.

"**Debtor Relief Laws**" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors (or any class of creditors), moratorium, arrangement, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States, or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally (including any applicable corporations legislation to the extent the relief sought thereunder relates to or involves the compromise, settlement, adjustment or arrangement of debt).

"**French Obligor**" means any Guarantor or grantor under a Security Document incorporated in France.

"**German Obligor**" means any Guarantor or grantor under a Security Document incorporated in Germany.

"**Governmental Authority**" 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.

"**Guaranteed Obligations**" shall have the meaning set forth in Section 2 of this Guaranty.

"**Guarantor**" or "**Guarantors**" shall have the meaning set forth in the recitals hereto.

"**Indemnitee**" shall have the meaning set forth in the Securities Purchase Agreement.

"**Insolvency Proceeding**" means any proceeding commenced by or against any Person under any Debtor Relief Laws.

"**Investor**" or "**Investors**" shall have the meaning set forth in the recitals hereto.

"**Joinder Agreement**" means an agreement substantially in the form attached hereto as Exhibit A.

"**Notes**" shall have the meaning set forth in the recitals hereto.

"**Obligations**" shall have the meaning set forth in Section 4 of the US Security Agreement.

"**Other Taxes**" shall have the meaning set forth in Section 15(a)(iv) of this Guaranty.

"**Paid in Full**" **or** "**Payment in Full**" means the indefeasible payment in full in cash of all of the Guaranteed Obligations (other than inchoate indemnity obligations).

"**Person**" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"**Securities Purchase Agreement**" shall have the meaning set forth in the recitals hereto.

"**Subsidiary**" means any Person in which a Guarantor directly or indirectly, (i) owns a majority of the outstanding Capital Stock of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person, and all of the foregoing, collectively, "**Subsidiaries**".

"**Taxes**" shall have the meaning set forth in Section 13(a) of this Guaranty.

"**Transaction Documents**" shall have the meaning set forth in the Securities Purchase Agreement.

"**Transaction Party**" means the Company and each Guarantor, collectively, "**Transaction Parties**".

"**UK Obligor**" means any Guarantor or grantor under a Security Document incorporated in England and Wales.

"**US Security Agreement**" shall have the meaning set forth in the recitals hereto.

SECTION 2 Guaranty.

(a) The Guarantors, jointly and severally, hereby unconditionally and irrevocably, guaranty to the Collateral Agent, for the benefit of the Collateral Agent and the Noteholders, the punctual payment in full in cash, as and when due and payable, by stated maturity, by required prepayment declaration, acceleration, demand or otherwise, of all Obligations, including, without limitation, all interest, make-whole and other amounts that accrue after the commencement of any Insolvency Proceeding of the Company or any Guarantor, whether or not the payment of such interest, make-whole and/or other amounts are enforceable or are allowable in such Insolvency Proceeding or under any provision of any Debtor Relief Law, and all fees, interest, premiums, penalties, causes of actions, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under any of the Transaction Documents (all of the foregoing collectively being the "**Guaranteed Obligations**"), and agrees to pay any and all costs and expenses (including counsel fees and expenses) incurred by the Collateral Agent in enforcing any rights under this Guaranty. Without limiting the generality of the foregoing, each Guarantor's liability hereunder shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Company to the Collateral Agent or any Noteholder under the Securities Purchase Agreement and the Notes but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Transaction Party.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Collateral Agent and each Noteholder, hereby confirms that it is the intention of all such Persons that this Guaranty and the Guaranteed Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, any other Debtor Relief Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal, provincial, state, or other applicable law to the extent applicable to this Guaranty and the Guaranteed Obligations of each Guarantor hereunder. To effectuate the foregoing intention, by acceptance of the benefits of this Guaranty, the Collateral Agent, the Noteholders and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of each Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

SECTION 3 Guaranty Absolute; Continuing Guaranty; Assignments.

(a) The Guarantors, jointly and severally, agree that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Transaction Documents, regardless of any law,

regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Collateral Agent or any Noteholder with respect thereto. The obligations of each Guarantor under this Guaranty are independent of the obligations of the Company or any other guarantor (including any other Guarantor) of the obligations of the Company, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce such obligations, irrespective of whether any action is brought against the Company or any other guarantor (including any other Guarantor) of the obligations of the Company or whether any Transaction Party is joined in any such action or actions. The liability of any Guarantor under this Guaranty shall be as a primary obligor (and not merely as a surety) and shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives, to the extent permitted by law, any defenses (other than a defense of Payment in Full of the Guaranteed Obligations) it may now or hereafter have in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of any Transaction Document;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Transaction Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Transaction Party or extension of the maturity of any Guaranteed Obligations or otherwise;

(iii) any taking, exchange, release or non-perfection of any Collateral;

(iv) any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(v) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Transaction Party;

(vi) any manner of application of any Collateral or any other collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Guaranteed Obligations or any other Obligations of any Transaction Party under the Transaction Documents or any other assets of any Transaction Party or any of its Subsidiaries;

(vii) any failure of the Collateral Agent or any Noteholder to disclose to any Transaction Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Transaction Party now or hereafter known to the Collateral Agent or any Noteholder (each Guarantor waiving any duty on the part of the Collateral Agent or any Noteholder to disclose such information);

(viii) the taking of any action in furtherance of the release of any Guarantor or any other Person that is liable for the Guaranteed Obligations from all or any part of any liability arising under or in connection with any Transaction Document without the prior written consent of the Collateral Agent; or

(ix) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Collateral Agent or any Noteholder that might otherwise constitute a defense available to, or a discharge of, any Transaction Party or any other guarantor or surety.

(b) This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Collateral Agent, any Noteholder, or any other Person upon the insolvency, bankruptcy or reorganization of any Transaction Party or otherwise, all as though such payment had not been made.

(c) Payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Collateral Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations.

(d) This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until Payment in Full of the Guaranteed Obligations and shall not terminate for any reason prior to the respective Maturity Date of each Note (other than Payment in Full of the Guaranteed Obligations) and (ii) be binding upon each Guarantor and its respective successors and assigns. This Guaranty shall inure to the benefit of and be enforceable by the Collateral Agent, the Noteholders, and their respective successors, and permitted pledgees, transferees and assigns. Without limiting the generality of the foregoing sentence, the Collateral Agent or any Noteholder may pledge, assign or otherwise transfer all or any portion of its rights and obligations under and subject to the terms of any Transaction Document to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Collateral Agent or such Noteholder (as applicable) herein or otherwise, in each case as provided in the Securities Purchase Agreement or such Transaction Document. None of the rights or obligations of any Guarantor hereunder may be assigned or otherwise transferred without the prior written consent of the Collateral Agent (acting on the instructions of each Noteholder).

SECTION 4 Waivers. To the extent permitted by applicable law, each Guarantor hereby waives promptness, diligence, protest, notice of acceptance and any other notice or formality of any kind with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that the Collateral Agent exhaust any right or take any action against any Transaction Party or any other Person or any Collateral. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 4 is knowingly made in contemplation of such benefits. The Guarantors hereby waive any right to revoke this Guaranty, and acknowledge that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future. Without limiting the foregoing, to the extent permitted by applicable law, each Guarantor hereby unconditionally and irrevocably waives (a) any defense arising by reason of any claim or defense based upon an election of remedies by the Collateral Agent or any Noteholder that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Transaction Parties, any other guarantor or any other Person or any Collateral, and (b) any defense based on any right of set-off or counterclaim against or in respect of the Guaranteed Obligations of such Guarantor hereunder. Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Collateral Agent or any Noteholder to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Transaction Party or any of its Subsidiaries now or hereafter known by the Collateral Agent or an Noteholder.

SECTION 5 Subrogation. No Guarantor may exercise any rights that it may now or hereafter acquire against any Transaction Party or any other guarantor that arise from the existence, payment, performance or enforcement of any Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Collateral Agent or any Noteholder against any Transaction Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Transaction Party or any other guarantor, directly or indirectly, in cash or other property or by

set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until there has been Payment in Full of the Guaranteed Obligations. If any amount shall be paid to a Guarantor in violation of the immediately preceding sentence at any time prior to Payment in Full of the Guaranteed Obligations and all other amounts payable under this Guaranty, such amount shall be held in trust for the benefit of the Collateral Agent and shall forthwith be paid to the Collateral Agent to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Transaction Document, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (a) any Guarantor shall make payment to the Collateral Agent of all or any part of the Guaranteed Obligations, and (b) there has been Payment in Full of the Guaranteed Obligations, the Collateral Agent will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

SECTION 6 Representations, Warranties and Covenants.

(a) Each Guarantor hereby represents and warrants as of the date first written above as follows:

(i) such Guarantor (A) is a corporation, limited liability company, limited partnership or other legal entity duly organized, validly existing and in good standing (to the extent that the concept of good standing exists) under the laws of the jurisdiction of its organization as set forth on the signature pages hereto, (B) has all requisite corporate, limited liability company, limited partnership or other legal entity power and authority to conduct its business as now conducted and as presently contemplated and to execute, deliver and perform its obligations under this Guaranty and each other Transaction Document to which such Guarantor is a party, and to consummate the transactions contemplated hereby and thereby and (C) is duly qualified to do business and is in good standing (to the extent that the concept of good standing exists) 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 be so qualified (individually or in the aggregate) would not result in a Material Adverse Effect.

(ii) The execution, delivery and performance by such Guarantor of this Guaranty and each other Transaction Document to which such Guarantor is a party (A) have been duly authorized by all necessary corporate, limited liability company, limited partnership or other legal entity action, (B) do not and will not contravene its charter, articles, certificate of formation or by-laws, its limited liability company or operating agreement or its certificate of partnership or partnership agreement, or similar formation and organizational documents, as applicable, or any applicable law or any contractual restriction binding on such Guarantor or its properties do not and will not result in or require the creation of any lien, security interest or encumbrance (other than pursuant to any Transaction Document) upon or with respect to any of its properties, and (C) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to it or its operations or any of its properties, except any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal that would not result in a Material Adverse Effect.

(iii) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required in connection with the due execution, delivery and performance by such Guarantor of this Guaranty or any of the other Transaction Documents to which such Guarantor is a party (other than as expressly provided for in any of the Transaction Documents).

(iv) This Guaranty has been duly executed and delivered by each Guarantor and is a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms, except as may be limited by the Bankruptcy Code or other applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

(v) There is no pending or, to the best knowledge of such Guarantor, threatened action, suit or proceeding against such Guarantor or to which any of the properties of such Guarantor is subject, before any court or other Governmental Authority or any arbitrator that (A) if adversely determined, could reasonably be expected to have a Material Adverse Effect or (B) relates to this Guaranty or any of the other Transaction Documents to which such Guarantor is a party or any transaction contemplated hereby or thereby.

(vi) Such Guarantor (A) has read and understands the terms and conditions of the Securities Purchase Agreement and the other Transaction Documents, and (B) now has and will continue to have independent means of obtaining information concerning the affairs, financial condition and business of the Company and the other Transaction Parties, and has no need of, or right to obtain from the Collateral Agent or any Noteholder, any credit or other information concerning the affairs, financial condition or business of the Company or the other Transaction Parties.

(b) Each Guarantor covenants and agrees that, until Payment in Full of the Guaranteed Obligations, it will comply with each of the covenants (except to the extent applicable only to a public company) which are set forth in Section 4 of the Securities Purchase Agreement and Section 13 of the Notes as if such Guarantor were a party thereto.

SECTION 7 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default and subject to the Intercreditor Agreement, the Collateral Agent and any Noteholder may, and is hereby authorized to, at any time and from time to time, without prior notice to the Guarantors (any such notice being expressly waived by each Guarantor) and to the fullest extent permitted by law, set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Collateral Agent or any Noteholder to or for the credit or the account of any Guarantor against any and all obligations of the Guarantors now or hereafter existing under this Guaranty or any other Transaction Document, irrespective of whether or not the Collateral Agent or any Noteholder shall have made any demand under this Guaranty or any other Transaction Document and although such obligations may be contingent or unmatured. The Collateral Agent and each Noteholder agrees to notify the relevant Guarantor promptly after any such set-off and application made by the Collateral Agent or such Noteholder, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Collateral Agent or any Noteholder under this Section 7 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Collateral Agent or such Noteholder may have under this Guaranty or any other Transaction Document in law or otherwise.

SECTION 8 Limitation on Guaranteed Obligations.

(a) Notwithstanding any provision herein contained to the contrary, each Guarantor's liability hereunder shall be limited to an amount not to exceed as of any date of determination the greater of:

(i) the amount of all Guaranteed Obligations, plus interest thereon at the applicable Interest Rate as specified in the Note; and

(ii) the amount which could be claimed by the Collateral Agent from any Guarantor under this Guaranty without rendering such claim voidable or avoidable under the

Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, Guarantor's right of contribution and indemnification.

(b) Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guaranty hereunder or affecting the rights and remedies of the Collateral Agent or any Noteholder hereunder or under applicable law.

(c) No payment made by the Company, any Guarantor, any other guarantor or any other Person or received or collected by the Collateral Agent or any other Noteholder from the Company, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Guaranteed Obligations or any payment received or collected from such Guarantor in respect of the Guaranteed Obligations), remain liable for the Guaranteed Obligations up to the maximum liability of such Guarantor hereunder until after all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been Paid in Full.

SECTION 9 French Guarantee Limitation.

(a) Notwithstanding anything set out to the contrary in this Agreement or any other Transaction Document, the obligations and liabilities of any French Obligor under this Agreement shall apply only insofar as required to:

(i) guarantee the payment obligations under this Agreement of its direct or indirect Subsidiaries which are or become Guarantors, (an "**Obligor**") from time to time under this Agreement and incurred by those Subsidiaries as Guarantors ; and

(ii) guarantee the payment obligations of the Company or any other Obligor which is not its direct or indirect Subsidiary (each a "**Guaranteed Obligor**"), provided that in such case such guarantee shall be limited, in respect of any Guaranteed Obligor: (A) to the payment obligations of such Guaranteed Obligor and (B) up to an amount equal to the aggregate of all amounts received under the Securities Purchase Agreement, the Notes or any other Transaction Document directly or indirectly (by way of intra-group loans directly or indirectly from any other issuer) by such Guaranteed Obligor and on-lent directly or indirectly to that French Obligor and/or (without double counting) its direct or indirect Subsidiaries and outstanding on the date on which the guarantee is enforced against that French Obligor (the "**Maximum Guaranteed Amount**"); it being specified that any payment made by such French Obligor under this Agreement in respect of the obligations of any other Guaranteed Obligor (x) shall reduce pro tanto the outstanding amount of the intercompany loans (if any) owed by such French Obligor to that Guaranteed Obligor under the intercompany loan arrangements referred to above and (y) shall reduce the Maximum Guaranteed Amount of such French Obligor in the same amount.

(b) Notwithstanding any other provision of this Agreement, no French Obligor shall secure liabilities under the Agreement which would result in such French Obligor not complying with French financial assistance rules as set out in article L. 225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article L. 241-3, article L. 242-6 or L. 244-1 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The limitations set out under paragraphs (a) and (b) above shall apply mutatis mutandis to any security created by any French Obligor under any Security Document and to any guarantee,

undertaking, obligation, indemnity and payment, including (but not limited to) distributions, cash sweeps, credits, loans and set offs, pursuant to or permitted under the Securities Purchase Agreement, the Notes or any other Transaction Documents and made by a French Obligor.

SECTION 10 German Guarantee Limitation

(a) The enforcement of the Guaranty granted by the German Obligor shall be limited if and to the extent that:

(i) the Guaranty is an up-stream or cross-stream guarantee as the Guaranty of the German Obligor secures obligations of an affiliated company (*verbundenes Unternehmen*) of the German Obligor within the meaning of Section 15 of the German Stock Corporation Act (*Aktiengesetz*) (other than any of the German Obligor's subsidiaries within the meaning of Sections 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*)) (each an "**Up-Stream and/or Cross-Stream Guaranty**"); and

(ii) the enforcement of the Guaranty granted by the German Obligor would lead to a situation where:

(a) the Net Assets (*Reinvermögen*) are not sufficient to maintain the registered share capital (*Stammkapital*) of the German Obligor; or

(b) an existing shortfall of the Net Assets of the German Obligor would be further increased (*Vertiefung einer bestehenden Unterbilanz*),

provided that, for the purposes of the calculation of the amount (if any) which can be demanded under the Guaranty from the German Obligor, the balance sheet items of German Obligor shall be adjusted as set out below:

(I) the amount of any increase of the registered share capital of the German Obligor out of retained earnings (*Kapitalerhöhung aus Gesellschaftsmitteln*) after the date hereof (excluding any such increase of the registered share capital which is not prohibited under the Transaction Documents) that (x) has been effected without the prior written consent of the Collateral Agent or (y) to the extent it has not been fully paid up shall be deducted from the registered share capital;

(II) any loan provided to the German Obligor after the date hereof, insofar as such loan qualifies as equity or subordinated shareholder loan within the meaning of section 39 para. 2 of the German Insolvency Code (*Insolvenzordnung*), shall be disregarded if it is waived or can be waived by the respective intra-group or shareholder creditor at the time without the risk of triggering a personal or criminal liability for waiving such shareholder loan on behalf of the respective intra-group or shareholder creditor; and

(III) loans and other contractual liabilities incurred by the German Obligor (if any) in violation of the provisions of any of the Transaction Documents shall be disregarded to the extent such violation can be attributed to the willful misconduct or negligence of the managing directors (*Geschäftsführer*) of the German Obligor (if any).

(b) The limits of paragraph (a) above will not apply:

(i) to any amounts which correspond to funds that have been borrowed under the Securities Purchase Agreement and/or any Notes and have been on-lent to, or otherwise been passed on

to the German Obligor or the German Obligor's subsidiaries within the meaning of Sections 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*);

(ii) if the German Obligor does not provide the Management's Determination and/or the Auditor's Determination in accordance with paragraphs (c) and (d) below;

(iii) if and to the extent for any other reason (including, without limitation, as a result of a change in the relevant rules of law) the deficit (*Unterbilanz*) referred to under Section 10(b)(ii) does not constitute a breach of the German Obligor's obligations to maintain its registered share capital pursuant to sections 30 et seq. of the German Limited Liability Companies Act ("**GmbHG**") or does not result in a personal liability of the managing directors (*Geschäftsführer*) of the German Obligor pursuant to section 43 para. 3 GmbHG, each as amended, supplemented and/or replaced from time to time;

(iv) if at the point in time where a Demand (as defined below) is made, the German Obligor (as dominated entity) is party to a domination and/or profit and loss transfer agreement (*Beherrschungs- und/oder Gewinnabführungsvertrag*); or

(v) if and to the extent the German Obligor holds at the point in time where a Demand (as defined below) is made a fully recoverable indemnity claim or claim for refund (*vollwertiger Gegenleistungs-oder Rückgewähranspruch*) against the relevant Grantor whose obligations are secured by the Guaranty that can be accounted for in the balance sheet of the German Obligor at full value (*vollwertig*).

(vi) In this entire Section 10:

"Net Assets" means an amount equal to the sum of the amounts of the German Obligor's assets (consisting of all assets which correspond to the items set forth in section 266 para. 2 A, B, C, D and E of the German Commercial Code (*Handelsgesetzbuch, "**HGB**"*)) less the aggregate amount of the German Obligor's liabilities (consisting of all liabilities and liability reserves which correspond to the items set forth in section 266 para. 3 B, C, D and E HGB), save that any obligations (*Verbindlichkeiten*) of the German Obligor and in accordance with the generally accepted accounting principles applicable from time to time in Germany (*Grundsätze ordnungsmäßiger Buchführung*) and be based on the same principles that were applied by the German Obligor in the preparation of its most recent annual balance sheet (*Jahresbilanz*).

(c) The managing directors on behalf of the German Obligor must confirm in writing to the Collateral Agent (together with a calculation in form and substance satisfactory to the Collateral Agent (acting reasonably)) by not later than twenty (20) Business Days after the German Obligor's receipt of a demand from the Collateral Agent (a "**Demand**") to enforce the Guaranty granted by the German Obligor (the "**Management Determination Delivery Period**"):

(a) to what extent the Guaranty form an Up-Stream and/or Cross-Stream Guaranty; and

(b) which amount of such Up-Stream and/or Cross-Stream Guaranty cannot be enforced as it would lead to a situation where:

(i) the Net Assets (*Reinvermögen*) are not sufficient to maintain the registered share capital (*Stammkapital*) of the German Obligor (*Entstehen einer Unterbilanz*); or

(ii) an existing shortfall of the Net Assets of the German Obligor would be further increased (*Vertiefung einer bestehenden Unterbilanz*);

provided that the amounts shall be calculated for the purposes of this paragraph on the basis of the registered share capital and the amount of Net Assets (in each case

calculated as set out in Sections 10(a) and 10(b) above) shown in interim balance sheets of the German Obligor as of the relevant point in time prepared by its management ("**Management's Determination**"), a copy of which shall be made available to the Collateral Agent within 30 Business Days of the German Obligor's receipt of such Demand. The Management's Determination shall be made as of the date of the respective German Obligor's receipt of the Demand.

If the Management's Determination is not provided within the Management Determination Delivery Period, the Collateral Agent shall be entitled to enforce the Guaranty (or any of them) without any limitation or restriction under this Section 10. If the Management Determination is provided within the Management Determination Delivery Period, the Collateral Agent shall without any further limitation or restriction in any event be entitled to enforce the Guaranty for any amounts where such enforcement would, in accordance with the Management Determination, not cause that the German Obligor's Net Assets to be less than (or to fall further below) the amount of its respective registered share capital (in each case as calculated and adjusted in accordance with Sections 10(a) and 10(b) above and taking into account any proceeds resulting from a realization of assets in accordance with Section 10(g) below).

(d) Following the Collateral Agent's receipt of the Management's Determination, the German Obligor shall not later than twenty (20) Business Days after a request of the Collateral Agent obtain and provide the Collateral Agent with a determination by auditors of a standing and repute normally used appointed by the German Obligor either confirming the Management Determination or setting out deviations from the Management Determination (the "**Auditor's Determination**") (such determination to take into account the balance sheet adjustments set out in Section 10(a) and the methods of calculation in Section 10(b) and any proceeds actually received from a realization of assets in accordance with Section 10(g) below).

(e) The further enforcement of the Guaranty shall be limited, if and to the extent such enforcement of the Guaranty would, in accordance with the Auditor's Determination, cause German Obligor's Net Assets, as applicable to be less than (or fall further below) the amount of its share capital (in each case as calculated and adjusted in accordance with Sections 10(a) and 10(b) above and taking into account any proceeds resulting from a realization of assets in accordance with Section 10(g) below).

(f) The Collateral Agent, or, if and to the extent already distributed by the Collateral Agent to the Investors and/or the Noteholders, as the case may be, the Investors and the Noteholders, as the case may be, shall upon written demand of the German Obligor to the Collateral Agent repay any amount received from the German Obligor or from the realization proceeds of the enforcement of the Guaranty granted by the German Obligor which pursuant to the Auditor's Determination would not have been available for enforcement.

(g) If the Management's Determination does not show sufficient assets to maintain the German Obligor's registered share capital, the German Obligor shall realize to the extent legally permitted and in the German Obligor's opinion and commercially justified (with regard to the costs and effort involved in such realization) any and all of its assets that are shown in the balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of the assets, if the relevant asset is not necessary for the German Obligor's operational business (*nicht betriebsnotwendig*).

SECTION 11 English Guarantee Limitation.

Any guarantee granted by a Guarantor incorporated under the laws of England and Wales under this Agreement or any of the other Transaction Documents shall not apply to any liability to the

extent that it would result in such guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006.

SECTION 12 Notices, Etc. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Guaranty must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by email or other electronic transmission (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 email could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an nationally recognized overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. All notices and other communications provided for hereunder shall be sent, if to any Guarantor, to the Company's address and/or email address, or if to the Collateral Agent or any Noteholder, to it at its respective address and/or email address, each as set forth in Section 8(f) of the Securities Purchase Agreement, but shall at any rate not be sent to an address, e-mail address or fax number with an Austrian nexus.

SECTION 13 Governing Law; Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Guaranty shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York. Each Guarantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, obligation or defense 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 Section 8(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Guarantor in any other jurisdiction to collect on a Guarantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or an Noteholder.

SECTION 14 WAIVER OF JURY TRIAL, ETC. EACH GUARANTOR 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 GUARANTY, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

SECTION 15 Taxes.

(a) All payments made by any Guarantor 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 taxes imposed on the net income of the Collateral Agent or any Noteholder by the jurisdiction in which the Collateral Agent or such Noteholder is organized or where it has its principal

lending office (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities, collectively or individually, "**Taxes**"). If any Guarantor 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:

(i) 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 the Collateral Agent or any Noteholder pursuant to this sentence) the Collateral Agent or each Noteholder receives an amount equal to the sum it would have received had no such deduction or withholding been made,

(ii) such Guarantor shall make such deduction or withholding,

(iii) such Guarantor shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law, and

(iv) as promptly as possible thereafter, such Guarantor shall send the Collateral Agent or each Noteholder an official receipt (or, if an official receipt is not available, such other documentation as shall be satisfactory to the Collateral Agent, as the case may be) showing payment. In addition, each Guarantor 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 Guaranty or any other Transaction Document (collectively, "**Other Taxes**").

(b) Each Guarantor hereby indemnifies and agrees to hold each Indemnitee 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 15) paid by any Indemnitee as a result of any payment made hereunder or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Guaranty 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 the Collateral Agent or such Noteholder makes written demand therefor, which demand shall identify the nature and amount of such Taxes or Other Taxes.

(c) If any Guarantor fails to perform any of its obligations under this Section 13, such Guarantor shall indemnify the Collateral Agent and each Noteholder for any taxes, interest or penalties that may become payable as a result of any such failure. The obligations of the Guarantors under this Section 13 shall survive the termination of this Guaranty and the payment of the Guaranteed Obligations and all other amounts payable hereunder.

SECTION 16 Right of Contribution.

(a) Each Guarantor agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made hereunder in respect of any Guaranteed Obligations of any other Guarantor, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor which has not paid its proportionate share of such payment.

(b) Each Guarantor's right of contribution under this Section 16 shall be subject to the terms and conditions of Section 5. The provisions of this Section 16 shall in no respect limit the obligations and liabilities of the Company or any other Guarantor to the Collateral Agent and the Noteholders, and each Guarantor shall remain jointly and severally liable to the Collateral Agent and the Noteholders for the full amount of the Guaranteed Obligations. Each Guarantor agrees to contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Noteholders under or in respect of the Transaction Documents.

SECTION 17 Indemnification.

(a) Without limitation of any other obligations of any Guarantor or remedies of the Collateral Agent or the Noteholders under this Guaranty or applicable law, each Guarantor shall, to the fullest extent permitted by law, indemnify, defend and save and hold harmless the Collateral Agent and each other Indemnitee (as defined in the Securities Purchase Agreement) to the same extent and subject to the same terms that the Company has agreed to indemnify the Indemnities under Section 8(k) of the Securities Purchase Agreement, which Section 8(k) is hereby incorporated by reference, *mutatis mutandis*.

(b) Each Guarantor hereby also agrees that none of the Indemnitees shall have any liability (whether direct or indirect, in contract, tort or otherwise) or any fiduciary duty or obligation to any of the Guarantors or any of their respective affiliates or any of their respective officers, directors, employees, agents and advisors, and each Guarantor hereby agrees not to assert any claim against any Indemnitee on any theory of liability, for special, indirect, consequential, incidental or punitive damages arising out of or otherwise relating to this Guaranty, the other Transaction Documents or any of the transactions contemplated hereby and thereby.

SECTION 18 Miscellaneous.

(a) Each Guarantor will make each payment hereunder in lawful money of the United States of America and in immediately available funds to the Collateral Agent or each Noteholder, at such address specified by the Collateral Agent or such Noteholder from time to time by notice to the Guarantors.

(b) No amendment or waiver of any provision of this Guaranty and no consent to any departure by any Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by each Guarantor, the Collateral Agent and each Noteholder, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of the Collateral Agent or any Noteholder to exercise, and no delay in exercising, any right or remedy hereunder or under any other Transaction Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder or under any Transaction Document preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies of the Collateral Agent and the Noteholders provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights and remedies of the Collateral Agent and the Noteholders under any Transaction Document against any party thereto are not conditional or contingent on any attempt by the Collateral Agent or any Noteholder to exercise any of their respective rights or remedies under any other Transaction Document against such party or against any other Person.

(d) Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction or with respect to any Guarantor shall, as to such jurisdiction or Guarantor, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction or against any other Guarantor.

(e) 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.

(f) This Guaranty and the other Transaction Documents reflect the entire understanding of the transaction contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, entered into before the date hereof.

(g) Section headings herein are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

SECTION 19 Currency Indemnity.

If, for the purpose of obtaining or enforcing judgment against Guarantor in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 19 referred to as the "**Judgment Currency**") an amount due under this Guaranty in any currency (the "**Obligation Currency**") other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date on which the judgment is given (such date being hereinafter in this Section 19 referred to as the "**Judgment Conversion Date**").

If, in the case of any proceeding in the court of any jurisdiction referred to in the preceding paragraph, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due in immediately available funds, the Guarantors shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. If the amount of the Judgment Currency actually paid is greater than the sum originally due to the Collateral Agent or any Noteholder in the Obligation Currency, the Collateral Agent or such Noteholder agrees to return the amount of any excess to the Company (or to any other Person who may be entitled thereto under applicable law). Any amount due from the Guarantors under this Section 19 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 Guaranty.

SECTION 20 Joinder of Additional Guarantors. Any Subsidiary of the Company may become a Guarantor under this Guaranty by executing and delivering to the Collateral Agent a joinder agreement in substantially the form attached hereto as Exhibit A.

SECTION 21 Intercreditor Agreement. With respect to any Guarantor, this Agreement is subject in all respects (including with respect to all obligations and agreements of the Guarantors provided for hereunder) to the terms of the Intercreditor Agreement and if any provision in this Agreement expressly conflicts with any provision in the Intercreditor Agreement, the provisions in the Intercreditor Agreement shall govern and control.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be executed by its respective duly authorized officer, as of the date first above written.

GUARANTORS:

FISKER INC.

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GROUP INC.

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

TERRA ENERGY INC.

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

PLATINUM IPR LLC

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Authorized Officer

FISKER TN LLC

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: President

FISKER GMBH (Germany)

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: Director

BLUE CURRENT HOLDING LLC

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: President

FISKER FRANCE SAS

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: Director

FISKER (GB) LIMITED

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: Director

CVI INVESTMENTS, INC.,
as Collateral Agent
By: Heights Capital Management, Inc.,
its authorized agent

By: _____
Name: Martin Kobinger
Title: President

EXHIBIT A

FORM OF JOINDER AGREEMENT

This Joinder Agreement (this "**Joinder**"), dated [●], 202[●], by and among Fisker Inc., a Delaware corporation (the "**Company**"), [●] (the "**Additional Guarantor**"), a [●] and a Subsidiary of the Company, and CVI Investments, Inc., in its capacity as collateral agent for the Noteholders (together with its successors and assigns, in such capacity, the "**Collateral Agent**") under that certain Guaranty, dated as of May 10, 2024, by and among the Company, the Collateral Agent and the other Guarantors party thereto (as may from time to time be amended, the "**Guaranty**"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Guaranty.

Pursuant to Section 20 of the Guaranty, by executing and delivering this Joinder, the Additional Guarantor hereby becomes a party to the Guaranty as a Guarantor thereunder with the same force and effect as if originally named as a Guarantor therein. Without limiting the generality of the foregoing, the Additional Guarantor, jointly and severally with all other Guarantors, hereby unconditionally and irrevocably, guaranties to the Collateral Agent, for the benefit of the Collateral Agent and the Noteholders, the punctual payment, as and when due and payable, by stated maturity or otherwise, of all Guaranteed Obligations.

Each of the Company and the Additional Guarantor represents and warrants to the Collateral Agent that (i) it has the requisite power and authority to enter into, deliver and perform its obligations under this Joinder and has taken all necessary action to authorize the execution, delivery and performance by it of this Joinder; (ii) this Joinder has been duly executed and delivered on behalf of each of the Company and the Additional Guarantor; and (iii) this Joinder constitutes a legal, valid and binding obligation of each of the Company and the Additional Guarantor, enforceable against such party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

[*Signature Pages Follow*]

FISKER INC.

By: _____
Name:
Title:

[ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

Acknowledged by:

CVI INVESTMENTS, INC.,
as Collateral Agent

By: _____
Name:
Title:

EXHIBIT O

SECURITY AND PLEDGE AGREEMENT

SECURITY AND PLEDGE AGREEMENT, dated as of May 10, 2024 (this "**Agreement**"), made by Fisker Inc., a company organized under the laws of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**"), and each of the undersigned Subsidiaries (as defined below) of the Company from time to time, if any (each a "**Grantor**" and together with the Company, collectively, the "**Grantors**"), in favor of CVI Investment, Inc. with offices located at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111 in its capacity as collateral agent (together with its successors and assignees, in such capacity, the "**Collateral Agent**") for the Noteholders (as defined below).

W I T N E S S E T H:

WHEREAS, the Company is party to that certain Securities Purchase Agreement, dated as of May 10, 2024 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as an " Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future be required or have the right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms and conditions thereof, collectively, the "**Notes**");

WHEREAS, the Grantors, other than the Company, (each a "**Guarantor**" and collectively, the "**Guarantors**") have executed and delivered that certain Guaranty, dated as of the date hereof (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Guaranty**") with respect to the Company's Obligations (as defined below);

WHEREAS, the Grantors are Affiliates that are part of a common enterprise such that each Grantor will derive substantial direct and indirect financial and other benefits from the consummation of the transactions contemplated under the Transaction Documents and, accordingly, the consummation of such transactions are in the best interests of each Grantor; and

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows:

SECTION 1 Foreign Currency Amounts; Definitions.

(a) Amounts expressed herein in dollars or $ shall mean, with respect to any amounts denominated in a currency other than United States dollars, the equivalent of such dollar amount in such other currency, as reasonably determined by the Company using a widely available foreign exchange rate.

(b) All terms used in this Agreement and the recitals hereto which are defined in the Securities Purchase Agreement, the Notes or in the Code, and which are not otherwise defined herein, shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Code on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of the Code except as the Collateral Agent may otherwise determine in its sole and absolute discretion.

(c) Without limiting the generality of, and subject to the proviso at the end of, Section 1(b), the following terms shall have the respective meanings provided for in the Code: "Accounts", "Account Debtor", "Cash Proceeds", "Certificate of Title", "Chattel Paper", "Commercial Tort Claim", "Commodity Account", "Commodity Contracts", "Deposit Account", "Documents", "Electronic Chattel

Paper", "Equipment", "Financial Asset", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-Credit Rights", "Noncash Proceeds", "Payment Intangibles", "Proceeds", "Promissory Notes", "Security Entitlement", "Security", "Record", "Securities Account", "Software", "Supporting Obligations" and "Uncertificated Securities".

(d) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"**Affiliate**" shall have the meaning ascribed to such term in the Notes.

"**Bankruptcy Code**" means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

"**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in New York are authorized or required by law to remain closed.

"**Capital Stock**" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not an individual or a corporation, any and all partnership, membership, trust or other equity interests of such Person.

"**Code**" means Articles 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Collateral**" shall have the meaning set forth in Section 3(a) of this Agreement.

"**Collateral Agent**" shall have the meaning set forth in the preamble hereto.

"**Collateral Reporting Date**" means the last Business Day of each January, March, May, July, September and November, commencing May 31, 2024.

"**Company**" shall have the meaning set forth in the preamble hereto.

"**Controlled Account**" means any Pledged Account that is subject to a Controlled Account Agreement.

"**Controlled Account Agreement**" means (a) in the case of any Pledged Account maintained at a financial institution in the United States, a deposit account control agreement or securities account control agreement with respect to such Pledged Account, pursuant to which the Collateral Agent is granted control over such Pledged Account in a manner that perfects its security interest in such Pledged Account under the Code or (b) in the case of any other Pledged Account maintained at a financial institution outside of the United States, an agreement with respect to such Pledged Account that is necessary under the laws of the jurisdiction where such Pledged Account is maintained to perfect the Collateral Agent's security interest in such Pledged Account and to permit the Collateral Agent to control the disposition of funds or other assets deposited in or credited to such Pledged Account at such time that an Event of Default has occurred and is continuing, in each case in form and substance reasonably satisfactory to the Collateral Agent, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

"**Controlled Account Bank**" shall have the meaning set forth in Section 6(i).

"**Copyright Licenses**" means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensee or licensor and providing for the grant of any right to use or sell any works covered by any Copyright.

"**Copyrights**" means all domestic and foreign copyrights, whether registered or not, including, without limitation, all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship fixed in any tangible medium of expression, acquired or used by any Grantor, all applications, registrations and recordings thereof (including, without limitation, the applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of any other country described in Schedule II, as updated by the Grantors from time to time), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

"**Domestic Subsidiary**" means any Subsidiary other than a Foreign Subsidiary.

"**Enforcement Restrictions**" shall have the meaning set forth in Section 5(i).

"**Event of Default**" shall have the meaning set forth in Section 4(a) of the Notes.

"**Excluded Accounts**" means (a) any deposit accounts or securities accounts that are maintained by any Grantor exclusively for one or more of the purposes described in the following clauses: (i) disbursements and payments for payroll, healthcare and other employee wage and benefit accounts in the ordinary course of business, (ii) tax accounts related to Taxes required to be collected, remitted or withheld (including, federal and state withholding taxes) (with respect to clauses (a)(i) and (a)(ii), the aggregate balance in such accounts shall not exceed the total amount estimated by the Grantors in good faith to be payable in the following thirty (30) days from such accounts), (iii) fiduciary, trust or escrow accounts held for another Person (other than a Grantor or Affiliate) in the ordinary course of business; (iv) accounts holding deposits made by customers to secure orders placed with any Grantor pursuant to a written agreement; (v) accounts holding cash or cash equivalents required to be restricted in favor of any of the Company's financing partners pending the perfection of such financing partners' liens on vehicles financed for the benefit of third party purchasers by such financing partners; and (vi) accounts maintained to satisfy minimum capital requirements imposed by Governmental Authorities in countries other than the United States only to the extent and for so long as such requirement is in effect and (b) deposit accounts or securities accounts holding cash or cash equivalents pledged to secure or that are otherwise restricted to support reimbursement obligations of a Grantor with respect to letters of credit, bank guaranties, surety bonds and similar instruments.

"**Excluded Property**" means (a) any governmental licenses or state or local franchises, charters and authorizations to the extent the grant of a security interest is prohibited or restricted thereby (except to the extent such prohibition or restriction is ineffective under the Code or other applicable law) other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (b) any property or assets as to which pledges thereof or security interests therein are prohibited or restricted by applicable law (including any requirement to obtain the consent of any (x) Governmental Authority or (y) similar regulatory third party, in each case, except to the extent such consent has been obtained) after giving effect to the applicable anti-assignment provisions of the Code and other applicable law (provided that such property shall be Excluded Property only to the extent and for so long as such prohibition is in effect); (c) any lease, license or other contract or agreement or any property or assets subject to an agreement binding on and relating to such property at the time of acquisition thereof (and not entered into in contemplation of such acquisition), to the extent that a grant of a Lien therein would violate or invalidate, such lease, license or other contract or agreement or create a right of termination or right of acceleration in favor of any party (other than the Company or any

of its Subsidiaries) thereto or otherwise require consent (other than the Company or any of its Subsidiaries) thereunder (after giving effect to the applicable anti-assignment provisions of the Code or other applicable law) other than proceeds and receivables thereof; (d) any Excluded Accounts; (e) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, solely during the period, if any, in which the grant of a security interest therein may impair the validity or enforceability of such intent-to-use trademark application under applicable federal law; (f) any property subject to a purchase money arrangement or finance lease that is permitted or not otherwise prohibited by the terms of any Transaction Document to the extent that a grant of a security interest therein would violate or invalidate such purchase money arrangement or finance lease or create a right of termination in favor of any other party thereto (other than the Company or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law, other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; (g) the portion of the voting Capital Stock of any Foreign Subsidiary (other than a Grantor) in excess of 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary to the extent that at any time the pledging of more than 65% of the total outstanding voting Capital Stock of such Foreign Subsidiary would result in a material adverse tax consequence to the Company and its Subsidiaries, taken as a whole; and (h) any "margin stock", as such term is defined in Regulation U promulgated by the Board of Governors of the Federal Reserve System of the United States of America.

Notwithstanding anything to the contrary, "Excluded Property" shall not include any proceeds, products, substitutions or replacements of any "Excluded Property" (unless such proceeds, substitutions or replacements would constitute "Excluded Property"). Immediately upon the ineffectiveness, lapse or termination of each restriction or condition set forth in the definition of "Excluded Property" that prevented the grant of a security interest in any right, interest or other asset that would have, but for such restriction or condition, constituted Collateral, the Collateral shall include, and the relevant Grantor shall be deemed to have automatically granted a security interest in, such previously restricted or conditioned right, interest or other asset, as the case may be, as if such restriction or condition had never been in effect.

"**Foreign Collateral Actions**" shall have the meaning set forth in Section 6(m).

"**Foreign Subsidiary**" means any Subsidiary of a Grantor organized under the laws of a jurisdiction other than the United States, any of the states thereof, Puerto Rico or the District of Columbia.

"**GAAP**" means U.S. generally accepted accounting principles consistently applied.

"**Governmental Authority**" means any nation or government, any Federal, state, city, town, municipality, county, local, foreign or other political subdivision thereof or thereto and any department, commission, board, bureau, court, tribunal, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guaranteed Obligations**" shall have the meaning set forth in Section 2 of the Guaranty.

"**Guarantor**" or "**Guarantors**" shall have the meaning set forth in the recitals hereto.

"**Guaranty**" shall have the meaning set forth in the recitals hereto.

"**Insolvency Proceeding**" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law or law for the relief of debtors, any proceeding relating to assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or any proceeding seeking reorganization, arrangement, or other similar relief.

"**Intellectual Property**" means, collectively, all intellectual property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, under the applicable laws of any jurisdiction throughout the world, whether registered or unregistered, including, without limitation, any and all: (a) Trademarks; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content; (c) accounts with YouTube, LinkedIn, Twitter, Instagram, Facebook and other social media companies and the content found thereon (to the extent that such accounts and content are transferable pursuant to the terms, conditions, and policies of each applicable social media platform); (d) Copyrights; (e) Patents; (f) Software and (g) Trade Secrets.

"**Intellectual Property Security Agreement**" means the Intellectual Property Security Agreement required to be delivered pursuant to Section 6(h)(i) of this Agreement, substantially in the form attached hereto as Exhibit A.

"**Investor**" or "**Investors**" shall have the meaning set forth in the recitals hereto.

"**Joinder Agreement**" means an agreement substantially in the form attached hereto as Exhibit B.

"**Licenses**" means, collectively, the Copyright Licenses, the Trademark Licenses and the Patent Licenses, and all other Intellectual Property licenses or sublicense agreements to which any Grantor is a party, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder or 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.

"**Lien**" means any mortgage, lien, pledge, charge, security interest, adverse claim or other encumbrance upon or in any property or assets.

"**Material Adverse Effect**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

"**Non-Grantor Subsidiary**" means any Subsidiary of the Company that is not a Grantor.

"**Noteholders**" means, at any time, the holders of the Notes at such time.

"**Notes**" shall have the meaning set forth in the recitals hereto.

"**Obligations**" shall have the meaning set forth in Section 4 of this Agreement.

"**Paid in Full**" or "**Payment in Full**" means the indefeasible payment in full in cash of all of the Obligations.

"**Patent Licenses**" means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensee or licensor and providing for the grant of any right to manufacture, use or sell any invention covered by any Patent.

"**Patents**" means all domestic and foreign letters patent, design patents, utility patents, industrial designs, and inventions, now existing or hereafter acquired (including, without limitation, all domestic and foreign letters patent, design patents, utility patents, industrial designs, and inventions), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office, or in any similar office or agency of the United States or any other country or any political subdivision thereof described in Schedule II hereto, as updated

by the Grantors from time to time), and all reissues, reexaminations, divisions, continuations, continuations in part and extensions or renewals thereof.

"**Perfection Requirements**" means: (a) the filing under the Code in the applicable jurisdiction of the financing statements described in Schedule V hereto, (b) with respect to any Collateral constituting Registered Intellectual Property, the recording in the United States Patent and Trademark Office or the United States Copyright Office of the appropriate Intellectual Property Security Agreement, (c) with respect to all Pledged Accounts (other than Excluded Accounts), and all cash and other property from time to time deposited or carried therein or credited thereto, the execution of a Controlled Account Agreement with the depository, securities intermediary or commodity intermediary with which the applicable Pledged Accounts are maintained, as provided in Section 6(i), (d) with respect to any Collateral constituting Letter- of-Credit Rights, the consent of the issuer of the applicable letter of credit to the assignment of proceeds of such letter of credit, (e) with respect to any Collateral constituting uncertificated securities, the applicable Grantor causing the issuer thereof either (i) to register the Collateral Agent as the registered owner of such securities or (ii) to agree in an authenticated record with such Grantor and the Collateral Agent that such issuer will comply with instructions with respect to such securities originated by the Collateral Agent without further consent of such Grantor, such authenticated record to be in form and substance reasonably satisfactory to the Collateral Agent, (f) with respect to any Collateral constituting certificated securities, the acquisition by the Collateral Agent, or by another person on behalf of the Collateral Agent, of the security certificates evidencing such certificated securities, indorsed to such Person in blank or by an effective indorsement, (g) with respect to any Collateral constituting Electronic Chattel Paper, the Collateral Agent obtaining "control" of such Electronic Chattel Paper within the meaning of Section 9-105 of the Code; (h) with respect to any Collateral constituting Documents, Chattel Paper (other than Electronic Chattel Paper), or Instruments, the Collateral Agent obtaining possession of such Collateral and (i) with respect to the assets or Capital Stock of any Foreign Subsidiary, the Foreign Collateral Actions.

"**Permitted Liens**" shall have the meaning set forth in the Notes.

"**Person**" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"**Pledged Accounts**" means (a) all of each Grantor's right, title and interest in all of its Deposit Accounts, Commodity Accounts and Securities Accounts and all Security Entitlements with respect thereto; and (b) all right, title and interest of each Non-Grantor Subsidiary in any Deposit Accounts and Securities Accounts and all Security Entitlements with respect thereto that have been or will be pledged by such Non-Grantor Subsidiary to the Collateral Agent to secure the Obligations (including those listed on Schedule IV attached hereto), but in each case excluding any Excluded Accounts.

"**Pledged Collateral**" shall have the meaning set forth in Section **Error! Reference source not found.**.

"**Pledged Debt**" shall have the meaning set forth in Section **Error! Reference source not found.**.

"**Pledged Entity**" means, each Person listed from time to time on Schedule IV hereto as a "Pledged Entity," together with each other Person, any right in or interest in or to all or a portion of whose Securities or Capital Stock is acquired or otherwise owned by a Grantor after the date hereof.

"**Pledged Equity**" means all of each Grantor's right, title and interest in and to all of the Capital Stock now or hereafter owned by such Grantor (including, without limitation, those interests listed opposite the name of such Grantor on Schedule IV, but excluding Financial Assets credited to any Securities Account and any Security Entitlements with respect thereto), regardless of class or designation, including all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, all

certificates representing such Capital Stock, the right to receive any certificates representing any of such Capital Stock, all warrants, options, subscription, share appreciation rights and other rights, contractual or otherwise, in respect thereof, and the right to receive dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and 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 foregoing; provided, that "Pledged Equity" shall not include any Excluded Property.

"**Pledged Operating Agreements**" means all of each Grantor's rights, powers and remedies under the limited liability company operating agreements of each of the Pledged Entities that is a limited liability company, as may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

"**Pledged Partnership Agreements**" means all of each Grantor's rights, powers, and remedies under the general or limited partnership agreements of each of the Pledged Entities that is a general or limited partnership, as may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

"**Pledged Securities**" means any Promissory Notes, stock certificates, limited liability membership interests or other Securities, certificates or Instruments now or hereafter included in the Pledged Collateral, including all Pledged Equity, Pledged Debt and all other certificates, instruments or other documents representing or evidencing any Pledged Collateral.

"**Principal Market**" means the New York Stock Exchange.

"**Registered Copyrights**" means all Copyrights registered or applied for with or recorded in the United States Copyright Office or in any similar office or agency of any other country.

"**Registered Intellectual Property**" means, collectively, the Registered Copyrights, the Registered Patents and the Registered Trademarks.

"**Registered Patents**" means all Patents registered or applied for with or recorded in the United States Patent and Trademark Office or in any similar office or agency of any other country.

"**Registered Trademarks**" means all Trademarks registered or applied for with or recorded in the United States Patent and Trademark Office or in any similar office or agency of any other country.

"**Required Holders**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

"**Securities Purchase Agreement**" shall have the meaning set forth in the recitals hereto.

"**Software**" means all computer programs, object code, source code and supporting documentation, including, without limitation, "software" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York and computer programs that may be construed as included in the definition of "goods" in the Uniform Commercial Code as in effect on the date hereof in the State of New York, including any licensed rights to Software, and all media that may contain Software or recorded data of any kind.

"**Subsidiary**" means any Person in which a Grantor directly or indirectly, (i) owns a majority of the outstanding Capital Stock of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person, and all of the foregoing, collectively, "**Subsidiaries**".

"**Taxes**" means all present and future taxes, levies, deductions, withholdings, assessments, fees and other charges imposed by any Governmental Authority, including any interest applicable thereto.

"**Trade Secrets**" means any trade secrets or other proprietary and confidential information, including unpatented inventions, invention disclosures, engineering or other technical data, financial data, procedures, know-how, designs, personal information, supplier lists, customer lists, business, production or marketing plans, formulae, methods (whether or not patentable), processes, compositions, schematics, ideas, algorithms, techniques, analyses, proposals, source code, object code, data collection, rights of publicity and any other general intangibles of like nature.

"**Trademark Licenses**" means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensor or licensee and providing for the grant of any right concerning any Trademark, together with any goodwill connected with and symbolized by any such licenses, contracts or agreements and the right to prepare for sale or lease and sell or lease any and all Inventory now or hereafter owned by any Grantor and now or hereafter covered by such licenses, contracts or agreements.

"**Trademarks**" means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a's, assumed names, Internet domain names, trade styles, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, acquired or used by any Grantor (including, without limitation, all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a's, assumed names, Internet domain names, trade styles, designs, logos and other source or business identifiers), all applications, registrations and recordings thereof (including, without limitation, the applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of any other country described in Schedule II, as updated by the Grantors from time to time), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by such marks and all customer lists, formulae and other Records of any Grantor relating to the distribution of products and services in connection with which any of such marks are used.

"**Transaction Documents**" means, collectively, the Securities Purchase Agreement, this Agreement, the Notes, the Irrevocable Transfer Agent Instructions, the Voting Agreement, the Guaranty, the Security Documents 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 including in connection with any Foreign Collateral Action, as may be amended from time to time.

"**Transfer Cut-Off Time**" means, on any Business Day, the latest time on which a transfer of cash or Cash Equivalents may be made by wire, book-entry transfer, automated clearing house or other electronic means from one Controlled Account to another Controlled Account may be made in order for such cash or Cash Equivalents to be shown by the applicable Controlled Account Bank as available in or credited to the receiving Controlled Account on such Business Day.

SECTION 2 Pledge of Pledged Collateral.

(a) As collateral security for due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby assigns and pledges to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, and subject to the Intercreditor Agreement, a continuing Lien on and security interest in all of such Grantor's right, title and interest in, to and under all of the following, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired: (i) the Pledged Equity; (ii) all Promissory Notes, and other Instruments evidencing debt now owned or at any time hereafter acquired by it (including, without limitation, those listed opposite the name of such Grantor on Schedule IV, but excluding any Excluded Property) (the "**Pledged Debt**"); (iii) subject to Section 2(g) and 2(h), all payments of principal or interest, dividends, distributions, cash, Securities, Instruments and other property from time to time received,

receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the Pledged Equity and the Pledged Debt; (iv) all rights and privileges of such Grantor with respect to the Securities and other property referred to in clauses (i), (ii), and (iii) above; and (v) all Proceeds of any of the foregoing (the items referred to in clauses (i) through (v) above being collectively referred to as the "**Pledged Collateral**"); provided that the Pledged Collateral shall not include any item referred to in clauses (i) through (v) above if, for so long as and to the extent such item constitutes Excluded Property.

(b) No later than the fifth (5th) Business Day following (x) the date of this Agreement (in the case of any Grantor that party to this Agreement on the date hereof) or (y) the date on which it becomes a party to this Agreement pursuant to Section 6(m) (in the case of any other Grantor), each Grantor shall deliver or cause to be delivered to the Collateral Agent any and all Pledged Securities (other than any Uncertificated Securities, but only for so long as such Securities remain uncertificated) to the extent such Pledged Securities, in the case of Promissory Notes and other Instruments evidencing debt, are required to be delivered pursuant to Section 2(c). Thereafter, whenever such Grantor acquires any other Pledged Security (other than any Uncertificated Securities, but only for so long as such Uncertificated Securities remain uncertificated), such Grantor shall promptly, and in any event within 30 days (or such longer period as the Collateral Agent may agree to in writing), deliver or cause to be delivered to the Collateral Agent such Pledged Security as Collateral hereunder to the extent such Pledged Securities, in the case of Promissory Notes and Instruments evidencing debt, are required to be delivered pursuant to Section 2(c).

(c) Each Grantor will cause each Promissory Note or Instrument constituting Collateral to be pledged and delivered to the Collateral Agent (i) no later than the fifth (5th) Business Day following (x) the date of this Agreement (in the case of any Grantor that party to this Agreement on the date hereof) or (y) the date on which it becomes a party to this Agreement pursuant to Section 6(m) (in the case of any other Grantor), in the case of any such debt existing on such date or (ii) on the next Collateral Reporting Date that is at least 30 days after the acquisition thereof, in the case of any such Promissory Note or Instrument acquired by a Grantor after the date hereof (or after the date such Grantor becomes party to this Agreement), in each case pursuant to the terms hereof.

(d) Upon delivery to the Collateral Agent, any Pledged Securities required to be delivered pursuant to Section **Error! Reference source not found.** and/or 2(c) shall be accompanied by undated stock or note powers duly executed by the applicable Grantor in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request in order to effect the transfer of such Pledged Securities. Each delivery of Pledged Securities or other Pledged Collateral shall be accompanied by a schedule describing such Pledged Securities or Pledged Collateral, as the case may be, which schedule shall be deemed to supplement Schedule IV and be made a part hereof; provided that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.

(e) The assignment, pledge, Lien and security interest granted in Section **Error! Reference source not found.** are granted as security only and shall not subject the Collateral Agent or any Noteholder to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Pledged Collateral.

(f) Subject to the Intercreditor Agreement, if an Event of Default shall occur and be continuing and, other than in the case of a Bankruptcy Event of Default, the Collateral Agent shall have notified the Borrower in writing of its exercise of such rights, (a) the Collateral Agent, shall have the right (in its sole and absolute discretion) to cause each of the Pledged Securities to be transferred of record into the name of the Collateral Agent or into the name of its nominee (as pledgee or as sub-agent) or the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent and (b) to the

extent permitted by the documentation governing such Pledged Securities and applicable law, the Collateral Agent shall have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement. Each Grantor will take any and all actions reasonably requested by the Collateral Agent to facilitate compliance with this Section 2(f).

(g) Subject to the Intercreditor Agreement, unless and until an Event of Default shall have occurred and be continuing and, other than in the case of a Bankruptcy Event of Default, the Collateral Agent shall have notified the Grantors in writing that the rights of the Grantors under this Section 2(g) are suspended:

(i) Each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with or not otherwise prohibited by the terms of this Agreement and the other Transaction Documents.

(ii) The Collateral Agent shall promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request in writing for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to Section 2(g)(i), in each case as shall be specified in such request.

(iii) Each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral, to the extent (and only to the extent) that such dividends, interest, principal and other distributions are permitted by, the other Transaction Documents and applicable laws; provided that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity or Pledged Debt, whether resulting from a subdivision, combination or reclassification of the outstanding equity interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral, and, if received by any Grantor, shall be held in trust for the benefit of the Collateral Agent and shall, to the extent required by Section **Error! Reference source not found.** and/or 2(c) be forthwith delivered to the Collateral Agent in the same form as so received (with any necessary endorsement or documents set forth in Section 2(d) or as otherwise reasonably requested by the Collateral Agent). So long as no Event of Default has occurred and is continuing, the Collateral Agent shall promptly deliver to each Grantor any Pledged Securities in its possession if requested to be delivered to the issuer thereof in connection with any exchange or redemption of such Pledged Securities.

(h) Subject to the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default and, other than in the case of a Bankruptcy Event of Default, after the Collateral Agent shall have notified the Grantors in writing of the suspension of the rights of the Grantors under Section 2(g)(iii), all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to Section 2(g)(iii) shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions as part of the Pledged Collateral, subject to Section 2(k) and the last sentence of this Section 2(h). All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of Section 2(g) or this Section 2(h) shall be held in trust for the benefit of the Collateral Agent and shall be forthwith delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement reasonably requested by the Collateral Agent). Any and all money and other property paid over to or received by the Collateral

Agent pursuant to the provisions of Section 2(g) and/or this Section 2(h) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property, shall be held as security for the payment and performance of the Obligations and shall be applied in accordance with the provisions of Section 8. After all Events of Default have been cured or waived, and the Grantors have delivered to the Collateral Agent a certificate of an executive officer to such effect, the Collateral Agent shall promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of Section 2(g)(iii) in the absence of an Event of Default and that remain in such account.

(i) Subject to the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default and, other than in the case of a Bankruptcy Event of Default, after the Collateral Agent shall have notified the Grantors in writing of the suspension of the rights of the Grantors under Section 2(g)(i), all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to Section 2(g)(i), and the obligations of the Collateral Agent under Section 2(g)(ii), shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers subject to Section 2(k) and the last sentence of this Section 2(i); provided that, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all Events of Default have been cured or waived, and the Grantors have delivered to the Collateral Agent a certificate of an executive officer to such effect, each Grantor shall have the exclusive right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of Section 2(g)(i), and the obligations of the Collateral Agent under Section 2(g)(ii) shall be reinstated.

(j) Any notice given by the Collateral Agent to the Grantors under Section 2(f) or Section 2(g) (i) may be given by telephone if promptly confirmed in writing, (ii) may be given with respect to one or more of the Grantors at the same or different times and (iii) may suspend the rights of the Grantors under Section 2(g)(i) or 2(g)(iii) in part without suspending all such rights (as specified by the Collateral Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Collateral Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing.

(k) Nothing contained in this Agreement shall be construed to make the Collateral Agent or any Noteholder liable as a member of any limited liability company or as a partner of any partnership, and neither the Collateral Agent nor any Noteholder by virtue of this Agreement or otherwise (except as referred to in the following sentence) shall have any of the duties, obligations or liabilities of a member of any limited liability company or as a partner in any partnership. The parties hereto expressly agree that, unless the Collateral Agent shall become the absolute owner of Pledged Equity consisting of a limited liability company interest or a partnership interest pursuant hereto, this Agreement shall not be construed as creating a partnership or joint venture among the Collateral Agent, any Noteholder, any Grantor and/or any other Person.

SECTION 3 Grant of Security Interest

(a) As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under all personal property and assets of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or

intangible (together with the Pledged Collateral, the "**Collateral**"), including, without limitation, the following:

(i) all Accounts;

(ii) all Chattel Paper (whether tangible or Electronic Chattel Paper);

(iii) all Commercial Tort Claims, including, without limitation, those specified on Schedule VI hereto;

(iv) all Documents;

(v) all Equipment;

(vi) all Fixtures;

(vii) all General Intangibles (including, without limitation, all Payment Intangibles);

(viii) all Goods;

(ix) all Instruments;

(x) all Inventory;

(xi) all Investment Property (and, regardless of whether classified as Investment Property under the Code, all Pledged Equity, Pledged Operating Agreements and Pledged Partnership Agreements);

(xii) all Intellectual Property and all Licenses;

(xiii) all Letter-of-Credit Rights;

(xiv) all Pledged Accounts, all cash and other property from time to time deposited therein, including without limitation all Financial Assets and all Security Entitlements with respect thereto and all monies and property in the possession or under the control of the Collateral Agent or any Noteholder or any Affiliate, representative, agent or correspondent of the Collateral Agent or any such Noteholder;

(xv) all Supporting Obligations;

(xvi) all other tangible and intangible personal property of each Grantor (whether or not subject to the Code), including, without limitation, all Deposit Accounts and other accounts and all cash and all investments therein, all proceeds, products, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of any Grantor described in the preceding clauses of this Section 3(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by each Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, desks, cards, Software, data and computer programs in the possession or under the control of any Grantor or any other Person from time to time acting for any Grantor, in each case, to the extent of such Grantor's rights therein, that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 3(a) or are otherwise necessary or helpful in the collection or realization thereof; and

(xvii) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever any Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

(b) Notwithstanding anything herein to the contrary, the term "**Collateral**" shall not include any Excluded Property.

SECTION 4 Security for Obligations. The Lien and security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether direct or indirect, absolute or contingent, and whether now existing or hereafter incurred (collectively, the "**Obligations**"):

(a) (i) the payment by the Company and each other Grantor, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of the Securities Purchase Agreement, this Agreement, the Notes and the other Transaction Documents, and (ii) in the case of the Guarantors, the payment by such Guarantors, as and when due and payable of all Guaranteed Obligations under the Guaranties, including, without limitation, in both cases, (A) all principal of, interest, make-whole and other amounts on the Notes (including, without limitation, all interest, make-whole and other amounts that accrues after the commencement of any Insolvency Proceeding of any Grantor, whether or not the payment of such interest is enforceable or is allowable in such Insolvency Proceeding), and (B) all fees, interest, premiums, penalties, contract causes of action, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under this Agreement or any of the Transaction Documents; and

(b) the due and punctual performance and observance by each Grantor of all of its other obligations from time to time existing in respect of any of the Transaction Documents, including without limitation, with respect to any conversion or redemption rights of the Noteholders under the Notes.

SECTION 5 Representations and Warranties. Each Grantor represents and warrants as follows:

(a) Schedule I hereto sets forth (i) the exact legal name of each Grantor, and (ii) the jurisdiction of incorporation, organization or formation and the organizational identification number (if any) of each Grantor in such jurisdiction. The information set forth in Schedule I hereto with respect to such Grantor is true and accurate in all respects. Such Grantor has not changed its name (or operated under any other name), jurisdiction of organization or organizational identification number prior to the date of this Agreement from those set forth in Schedule I hereto except as disclosed in Schedule I hereto.

(b) There is no pending or, to its knowledge, written notice threatening any action, suit, proceeding or claim affecting any Grantor before any Governmental Authority or any arbitrator, or any order, judgment or award issued by any Governmental Authority or arbitrator, in each case, that may adversely affect the grant by any Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Collateral, or the exercise by the Collateral Agent of any of its rights or remedies hereunder.

(c) All Federal, state and material local tax returns and other material reports required by applicable law to be filed by any Grantor have been filed, or extensions have been obtained, and all taxes, assessments and other governmental charges or levies imposed upon any Grantor or any property of any Grantor (including, without limitation, all federal income and social security taxes on employees' wages) that are material in amount and which have become due and payable on or prior to the date hereof have been paid, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) All Equipment, Fixtures, Inventory and other Goods of each Grantor are located at the addresses specified therefor in Schedule 0 hereto, excluding (i) [reserved], (ii) [reserved], and (iii) assets that are in transit to (x) any of the locations described on Schedule 0, (y) [reserved], or (z) any customer of the Company or any of its Subsidiaries; provided, that Schedule 0 shall also reflect finished Inventory located at any warehouses or distribution centers pending delivery to customers. Each Grantor's principal place of business and chief executive office, the place where each Grantor keeps its Records concerning the Collateral and all originals of all Chattel Paper evidencing obligations in which any Grantor has any right, title or interest are located at the addresses specified therefor in Schedule 0 hereto.

(e) Set forth in Schedule IV hereto is a complete and accurate list, as of the date of this Agreement, of (i) all Pledged Debt, specifying the debtor thereof and the outstanding principal amount thereof as of the date of this Agreement, in which any Grantor has any right, title or interest, (ii) each Deposit Account and Securities Account of each Grantor and each Pledged Account of each applicable Non-Grantor Subsidiary, together with the name and country of each institution at which each such account is maintained, the account number for each such account, a description of the purpose of each such account and, in the case of each Deposit Account and Securities Account of a Grantor, whether such account is an Excluded Account (and, in the case of any such account that is an Excluded Account, the relevant clause(s) in the definition of "Excluded Account" that are applicable to such account). Set forth in Schedule II hereto is a complete and correct list of each trade name used by each Grantor. All of the Pledged Debt, to the best of the Grantors' knowledge (provided that no such knowledge qualification applies to Pledged Debt issued by a Grantor or a Subsidiary), is the legal, valid and binding obligation of the issuer thereof, enforceable against such issuer in accordance with its 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.

(f) [Reserved]

(g) Each Grantor owns and controls, or otherwise possesses adequate rights to use, all of its Intellectual Property and Licenses necessary to conduct its business in substantially the same manner as conducted as of the date hereof. Schedule II hereto sets forth a true and complete list of all Registered Intellectual Property owned or used by each Grantor as of the date hereof. Except as would not have a Material Adverse Effect, all Intellectual Property of such Grantor is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, is valid and enforceable and has not been abandoned in whole or in part. Except as would not have a Material Adverse Effect (i) each Grantor is not now infringing or in conflict with any Patent, Trademark, Copyright, Trade Secret or other intellectual property rights or similar rights of others, and (ii) no other Person is now infringing or in conflict in any material respect with any such properties, assets and rights owned or used by each Grantor. No Grantor has received any written, or the knowledge of the Grantor, oral notice that it is violating or has violated the Trademarks, Patents, Copyrights, inventions, Trade Secrets, proprietary information and technology, know-how, formulae, rights of publicity or other intellectual property rights of any third party.

(h) Each Grantor is and will be at all times the sole and exclusive owner of, or will otherwise have rights to, the Collateral in which such Grantor has granted a Lien and security interest hereunder free and clear of any Liens, except for (i) Permitted Liens thereon and (ii) certain Intellectual Property rights of the Company which is jointly owned by the Company with certain third parties. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording or filing office except such as may have been filed in favor of the Collateral Agent and/or the Noteholders relating to this Agreement or the other Transaction Documents, or are intended to perfect Permitted Liens.

(i) The exercise by the Collateral Agent of any of its rights and remedies hereunder will not contravene any law or contractual restriction binding on or otherwise affecting any Grantor or any

of its properties other than restrictions arising under (x) any governmental license or state or local franchise, charter or authorizations, (y) any law or (y) any contract, in each case, to the extent described in clauses (a) through (c) of the definition of "Excluded Property" (disregarding for purposes of this subsection (i) any anti-assignment or override provision under the Code or other applicable law) (any such restrictions, "**Enforcement Restrictions**") and will not result in or require the creation of any Lien upon or with respect to any of its properties other than as granted pursuant to this Agreement.

(j) No authorization or approval or other action by or with, and no notice to or filing with (except as provided in Section 7), any Governmental Authority or any other Person, is required under the Code for (i) the grant by each Grantor, or the perfection, of the Lien and security interest purported to be created hereby in the Collateral, or (ii) the exercise by the Collateral Agent of any of its rights and remedies hereunder, except for (x) the filing under the Code in the applicable jurisdiction of the financing statements described in Schedule V hereto, (y) the performance of the Perfection Requirements and (z) the waiver of any applicable Enforcement Restrictions.

(k) This Agreement creates in favor of the Collateral Agent a legal, valid and enforceable Lien on and security interest in the Collateral, as security for the Obligations. The performance of the Perfection Requirements results in (and when performed in accordance with Section 7 shall result in) the perfection of such Lien on and security interest in the Collateral, to the extent that the Code governs perfection of such Lien and security interest. Such Lien and security interest is (or in the case of Collateral in which any Grantor obtains any right, title or interest after the date hereof, will be), subject only to Permitted Liens and the Perfection Requirements, a first priority, valid, enforceable and perfected Lien on and security interest in the Collateral, to the extent that the Code governs the creation and perfection of such Lien and security interest. The security interest granted herein shall have the priority set forth in the Intercreditor Agreement.

(l) As of the date of this Agreement, no Grantor holds any Commercial Tort Claims, or has knowledge of any pending Commercial Tort Claims, except for the Commercial Tort Claims described in Schedule VI.

(m) As of the date of this Agreement (i) all of the Pledged Equity is presently owned by the applicable Grantor as set forth in Schedule IV free and clear of all Liens other than Permitted Liens and, in the case of certificated securities, is presently represented by the certificates listed on Schedule IV hereto (if applicable); (ii) there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Pledged Equity other than as contemplated and permitted by the Transaction Documents; (iii) each Grantor is the sole holder of record or the sole beneficial owner of the Pledged Equity, as applicable; (iv) none of the Pledged Equity has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject; (v) the Pledged Equity constitutes 100% or such other percentage as set forth on Schedule IV of the issued and outstanding shares of Capital Stock of the applicable Pledged Entity; (vi) all of the Pledged Equity has been duly and validly authorized and issued by the issuer thereof and (vii) in the case of Pledged Equity constituting Capital Stock (other than Capital Stock consisting of limited liability company interests or partnership interests which, pursuant to the relevant organizational or formation documents, cannot be fully paid and non-assessable), is fully paid and non-assessable.

(n) Such Grantor (i) is a corporation, limited liability company, limited partnership or other legal entity, as applicable, duly organized, validly existing and in good standing (to the extent that the concept of good standing exists) under the laws of the jurisdiction of its incorporation, organization or formation, (ii) has all requisite corporate, limited liability company, limited partnership or other legal entity power and authority to conduct its business as now conducted and as presently contemplated and to execute and deliver this Agreement and each other Transaction Document to which such Grantor is a party, and to consummate the transactions contemplated hereby and thereby and (iii) is duly qualified to do business and

is in good standing (to the extent that the concept of good standing exists) 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 be so qualified would not result in a Material Adverse Effect.

(o) The execution, delivery and performance by each Grantor of this Agreement and each other Transaction Document to which such Grantor is a party (i) have been duly authorized by all necessary corporate, limited liability company, limited partnership or other legal entity action, (ii) do not and will not contravene its charter or by-laws, limited liability company or operating agreement, certificate of partnership or partnership agreement, or similar formation and organizational documents, as applicable, or any applicable law or any contractual restriction binding on such Grantor or its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Transaction Document) upon or with respect to any of its assets or properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to it or its operations or any of its assets or properties, except any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal that would not result in a Material Adverse Effect.

(p) This Agreement has been duly executed and delivered by each Grantor and is the legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

SECTION 6 Covenants as to the Collateral. Until all of the Obligations shall have been Paid in Full, unless the Collateral Agent shall otherwise consent in writing (in its sole and absolute discretion):

(a) Further Assurances. Each Grantor will, at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that the Collateral Agent may reasonably request in order to: (i) perfect and protect the Lien and security interest of the Collateral Agent created hereby; (ii) enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral, including, without limitation, the Pledged Accounts; or (iii) otherwise effect the purposes of this Agreement; provided, however, that unless an Event of Default has occurred and is continuing, no Grantor shall be required to take any action under this Section 6(a) to (A) obtain the consent or acknowledgment of any Person that is not a Subsidiary of the Company or a Controlled Account Bank, (B) comply with the Federal Assignment of Claims Act, (C) perfect the Collateral Agent's Lien on any Collateral consisting of Goods covered by a Certificate of Title (except to the extent perfection can be attained by the filing of a financing statement under the Code), (D) perfect by possession the Collateral Agent's Lien on any Collateral consisting of Goods or (E) unless reasonably requested by the Collateral Agent perfect or register the pledge of shares of Capital Stock in any Foreign Subsidiary in accordance with the laws of the applicable foreign jurisdiction.

(b) Location of Collateral. Each Grantor will keep the Collateral constituting Equipment, Fixtures, Inventory and other Goods of such Grantor at the locations specified therefor on Schedule 0 hereto (as such Schedule 0 will be updated in accordance with this Section 6(b)), excluding (i) [reserved], (i) [reserved], (iii) assets that are in transit to (x) any of the locations described on Schedule 0 (as such Schedule 0 will be updated in accordance with this Section 6(b)), (y) [reserved], or (z) any customer of the Company or any of its Subsidiaries; provided that Schedule 0 shall also reflect the finished Inventory located at any warehouses or distribution centers pending delivery to customers. On each Collateral Reporting Date, each Grantor shall deliver to the Collateral Agent an updated Schedule 0 setting forth where any Collateral constituting Equipment, Fixtures, Inventory and other Goods of such Grantor (other than

Collateral described in the exclusions to the immediately preceding sentence) is located as of a date that is no earlier than five (5) Business Days prior to such Collateral Reporting Date.

(c) Condition of Equipment. Each Grantor will maintain or cause to be maintained and preserved in good condition, repair and working order, ordinary wear and tear excepted, the Equipment necessary or useful to its business.

(d) Taxes, Etc. Each Grantor agrees to pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent the validity thereof is being contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves in accordance with GAAP have been set aside for the payment thereof.

(e) Insurance.

(i) Each Grantor will, at its own expense, maintain insurance (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, in such form and with responsible and reputable insurance companies or associations 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 and in any event, in amount, adequacy and scope reasonably satisfactory to the Collateral Agent.

(ii) Each Grantor will, at its own expense, provide certificates of insurance, naming the Investor, as an additional insured party and/or lenders loss payee, as applicable. Any policy for general liability insurance shall provide for all losses to be paid on behalf of the Collateral Agent and any Grantor as their respective interests may appear, and each policy for property damage insurance shall provide for all losses to be adjusted with, and paid directly to, the Collateral Agent. In addition to and without limiting the foregoing, each such policy shall (A) name the Collateral Agent as an additional insured party and/or lenders loss payee, as applicable, thereunder (without any representation or warranty by or obligation upon the Collateral Agent) as its interests may appear, (B) contain an agreement by the insurer that any loss thereunder shall be payable to the Collateral Agent on its own account notwithstanding any action, inaction or breach of representation or warranty by any Grantor, (C) provide that there shall be no recourse against the Collateral Agent for payment of premiums or other amounts with respect thereto, and (D) provide that at least 30 days' (or 10 days' for non-payment of premium) prior written notice of cancellation, lapse, expiration or other adverse change shall be given to the Collateral Agent by the insurer. Any Grantor will, if so requested by the Collateral Agent, deliver to the Collateral Agent original or duplicate policies of such insurance (including certificates demonstrating compliance with this Section 6(e)). Any Grantor will also, at the request of the Collateral Agent, execute and deliver instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment.

(iii) Reimbursement under any liability insurance maintained by any Grantor pursuant to this Section 6(e) may be paid directly to the Person who shall have incurred liability covered by such insurance. In the case of any loss involving damage to Equipment or Inventory, to the extent paragraph (iv) of this Section 6(e) is not applicable, any proceeds of insurance involving such damage shall be paid to the Collateral Agent, and any Grantor will make or cause to be made the necessary repairs to or replacements of such Equipment or Inventory, and any proceeds of insurance maintained by any Grantor pursuant to this Section 6(e) (except as otherwise provided in paragraph (iv) of this Section 6(e)) shall be paid by the Collateral Agent to any Grantor as reimbursement for the reasonable costs of such repairs or replacements.

(iv) Notwithstanding anything to the contrary in subsection 6(e)(iii) above, following written notification by the Collateral Agent to the Grantors during the continuance of an Event of Default, all insurance payments in respect of each Grantor's properties and business shall be paid to the Collateral Agent and applied as specified in Section 8(b) hereof.

(f) Provisions Concerning Name, Organization, Location, Accounts and Licenses.

(i) Each Grantor will (A) notify the Collateral Agent no later than ten (10) Business Days prior to the date of any change in such Grantor's name, identity or organizational structure, (B) maintain its jurisdiction of incorporation, organization or formation as set forth in Schedule I hereto, and (C) keep adequate records concerning the Collateral and permit representatives of the Collateral Agent during normal business hours on reasonable notice to such Grantor, to inspect and make abstracts from such records; provided that unless an Event of Default has occurred and is continuing, the Collateral Agent may not conduct more than once in any calendar year inspections under this Section 6(f)(i) and under Section 7.

(ii) The Collateral Agent shall have the right at any time following the occurrence and during the continuance of an Event of Default to notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Collateral Agent and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to any Grantor thereunder directly to the Collateral Agent or its designated agent and, upon such notification and at the expense of any Grantor and to the extent permitted by applicable law, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as any Grantor might have done. After receipt by any Grantor of a notice from the Collateral Agent that the Collateral Agent has notified, intends to notify, or has enforced or intends to enforce any Grantor's rights against the Account Debtors or obligors under any Accounts as referred to in the immediately preceding sentence, (A) all amounts and proceeds (including, without limitation, Instruments) received by any Grantor in respect of the Accounts shall be received in trust for the benefit of the Collateral Agent hereunder (for the ratable benefit of the Collateral Agent and the Noteholders), shall be segregated from other funds of any Grantor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary endorsement) to be applied as specified in Section 8(b) hereof, and (B) no Grantor will adjust, settle or compromise the amount or payment of any Account or release wholly or partly any Account Debtor or obligor thereof or allow any credit or discount thereon. In addition, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may (in its sole and absolute discretion) direct any or all of the banks and financial institutions with which any Grantor either maintains a Pledged Account or a lockbox or deposits the proceeds of any Accounts to send immediately to the Collateral Agent by wire transfer (to such deposit account as the Collateral Agent shall specify, or in such other manner as the Collateral Agent shall direct) all or a portion of the cash, investments and other items held by such institution in such Pledged Account. Any such cash, investments and other items so received by the Collateral Agent shall be applied as specified in accordance with Section 8(b) hereof.

(g) Other Liens. No Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral other than a Permitted Lien.

(h) Intellectual Property.

(i) If applicable, each Grantor shall duly execute and deliver the applicable Intellectual Property Security Agreement. Subject to the qualifiers below in this subsection 6(h)(i), each Grantor (either itself or through licensees) will, and will cause each licensee thereof to, take all action necessary to maintain all of the Intellectual Property in full force and effect, including, without limitation, using the proper statutory notices, numbers and markings (relating to patent, trademark and copyright rights) and using the Trademarks on each applicable trademark class of goods in order to so maintain the Trademarks in full force and free from any claim of abandonment for non-use, and each Grantor will not

(nor permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Intellectual Property may become abandoned, cancelled or invalidated; provided, however, that so long as no Event of Default has occurred and is continuing, no Grantor shall have an obligation to use or to maintain any Intellectual Property (A) that each Grantor in its reasonable business judgment determines is no longer needed for the operation of the business of each Grantor's business, so long as no Material Adverse Effect will occur (B) that relates to any product or work, that is no longer necessary or material and has been, or is in the process of being, discontinued, abandoned or terminated in the ordinary course of business and consistent with the exercise of reasonable business judgment, (C) that is being replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the Lien created by this Agreement and does not have a material adverse effect on the business of any Grantor or (D) that is substantially the same as other Intellectual Property that is in full force, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such other Intellectual Property is subject to the Lien and security interest created by this Agreement and does not have a material adverse effect on the business of any Grantor. Subject to each Grantor's reasonable business judgment, each Grantor will cause to be taken all necessary steps in any proceeding before the United States Patent and Trademark Office and the United States Copyright Office or any similar office or agency in any other country or political subdivision thereof to maintain each registration of the Intellectual Property and application for registration of Intellectual Property (other than the Intellectual Property described in the proviso to the immediately preceding sentence), including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and payment of maintenance fees, filing fees, taxes or other governmental charges or fees. If any Intellectual Property (other than Intellectual Property described in the proviso to the second sentence of subsection (i) of this clause (h)) is infringed, misappropriated, diluted or otherwise violated in any material respect by a third party that would result in a Material Adverse Effect, each Grantor shall (x) upon learning of such infringement, misappropriation, dilution or other violation, promptly notify the Collateral Agent and (y) where deemed appropriate by each Grantor under the circumstances, promptly consider whether to sue for infringement, misappropriation, dilution or other violation, seek injunctive relief where appropriate and recover any and all damages for such infringement, misappropriation, dilution or other violation, or take such other actions as such Grantor shall deem appropriate under the circumstances to protect such Intellectual Property. On each Collateral Reporting Date, the Company shall furnish to the Collateral Agent an updated Schedule II hereto that sets forth all Registered Intellectual Property of the Grantors that has been registered or recorded with the applicable Governmental Authority as of a date that is no earlier than ten (10) Business Days prior to such Collateral Reporting Date and shall comply with such Perfection Requirements required hereunder to subject such Registered Intellectual Property (other than Excluded Property) to the Lien and security interest created by this Agreement. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, no Grantor may abandon, surrender or cancel or otherwise permit any Intellectual Property to become abandoned, surrendered, cancelled or invalid without the prior written consent of the Collateral Agent (in its sole and absolute discretion), and if any Intellectual Property is infringed, misappropriated, diluted or otherwise violated in any material respect by a third party, each Grantor will take such reasonable action, as the Collateral Agent shall deem appropriate under the circumstances to protect such Intellectual Property.

(ii) Upon request of the Collateral Agent, any Grantor shall execute, authenticate and deliver any and all assignments, agreements, instruments, documents and papers as the Collateral Agent may reasonably request to complete the Perfection Requirements with respect to any Registered Intellectual Property (other than Excluded Property) of any Grantor, and each Grantor hereby appoints the Collateral Agent its attorney-in-fact to execute and/or authenticate and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed, and such power

(being coupled with an interest) shall be irrevocable until all Obligations are fully performed and Paid in Full.

(i) Pledged Accounts. Each Grantor shall cause each bank and other financial institution which maintains a Pledged Account that is not an Excluded Account (each a "**Controlled Account Bank**") to execute and deliver to the Collateral Agent a Controlled Account Agreement with respect to all Pledged Accounts maintained with such Controlled Account Bank pursuant to which such Controlled Account Bank shall agree, among other things, with respect to such Pledged Account, that (i) at any time after any Grantor, the Collateral Agent or any Noteholder shall have notified such Controlled Account Bank that an Event of Default has occurred or is continuing, such Controlled Account Bank will comply with any and all instructions originated by the Collateral Agent directing the disposition of the funds in such Controlled Account without further consent by such Grantor and (ii) at any time after the Collateral Agent shall have notified such Pledged Account Bank that an Event of Default has occurred or is continuing, such Pledged Account Bank shall not comply with any instructions, directions or orders of any form with respect to such Controlled Accounts other than instructions, directions or orders originated by the Collateral Agent.

(j) Reserved.

(k) Control. Each Grantor hereby agrees to take any or all action that may be necessary or that the Collateral Agent may reasonably request in order for the Collateral Agent to obtain "control" in accordance with Section 8-106 or Section 9-105 through Section 9-107 of the Code, as applicable, with respect Collateral consisting of (i) Investment Property (ii) Electronic Chattel Paper or (iii) Letter-of-Credit Rights.

(l) Inspection and Reporting. Each Grantor shall permit the Collateral Agent, or any agent or representatives thereof or such attorneys, accountant or other professionals or other Persons as the Collateral Agent may designate (at Grantors' sole cost and expense) (x)(i) to examine and make copies of and abstracts from any Grantor's Records and books of account, (ii) to visit and inspect its properties, (iii) to verify materials, leases, Instruments, Accounts, Inventory and other assets of any Grantor from time to time, and (iv) to conduct audits, physical counts, appraisals, valuations and/or examinations at the locations of any Grantor and (y) to discuss such Grantor's affairs, finances and accounts with any of its directors, officers, managerial employees, attorneys, independent accountants or any of its other representatives provided that unless an Event of Default has occurred and is continuing, the Collateral Agent may not conduct more than once in any calendar year inspections under this Section 7 and under Section 6(f)(i). Without limiting the foregoing, the Collateral Agent may, at any time that an Event of Default has occurred and is continuing, in the Collateral Agent's own name, in the name of a nominee of the Collateral Agent, or in the name of any Grantor communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of such Grantor, parties to contracts with such Grantor and/or obligors in respect of Instruments or Pledged Debt of such Grantor to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Pledged Debt, Chattel Paper, payment intangibles and/or other receivables.

(m) Future Subsidiaries; Foreign Collateral Actions. If any Grantor hereafter creates or acquires any Subsidiary other than a Foreign Subsidiary, then as soon as commercially practicable (but no later than thirty (30) days following the creation or acquisition of such Subsidiary, such Grantor shall (i)(x) if such Subsidiary is a Domestic Subsidiary, cause such Subsidiary to become a party to this Agreement as an additional "Grantor" hereunder by execution of a Joinder Agreement or (y) if such Subsidiary is a Foreign Subsidiary, cause such Subsidiary to execute and deliver to the Collateral Agent such documents and to take such actions in such foreign jurisdictions that the Collateral Agent shall reasonably request to create and perfect in favor of the Collateral Agent a security interest in the assets of such Subsidiary (other than Excluded Property), (ii) deliver to the Collateral Agent updated Schedules to

this Agreement, as appropriate (including, without limitation, an updated Schedule IV to reflect the grant by such Grantor of a Lien on and security interest in all Pledged Debt and Pledged Equity now or hereafter owned by such Grantor), (iii) cause such Subsidiary to duly execute and deliver a joinder to the Guaranty in accordance with Section 18 of the Guaranty, (iv) deliver to the Collateral Agent the stock certificates representing all of the Capital Stock of such Subsidiary that is a certificated, along with undated stock powers for each such certificates, executed in blank (or, if any such shares of Capital Stock are uncertificated, confirmation and evidence reasonably satisfactory to the Collateral Agent that the security interest in such uncertificated securities has been perfected by the Collateral Agent, in accordance with Section 8-106(c) of the Code or any other similar or local or foreign law that may be applicable), and (v) duly execute and deliver (or cause to be duly executed and delivered) to the Collateral Agent, in form and substance acceptable to the Collateral Agent, such opinions of counsel and other documents as the Collateral Agent shall reasonably request with respect thereto; provided, however, that no Grantor shall be required to pledge any Excluded Property. Each Grantor hereby authorizes the Collateral Agent to attach such updated Schedules to this Agreement and agrees that all Pledged Equity and Pledged Debt listed on any updated Schedule delivered to the Collateral Agent shall for all purposes hereunder be considered Collateral. The Grantors (i) agree that, upon the reasonable request of the Collateral Agent, the pledge of the shares of Capital Stock currently owned or acquired by a Grantor of any Foreign Subsidiary may be supplemented by one or more separate pledge agreements, deeds of pledge, share charges, or other similar agreements or instruments, executed and delivered by the relevant Grantor in favor of the Collateral Agent, which pledge agreements will provide for the pledge of such shares of Capital Stock in accordance with the laws of the applicable foreign jurisdiction and (ii) shall, upon the reasonable request of the Collateral Agent, cause each applicable Non-Grantor Subsidiary to execute and deliver Controlled Account Agreements with respect to the Pledged Accounts held by such Non-Grantor Subsidiary (the actions that may be taken by the Collateral Agent under this sentence or under subsection (i)(y) of this Section 6(m), collectively, the "**Foreign Collateral Actions**").

SECTION 7 Additional Provisions Concerning the Collateral.

(a) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Collateral Agent to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office to satisfy the Perfection Requirements, (ii) authorizes the Collateral Agent at any time and from time to time to file, one or more financing or continuation statements, and amendments thereto, relating to the Collateral (including, without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Collateral Agent may determine regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the Code or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing or continuation statements, or amendments thereto, prior to the date hereof.

(b) Each Grantor hereby irrevocably appoints the Collateral Agent as its attorney-in-fact and proxy, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Collateral Agent's discretion, to take any action and to execute any instrument which the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, (i) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral,

(ii) to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (i) above, (iii) to file any claims or take any action or institute any action, suit or proceedings which the Collateral Agent may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of the Collateral Agent and the Noteholders with respect to any Collateral, (iv) to execute assignments, licenses and other documents to enforce the rights of the Collateral Agent and the Noteholders with respect to any Collateral, and (v) to verify any and all information with respect to any and all Accounts; provided, however, that the Collateral Agent may only take the actions described in clauses (i) through (v) if an Event of Default has occurred and is continuing. This power is coupled with an interest and is irrevocable until all of the Obligations are Paid in Full.

(c) For the purpose of enabling the Collateral Agent to exercise rights and remedies hereunder at such time that an Event of Default has occurred and is continuing, at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose and at no other time, each Grantor hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, assign, license or sublicense any Intellectual Property in which such Grantor now or hereafter has any right, title or interest, wherever the same may be located, including, without limitation, in such license reasonable 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 thereof. Notwithstanding anything contained herein to the contrary, but subject to the provisions of the Securities Purchase Agreement that limit the right of any Grantor to dispose of its property, and Section 6(g) and Section 6(h) hereof, unless an Event of Default shall have occurred and be continuing, any Grantor may exploit, use, enjoy, protect, license, sublicense, assign, sell, dispose of or take other actions with respect to the Intellectual Property in the ordinary course of its business and as otherwise expressly permitted by any of the other Transaction Documents. In furtherance of the foregoing, unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall from time to time, upon the request of any Grantor, execute and deliver any instruments, certificates or other documents, in the form so requested, which such Grantor shall have certified are appropriate (in such Grantor's judgment) to allow it to take any action permitted above (including relinquishment of the license provided pursuant to this clause (c) as to any Intellectual Property). Further, upon the Payment in Full of all of the Obligations, the Collateral Agent shall release and reassign to any Grantor all of the Collateral Agent's right, title and interest in and to the Intellectual Property, and the Licenses, all without recourse, representation or warranty whatsoever. The exercise of rights and remedies hereunder by the Collateral Agent shall not terminate the rights of the holders of any licenses or sublicenses theretofore granted by each Grantor in accordance with the second sentence of this clause (c). Each Grantor hereby releases the Collateral Agent from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Collateral Agent under the powers of attorney granted herein other than actions taken or omitted to be taken through the Collateral Agent's gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(d) If any Grantor fails to perform any agreement or obligation contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement or obligation, in the name of such Grantor or the Collateral Agent, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by such Grantor pursuant to Section 9 hereof and such obligation shall be secured by the Collateral.

(e) The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

(f) Anything herein to the contrary notwithstanding (i) each Grantor shall remain liable under the Licenses and otherwise with respect to any of the Collateral to the extent set forth therein to perform all of its obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Collateral Agent of any of its rights or remedies hereunder shall not release any Grantor from any of its obligations under the Licenses or otherwise in respect of the Collateral, and (iii) the Collateral Agent shall not have any obligation or liability by reason of this Agreement under the Licenses or with respect to any of the other Collateral, nor shall the Collateral Agent be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 8 Remedies Upon Event of Default; Application of Proceeds. If any Event of Default shall have occurred and be continuing, subject to the Intercreditor Agreement:

(a) The Collateral Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein, in any other Transaction Document or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Collateral Agent's name or into the name of its nominee or nominees (to the extent the Collateral Agent has not theretofore done so) and thereafter receive, for the ratable benefit of itself and the Noteholders, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of its respective Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place or places to be designated by the Collateral Agent that is reasonably convenient to both parties, and the Collateral Agent may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Collateral Agent's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale (including, without limitation, by credit bid), at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable and/or (B) lease, license or dispose of the Collateral or any part thereof upon such terms as the Collateral Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least ten (10) days' notice to any Grantor of the time and place of any public sale or the time after which any private sale or other disposition of its respective Collateral is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Collateral Agent and the Noteholders arising by reason of the fact that the price at which its respective Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree, and waives all rights that any Grantor may have to require that all or any part of such Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of its respective Collateral by the Collateral Agent shall be made without warranty, (ii) the Collateral Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (iii) such actions set forth in clauses (i) and (ii) above shall not adversely affect the commercial reasonableness of any such sale of Collateral. In addition to the foregoing, (1) upon written notice to any Grantor from the Collateral Agent after and during the continuance of an

Event of Default, such Grantor shall cease any use of the Intellectual Property or any trademark, patent or copyright similar thereto for any purpose described in such notice; (2) the Collateral Agent may, at any time and from time to time after and during the continuance of an Event of Default, license, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property, throughout the universe for such term or terms, on such conditions, and in such manner, as the Collateral Agent shall in its sole discretion determine; (3) the Collateral Agent may, at any time, pursuant to the authority granted in Section 7 hereof or otherwise (such authority being effective upon the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of such Grantor, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country and (4) take and use or sell the Intellectual Property rights, and take and use or sell the goodwill of such Grantor's business symbolized by the Trademarks and the right to carry on the business and use the assets of such Grantor in connection with which the Trademarks or domain names have been used.

(b) Any cash held by the Collateral Agent as Collateral and all Cash Proceeds received by the Collateral Agent in respect of any sale or disposition of or collection from, or other realization upon, all or any part of the Collateral shall be applied as follows (subject to the provisions of the Securities Purchase Agreement), subject to the Intercreditor Agreement: first, to pay any fees, indemnities or expense reimbursements then due to the Collateral Agent (including, without limitation, those described in Section 9 hereof); second, to pay any fees, indemnities or expense reimbursements then due to the Noteholders, on a pro rata basis; third to pay interest due under the Notes owing to the Noteholders, on a pro rata basis; fourth, to pay or prepay principal in respect of the Notes, whether or not then due, owing to the Noteholders, on a pro rata basis; fifth, to pay or prepay any other Obligations, whether or not then due, in such order and manner as the Collateral Agent shall elect, consistent with the provisions of the Securities Purchase Agreement. Any surplus of such cash or Cash Proceeds held by the Collateral Agent and remaining after the full performance and Payment in Full of all of the Obligations shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(c) In the event that the proceeds of any such sale, disposition, collection or realization are insufficient to pay all amounts to which the Collateral Agent and the Noteholders are legally entitled, each Grantor shall be, jointly and severally, liable for the deficiency, together with interest thereon at the highest rate specified in the Notes for interest on overdue principal thereof or such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable fees, costs, expenses and other charges of any attorneys employed by the Collateral Agent to collect such deficiency.

(d) To the extent that applicable law imposes duties on the Collateral Agent to exercise rights and remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix)

to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of brokers, investment bankers, consultants, attorneys and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of rights and remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation of the foregoing, nothing contained in this section shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

(e) The Collateral Agent shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Collateral Agent's rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that any Grantor lawfully may, each Grantor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Collateral Agent's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such laws.

(f) Notwithstanding anything to the contrary contained in this Agreement or any of the other Transaction Documents, the Collateral Agent shall, subject to the Intercreditor Agreement, not give notice of exclusive control or any similar notice to any Controlled Account Bank under a Controlled Account Agreement unless an Event of Default has occurred and is continuing.

SECTION 9 Indemnity; Expenses.

(a) Each Grantor, jointly and severally, agrees to indemnify and hold harmless the Collateral Agent and each other Indemnitee (as defined in the Securities Purchase Agreement) to the same extent and subject to the same terms that the Company has agreed to indemnify the Indemnitees under Section 9(k) of the Securities Purchase Agreement, which Section 9(k) is hereby incorporated by reference, *mutatis mutandis.*

(b) Each Grantor agrees, jointly and severally, to pay to the Collateral Agent upon demand the amount of any and all costs and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for the Collateral Agent and of any experts and agents (including, without limitation, any collateral trustee which may act as agent of the Collateral Agent), which the Collateral Agent may incur in connection with (i) the preparation, negotiation, execution, delivery, recordation, administration, amendment, waiver or other modification or termination of this Agreement, the Guaranty and any other Transaction Documents or the performance of any Foreign Collateral Action, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any Collateral, (iii) the exercise or enforcement of any of the rights or remedies of the Collateral Agent hereunder, or (iv) the failure by any Grantor to perform or observe any of the provisions hereof.

SECTION 10 Austrian Capital Maintenance Restrictions.

(a) The liabilities and obligations of each Grantor incorporated in Austria under any of the Transaction Documents shall be limited so that at no time the assumption or enforcement of a liability or obligation under any of the Transaction Documents would be required if this would violate mandatory Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*) pursuant to Austrian company law, in particular sections 82 et seq. of the Austrian Act on Limited Liability Companies (*GmbH-Gesetz*) and/or sections 52 et seq. (including, for the avoidance of doubt and without limitation, section 66a to the extent being directly or analogously applied) of the Austrian Stock Corporation Act (*Aktiengesetz*') (the "**Austrian Capital Maintenance Rules**").

(b) Should any liability and/or obligation of a Grantor incorporated in Austria under the Transaction Documents violate or contradict Austrian Capital Maintenance Rules and should therefore be held invalid or unenforceable or should the assumption, creation or enforcement of such liability and/or obligation expose any managing director or member of the supervisory board of the Grantor incorporated in Austria, if applicable, to personal liability or criminal responsibility, then such liability and/or obligation shall be limited in accordance with the Austrian Capital Maintenance Rules and shall be deemed to be replaced by a liability and/or obligation of a similar nature which is in compliance with the Austrian Capital Maintenance Rules and which provides the best possible security interest in favour of the Collateral Agent on behalf of the Noteholders. By way of example, should it be held that the security created under any Transaction Document contradicts the Austrian Capital Maintenance Rules in relation to any amount of the Obligations, the security created by the respective Transaction Document shall be reduced to such an amount of the Obligations which is permitted pursuant to the Austrian Capital Maintenance Rules.

(c) No reduction of the amount enforceable under any Transaction Document in accordance with the limitations set out in this Section 10 will prejudice the rights of the Collateral Agent or the Noteholders under any Transaction Document (subject always to the operation of the limitations set out in this Section 10 at the time of such enforcement) until full satisfaction of any guaranteed claims.

SECTION 11 Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, first-class postage prepaid and return receipt requested), telecopied, e-mailed or delivered, if to any Grantor, to the Company's address, or if to the Collateral Agent or any Noteholder, to it at its respective address, each as set forth in Section 9(f) of the Securities Purchase Agreement; or as to any such Person, at such other address as shall be designated by such Person in a written notice to all other parties hereto complying as to delivery with the terms of this Section 11. All such notices and other communications shall be effective (a) if sent by certified mail, return receipt requested, when received or five Business Days after deposited in the mails, whichever occurs first, (b) if telecopied or e-mailed, when transmitted (during normal business hours) and confirmation is received, and otherwise, the day after the notice or communication was transmitted and confirmation is received, or (c) if delivered in person, upon delivery. For the avoidance of doubt, all Foreign Subsidiaries, as Grantors, hereby appoint the Company as its agent for receipt of service of process and all notices and other communications in the United States at the address specified below, but shall at any rate not be sent to an address, e-mail address or fax number with an Austrian nexus.

SECTION 12 Miscellaneous.

(a) No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and no waiver of any provision of this Agreement, and no consent to any departure by each Grantor therefrom, shall be effective unless it is in writing and signed by each Grantor and the Collateral Agent (and approved by the Required Holders), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No amendment, modification or waiver of this Agreement shall be effective to the extent that it (1) applies to fewer than all of the holders of Notes or (2) imposes any

obligation or liability on any holder of Notes without such holder's prior written consent (which may be granted or withheld in such holder's sole and absolute discretion).

(b) No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right or remedy hereunder or under any of the other Transaction Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies of the Collateral Agent or any Noteholder provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights and remedies of the Collateral Agent or any Noteholder under any of the other Transaction Documents against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights or remedies under any of the other Transaction Documents against such party or against any other Person, including but not limited to, any Grantor.

(c) 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 portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(d) This Agreement shall create a continuing Lien on and security interest in the Collateral and shall (i) remain in full force and effect until the Payment in Full of the Obligations, and (ii) be binding on each Grantor and all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the Code and shall inure, together with all rights and remedies of the Collateral Agent and the Noteholders hereunder, to the ratable benefit of the Collateral Agent and the Noteholders and their respective permitted successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, without notice to any Grantor, the Collateral Agent and the Noteholders may assign or otherwise transfer their rights and obligations under this Agreement and any of the other Transaction Documents, to any other Person and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Collateral Agent and the Noteholders herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to the Collateral Agent or any such Noteholder shall mean the assignee of the Collateral Agent or such Noteholder. None of the rights or obligations of any Grantor hereunder may be assigned, delegated or otherwise transferred without the prior written consent of the Collateral Agent in its sole and absolute discretion, and any such assignment, delegation or transfer without such consent of the Collateral Agent shall be null and void.

(e) Upon the Payment in Full of the Obligations, (i) this Agreement and the security interests created hereby shall terminate and all rights to the Collateral shall revert to the respective Grantor that granted such security interests hereunder, and (ii) the Collateral Agent will, upon any Grantor's request and at such Grantor's expense, (A) return to such Grantor such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

(f) Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

(g) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(h) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same Agreement. Delivery of any executed counterpart of a signature page of this Agreement by pdf, facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(i) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Collateral Agent, any Noteholder or any other Person (upon (i) the occurrence of any Insolvency Proceeding of any of the Company or any Grantor or (ii) otherwise, in all cases as though such payment had not been made).

(j) [Reserved.]

(k) The parties hereto agree that the Collateral Agent shall be the joint and several creditor (*Gesamtgläubiger*) (together with the relevant other Noteholders) of each and every obligation of the Grantors towards that other Noteholder under the Transaction Documents and that accordingly the Collateral Agent will have its own and independent right to demand performance by the Grantors of those obligations in full.

SECTION 13 Material Non-Public Information.

(a) On or before 9:30 a.m., New York time, on the first Business Day following 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, 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 Noteholders 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 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 Noteholders or any of their affiliates, on the other hand, shall terminate.

(b) Upon receipt or delivery by any Grantor of any notice in accordance with the terms of this Agreement, unless such Grantor has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Grantor or any of its Subsidiaries, such Grantor shall by the next Business Day (if delivery is made after the close of the Principal Market on a Business Day or a Saturday or Sunday) or the same Business Day (if disclosure is made on a Business Day prior to the opening of the Principal Market) after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that such Grantor believes that a notice contains material, non-public information relating to such Grantor or any of its Subsidiaries, such Grantor so shall indicate to the Collateral Agent and any applicable Noteholder contemporaneously with delivery of such notice (which shall before the opening or after the close of the Principal Market), and in the absence of any such indication, the Collateral Agent and each Noteholder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to such Grantor or its Subsidiaries. Nothing contained in this Section 13 shall limit any obligations of any Grantor, or any rights or remedies of the Collateral Agent or any Noteholder, under Section 4(j) of the Securities Purchase Agreement.

SECTION 14 Intercreditor Agreement. With respect to any Grantor, this Agreement is subject in all respects (including with respect to all obligations and agreements of the Grantors provided for hereunder) to the terms of the Intercreditor Agreement and if any provision in this Agreement expressly conflicts with any provision in the Intercreditor Agreement, the provisions in the Intercreditor Agreement shall govern and control.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

FISKER INC.
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

FISKER GROUP INC.
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

TERRA ENERGY INC.

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

PLATINUM IPR LLC.
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Authorized Officer

FISKER TN LLC.
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: President

BLUE CURRENT HOLDINGS LLC.
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: President

ACCEPTED BY:

CVI INVESTMENTS, INC.,
as Collateral Agent
By: Heights Capital Management, Inc.,
its authorized agent

By: _____
Name: Martin Kobinger
Title: President

SCHEDULE I

Grantors

Legal Name	**Jurisdiction of Incorporation, Organization or Formation**	**Organizational Identification Number**	**Prior Names (if any)**
Fisker Inc.	Delaware	6577789	Spartan Energy Acquisition Corp.
Fisker Group Inc.	Delaware	6136073	Fisker Inc.
Terra Energy Inc.	Delaware	6183618	N/A
Platinum IPR LLC	Delaware	6014839	N/A
Fisker TN LLC	Tennessee	001439513	N/A
Blue Current Holding LLC	Delaware	6183618	N/A

SCHEDULE II

Intellectual Property

Utility Patents and Patent Applications owned by Fisker Inc.

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
29512447	US	HEADLAMPS FOR A VEHICLE	12/18/2014	Issued			07/05/2016	D760930
29619730	US	EXTERIOR LIGHTING	10/01/2017	Issued			9/24/2019	D861201
29582466	US	AUTOMOTIVE VEHICLE	10/27/2016	Issued			02/13/2018	D809972
29627626	US	AUTOMOTIVE VEHICLE	11/28/2017	Issued			11/06/2018	D832742
	US	29630931AUTOMOTIVE VEHICLE	12/23/2017	Issued			02/19/2019	D840874
29664312	US	EXTERIOR LIGHTING FOR AN AUTOMOTIVE VEHICLE	09/24/2018	Issued			12/10/2019	D869710

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
29735838	US	AUTOMOTIVE VEHICLE BODY	05/25/2020	Issued			02/22/2022	D944119
16951981	US	Automobile Having Retractable Rear Quarter Windows	11/18/2020	Issued	20210155084	05/27/2021	03/01/2022	11260729
29762488	US	WHEEL	12/16/2020	Issued			11/22/2022	D970412
17245826	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/30/2021	Issued			01/11/2022	11220182
29790197	US	VEHICLE STEERING WHEEL	11/10/2021	Issued			07/04/2023	D991112
29790235	US	INSTRUMENT PANEL	11/12/2021	Issued			10/03/2023	D1000338
29790238	US	DESIGN FOR WHEEL	11/12/2021	Issued			10/24/2023	D1002483

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
17455620	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	11/18/2021	Issued	20220348079	11/03/2022	10/11/2022	11465502
218956241	EP	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	11/18/2021	Published	4247654	09/27/2023		
17580376	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Published	20220144048	05/12/2022		
17580474	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Published	20220144359	05/12/2022		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
17580538	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Published	20220144049	05/12/2022		
29791932	US	WHEEL	02/18/2022	Issued			03/05/2024	D1016709
2022800314321	CN	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/29/2022	Published	CN117279804A	12/22/2023		
227968435	EP	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/29/2022	Published	4330083	03/06/2024		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
17931076	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	09/09/2022	Issued	US 2023-0001792 A1	01/05/2023	01/30/2024	11884157
PCTUS227 8828	WO	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	10/27/2022	Published	WO 2023077035	05/04/2023		
PCTUS227 9728	WO	SUN VISOR METHOD AND APPARATUS	11/11/2022	Published	WO 2023086947	05/19/2023		
PCTUS236 1629	WO	SYSTEMS, METHODS, AND DEVICES FOR GRAPHICAL USER INTERFACES	01/31/2023	Published	WO 2023/147575	08/03/2023		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
18471428	US	VEHICLE HAVING RETRACTABLE REAR GATE	09/21/2023	Published	US 2024-0010057 A1	01/11/2024		
18472957	US	SYSTEMS AND METHODS FOR A VEHICLE INTERACTIVE DISPLAY	09/22/2023	Published	US 2024-0100950 A1	03/28/2024		
18473095	US	VEHICLE HAVING FRONT STORAGE	09/22/2023	Published	US 2024-0010131 A1	01/11/2024		
18486908	US	SYSTEMS, METHODS, AND DEVICES FOR VEHICLE TRAYS	10/13/2023	Published	US 2024-0123907 A1	04/18/2024		
202311339 9663	CN	SYSTEMS, METHODS, AND DEVICES FOR VEHICLE TRAYS	10/16/2023	Published	117885625	04/16/2024		
232039123	EP	SYSTEMS, METHODS, AND DEVICES FOR VEHICLE TRAYS	10/16/2023	Published	4353534	04/17/2024		

Design Patents and Patent Applications owned by Fisker Inc.

APPLICATION NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	REGISTRATION NUMBER	GRANT DATE
0053220210001	EM	Automotive Vehicle	06/23/2018	Issued	005322021-0001	08/31/2018
0053220210002	EM	Automotive Vehicle	06/23/2018	Issued	005322021-0002	08/31/2018
005322047	EM	Automotive Vehicle	06/23/2018	Issued	005322047-0001	07/03/2018
007985304	EM	Automotive Vehicle	06/04/2020	Issued	007985304-0001	04/07/2021
007985304	EM	Automotive Vehicle	06/04/2020	Issued	007985304-0002	04/07/2021
007985304	EM	Automotive Vehicle	06/04/2020	Issued	007985304-0003	04/07/2021

2020303235768	**CN**	**AUTOMOTIVE VEHICLE**	**06/22/2020**	**Issued**	**ZL202030323576.8**	**03/30/2021**
2022302696766	**CN**	**VEHICLE DOOR**	**05/09/2022**	**Issued**	**ZL202230269676.6**	**01/02/2024**
2022302699745	**CN**	**Main body of STEERING WHEEL**	**05/09/2022**	**Issued**	**ZL202230269974.5**	**12/19/2023**
0014864500001	**EM**	**SEAT**	**05/10/2022**	**Issued**	**001486450-0001**	**05/10/2022**
0014864500002	**EM**	**SEAT**	**05/10/2022**	**Issued**	**001486450-0002**	**05/10/2022**
0090214210001	**EM**	**WHEEL**	**05/10/2022**	**Issued**	**009021421-0001**	**05/10/2022**
0090214210002	**EM**	**WHEEL COVER**	**05/10/2022**	**Issued**	**009021421-0002**	**05/10/2022**
0090214210003	**EM**	**VENT**	**05/10/2022**	**Issued**	**009021421-0003**	**05/10/2022**
0090214210004	**EM**	**STEERING WHEEL**	**05/10/2022**	**Issued**	**009021421-0004**	**05/10/2022**
0090214210005	**EM**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**009021421-0005**	**05/10/2022**
0090214210006	**EM**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**009021421-0006**	**05/10/2022**

0090214210009	**EM**	**INSTRUMENT PANEL**	**05/10/2022**	**Issued**	**009021421-0009**	**05/10/2022**
2022302700475	**CN**	**SEAT**	**05/10/2022**	**Issued**	**ZL 202230270047.5**	**02/23/2024**
2022302703026	**CN**	**Main body of WHEEL COVER**	**05/10/2022**	**Issued**	**ZL202230270302.6**	**12/12/2023**
2022302709450	**CN**	**Upper panel of INSTRUMENT PANEL**	**05/10/2022**	**Issued**	**ZL202230270945.0**	**01/23/2024**
2022302710138	**CN**	**VENT**	**05/10/2022**	**Issued**	**ZL 202230271013.8**	**03/01/2024**
202230271387X	**CN**	**FRONT PANEL OF WHEEL**	**05/10/2022**	**Issued**	**ZL 202230271387.X**	**02/06/2024**
6207156	**GB**	**WHEEL**	**05/10/2022**	**Issued**	**6207156**	**05/10/2022**
6207157	**GB**	**WHEEL COVER**	**05/10/2022**	**Issued**	**6207157**	**05/10/2022**
6207158	**GB**	**VENT**	**05/10/2022**	**Issued**	**6207158**	**05/10/2022**
6207159	**GB**	**STEERING WHEEL**	**05/10/2022**	**Issued**	**6207159**	**05/10/2022**

6207160	**GB**	**SEAT**	**05/10/2022**	**Issued**	**202230270047.5**	**05/10/2022**
6207161	**GB**	**SEAT**	**05/10/2022**	**Issued**	**6207161**	**05/10/2022**
6207162	**GB**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**6207162**	**05/10/2022**
6207163	**GB**	**VEHICLE DOOR**	**05/10/2022**	**Issued**	**6207163**	**05/10/2022**
6207164	**GB**	**INSTRUMENT PANEL**	**05/10/2022**	**Issued**	**6207164**	**05/10/2022**
0090970740001	**EM**	**WHEEL**	**07/25/2022**	**Issued**	**009097074-0001**	**08/04/2022**
0090970740002	**EM**	**WHEEL COVER**	**07/25/2022**	**Issued**	**009097074-0002**	**08/04/2022**
6221250	**GB**	**WHEEL**	**07/25/2022**	**Issued**	**6221250**	**08/20/2022**
6221251	**GB**	**WHEEL COVER**	**07/25/2022**	**Issued**	**6221251**	**08/20/2022**
2022305186267	**CN**	**AERO WHEEL COVER DESIGN**	**08/10/2022**	**Issued**	**ZL 202230518626.7**	**12/05/2023**
2022305254283	**CN**	**FRONT PANEL OF WHEEL**	**08/12/2022**	**Issued**	**ZL 202230525428.3**	**02/06/2024**

0150120350001	**EM**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**015012035-0001**	**07/27/2023**
0150120350002	**EM**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**015012035-0002**	**07/27/2023**
6263512	**GB**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**6263512**	**03/06/2023**
6263513	**GB**	**VEHICLE LIGHT PATTERN**	**02/20/2023**	**Issued**	**6263513**	**03/06/2023**
0150157690001	**EM**	**Seat trays for vehicles**	**03/24/2023**	**Issued**	**015015769-0001**	**04/11/2023**
0150157690002	**EM**	**Seat trays for vehicles**	**03/24/2023**	**Issued**	**015015769-0002**	**09/25/2023**
6271194	**GB**	**Extendable Tray**	**03/24/2023**	**Issued**	**6271194**	**05/24/2023**
6271195	**GB**	**Console Tray**	**03/24/2023**	**Issued**	**6271195**	**03/29/2023**
0150271230001	**EM**	**WHEEL**	**07/05/2023**	**Issued**	**015027123-0001**	**07/13/2023**
6294559	**GB**	**WHEEL**	**07/05/2023**	**Issued**	**6294559**	**09/20/2023**

0150321530001	**EM**	**AUTOMOTIVE VEHICLE BODY**	**08/24/2023**	**Issued**	**015032153-0001**	**10/18/2023**
6305336	**GB**	**Automotive Vehicle Body**	**08/24/2023**	**Issued**	**6305336**	**09/04/2023**
6335002	**GB**	**AUTOMOTIVE VEHICLE**	**12/21/2023**	**Issued**	**6335002**	**01/08/2024**
6335003	**GB**	**AUTOMOTIVE VEHICLE**	**12/21/2023**	**Issued**	**6335003**	**01/08/2024**
6335004	**GB**	**AUTOMOTIVE WHEEL**	**12/21/2023**	**Issued**	**6335004**	**01/08/2024**
6335005	**GB**	**AUTOMOTIVE WHEEL**	**12/21/2023**	**Issued**	**6335005**	**01/08/2024**
6335006	**GB**	**AUTOMOTIVE WHEEL**	**12/21/2023**	**Issued**	**6335006**	**01/24/2024**
0150455950001	**EM**	**AUTOMOTIVE VEHICLE**	**12/22/2023**	**Issued**	**015045595-0001**	**02/27/2024**
0150455950002	**EM**	**AUTOMOTIVE VEHICLE**	**12/22/2023**	**Issued**	**015045595-0002**	**02/27/2024**
0150455950003	**EM**	**AUTOMOTIVE WHEEL**	**12/22/2023**	**Issued**	**015045595-0003**	**02/27/2024**

0150455950004	**EM**	**AUTOMOTIVE WHEEL**	**12/22/2023**	**Issued**	**015045595-0004**	**02/27/2024**
0150455950005	**EM**	**AUTOMOTIVE WHEEL**	**12/22/2023**	**Issued**	**015045595-0005**	**02/27/2024**

Trademarks and Trademark Applications owned by Fisker Inc.

TITLE	COUNTRY	DATE FILED	APPLICATION NUMBER	STATUS	REGISTRATION DATE	REGISTRATION NO.
FISKER	**AU**	**05/04/2010**	**1359523**	**Registered**	**12/06/2012**	**1359523**
FISKER	**AU**	**05/04/2010**	**1359524**	**Registered**	**12/07/2010**	**1359524**
FISKER	**AU**	**05/04/2010**	**1359525**	**Registered**	**12/23/2010**	**1359525**
FISKER	**AU**	**05/04/2010**	**1359527**	**Registered**	**12/23/2010**	**1359527**
FISKER & Design	**AU**	**06/08/2010**	**1053827**	**Registered**	**06/24/2013**	**1392175**
FISKER & Design	**AU**	**05/19/2020**	**1539118**	**Registered**	**04/27/2022**	**2100654**
FISKER & Design (word and design)	**BR**	**10/19/2010**	**830772294**	**Registered**	**11/13/2018**	**830772294**

FISKER & Design (word and design)	**BR**	**10/19/2010**	**830772308**	**Registered**	**08/05/2014**	**830772308**
FISKER & Design (word and design)	**BR**	**10/19/2010**	**830772316**	**Registered**	**11/13/2018**	**830772316**
FISKER & Design (word and design)	**BR**	**10/19/2010**	**830772324**	**Registered**	**11/13/2018**	**830772324**
FISKER & Design	**BR**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
FISKER ALASKA	**CA**	**11/30/2023**	**2296295**	**Pending**		
FISKER	**CA**	**02/01/2024**	**2308361**	**Pending**		
FISKER RONIN	**CA**	**02/01/2024**	**2308359**	**Pending**		
FISKER	**CA**	**05/04/2010**	**1479582**	**Registered**	**08/25/2015**	**TMA912350**
FISKER & Design	**CA**	**05/04/2010**	**1479583**	**Registered**	**08/25/2015**	**TMA912349**
FISKER	**CH**	**05/31/2010**	**554562010**	**Registered**	**09/16/2010**	**605443**
FISKER	**CH**	**05/31/2010**	**554572010**	**Registered**	**09/16/2010**	**605444**

FISKER	**CH**	**05/31/2010**	**554582010**	**Registered**	**09/14/2010**	**605226**
FISKER	**CH**	**05/31/2010**	**554592010**	**Registered**	**09/14/2010**	**605227**
Fisker & Design	**CH**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**CN**	**05/13/2010**	**8292870**	**Registered**	**09/21/2011**	**8292870**
FISKER	**CN**	**05/13/2010**	**8292871**	**Registered**	**08/07/2011**	**8292871**
FISKER	**CN**	**05/13/2010**	**8292886**	**Registered**	**07/14/2011**	**8292886**
FISKER & Design	**CN**	**05/13/2010**	**8292885**	**Registered**	**07/14/2011**	**8292885**
FISKER & Design	**CN**	**05/13/2010**	**8292887**	**Registered**	**09/21/2011**	**8292887**
FISKER & Design	**CN**	**05/13/2010**	**8292888**	**Registered**	**08/07/2011**	**8292888**
FISKER	**CN**	**02/21/2014**	**14055689**	**Registered**	**06/21/2017**	**14055689**
FISKER in Chinese 菲斯科 (Fei Si Ke)	**CN**	**07/05/2016**	**20532914**	**Registered**	**08/28/2017**	**20532914**
FISKER	**CN**	**09/02/2016**	**21186653**	**Registered**	**06/14/2020**	**21186653**
FISKER & Design	**CN**	**05/19/2020**	**1539118**	**Pending**		

FISKER & Design	**DK**	**06/08/2010**	**1053827**	**Registered**	**02/16/2012**	**1053827**
FISKER	**DK**	**06/14/2010**	**VA201001883**	**Registered**	**08/31/2010**	**VR201002264**
FISKER	**DK**	**06/14/2010**	**VA201001884**	**Registered**	**08/31/2010**	**VR201002261**
FISKER	**DK**	**06/14/2010**	**VA201001885**	**Registered**	**08/31/2010**	**VR201002262**
FISKER	**DK**	**06/14/2010**	**VA201001886**	**Registered**	**08/31/2010**	**VR201002263**
RONIN	**EM**	**05/04/2022**	**018696994**	**Pending**		
KAYAK (Stylized)	**EM**	**11/16/2023**	**018952135**	**Published**		
FISKER & Design	**EM**	**06/13/2008**	**969292**	**Registered**	**06/13/2008**	**969292**
FISKER	**EM**	**05/21/2010**	**9123589**	**Registered**	**11/30/2010**	**9123589**
FISKER	**EM**	**05/21/2010**	**9124066**	**Registered**	**11/16/2010**	**9124066**
FISKER	**EM**	**05/21/2010**	**9124108**	**Registered**	**11/17/2010**	**9124108**
FISKER	**EM**	**05/21/2010**	**9124124**	**Registered**	**11/08/2010**	**9124124**
FISKER & Design	**EM**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**

FISKER & Color Design	**EM**	**03/18/2016**	**15232011**	**Registered**	**07/28/2016**	**15232011**
FISKER EMOTION	**EM**	**03/09/2017**	**016450249**	**Registered**	**03/19/2019**	**016450249**
ORBIT	**EM**	**01/03/2018**	**017655929**	**Registered**	**06/14/2018**	**017655929**
FISKER & Design	**EM**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
emotion	**EM**	**01/03/2018**	**017655937**	**Total Provisional Refusal**		
FISKER & Design	**GB**	**06/13/2008**	**UK00800969292**	**Registered**	**08/10/2009**	**UK00800969292**
FISKER	**GB**	**05/21/2010**	**UK00909123589**	**Registered**	**11/30/2010**	**UK00909123589**
FISKER	**GB**	**05/21/2010**	**UK00909124066**	**Registered**	**11/16/2010**	**UK00909124066**
FISKER	**GB**	**05/21/2010**	**UK00909124108**	**Registered**	**11/17/2010**	**UK00909124108**
FISKER	**GB**	**05/21/2010**	**UK00909124124**	**Registered**	**11/08/2010**	**UK00909124124**
FISKER & Design	**GB**	**06/08/2010**	**UK00801053827**	**Registered**	**09/06/2011**	**UK00801053827**
FISKER & Design (in color)	**GB**	**03/18/2016**	**UK00915232011**	**Registered**	**07/28/2016**	**UK00915232011**

FISKER EMOTION	**GB**	**03/09/2017**	**00916450249**	**Registered**	**03/19/2019**	**00916450249**
ORBIT	**GB**	**01/03/2018**	**00917655929**	**Registered**	**06/14/2018**	**00917655929**
FISKER & Design	**GB**	**05/19/2020**	**UK00801539118**	**Registered**	**11/24/2020**	**UK00801539118**
KAYAK (Stylized)	**GB**	**11/16/2023**	**UK00003980550**	**Registered**	**02/16/2024**	**UK00003980550**
FISKER	**HK**	**04/30/2010**	**301603016AA**	**Registered**	**10/13/2010**	**301603016AA**
FISKER & Design	**HK**	**04/30/2010**	**301603052AA**	**Registered**	**11/09/2010**	**301603052AA**
FISKER & Design	**HR**	**06/08/2010**	**1053827**	**Registered**	**11/11/2010**	**1053827**
FISKER	**HR**	**06/11/2010**	**Z20101111A**	**Registered**	**07/15/2011**	**Z20101111**
FISKER	**HR**	**06/11/2010**	**Z20101112A**	**Registered**	**07/15/2011**	**Z20101112**
FISKER	**HR**	**06/11/2010**	**Z20101113A**	**Registered**	**07/15/2011**	**Z20101113**
FISKER	**HR**	**06/11/2010**	**Z20101114A**	**Registered**	**07/15/2011**	**Z20101114**
FISKER OCEAN	**IB**	**01/11/2024**	**A0143132**	**Registered**	**01/11/2024**	**1784012**
FISKER & Design	**IB**	**06/13/2008**	**969292**	**Registered**	**06/13/2008**	**969292**

FISKER & Design	**IB**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER & Design	**IB**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
FISKER	**IN**	**05/06/2010**	**1961371**	**Registered**	**04/15/2011**	**1961371**
FISKER	**IN**	**05/06/2010**	**1961372**	**Registered**	**04/15/2011**	**1961372**
FISKER	**IN**	**05/06/2010**	**1961373**	**Registered**	**02/29/2016**	**1961373**
FISKER	**IN**	**05/06/2010**	**1961374**	**Registered**	**04/18/2011**	**1961374**
FISKER & Design	**IN**	**05/06/2010**	**1961367**	**Registered**	**06/07/2013**	**1961367**
FISKER & Design	**IN**	**05/06/2010**	**1961368**	**Registered**	**04/15/2011**	**1961368**
FISKER & Design	**IN**	**05/06/2010**	**1961369**	**Registered**	**04/15/2011**	**1961369**
FISKER & Design	**IN**	**05/06/2010**	**1961370**	**Registered**	**04/18/2011**	**1961370**
FISKER & Design	**IN**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**4557790**
FISKER	**JP**	**05/12/2010**	**201036753**	**Registered**	**10/29/2010**	**5364000**

FISKER	**JP**	**05/12/2010**	**201036754**	**Registered**	**09/10/2010**	**5352615**
FISKER	**JP**	**05/12/2010**	**201036755**	**Registered**	**08/20/2010**	**5347041**
FISKER	**JP**	**05/12/2010**	**201036756**	**Registered**	**09/10/2010**	**5352616**
FISKER & Design	**JP**	**05/12/2010**	**201036757**	**Registered**	**10/29/2010**	**5364001**
FISKER & Design	**JP**	**05/12/2010**	**201036758**	**Registered**	**09/10/2010**	**5352617**
FISKER & Design	**JP**	**05/12/2010**	**201036759**	**Registered**	**08/20/2010**	**5347042**
FISKER & Design	**JP**	**05/12/2010**	**201036760**	**Registered**	**09/10/2010**	**5352618**
FISKER & Design	**JP**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
FISKER	**KR**	**05/03/2010**	**4020100023668**	**Registered**	**02/13/2012**	**4009042900000**
FISKER	**KR**	**05/03/2010**	**4120100011461**	**Registered**	**02/02/2012**	**4102256320000**
FISKER	**KR**	**05/03/2010**	**4120100011462**	**Registered**	**12/05/2011**	**4102224670000**
FISKER	**KR**	**05/03/2010**	**4120100011463**	**Registered**	**10/07/2011**	**4102186450000**
FISKER & Design	**KR**	**05/03/2010**	**4020100023669**	**Registered**	**02/13/2012**	**4009042510000**

FISKER & Design	**KR**	**05/03/2010**	**4120100011464**	**Registered**	**02/02/2012**	**4102256440000**
FISKER & Design	**KR**	**05/03/2010**	**4120100011465**	**Registered**	**12/05/2011**	**4102224960000**
FISKER & Design	**KR**	**05/03/2010**	**4120100011466**	**Registered**	**02/02/2012**	**4102256200000**
FISKER & Design	**KR**	**05/19/2020**	**1539118**	**Registered**	**05/19/2020**	**1539118**
Fisker & Design	**MC**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**MC**	**08/04/2010**	**29658**	**Registered**	**09/01/2010**	**1028061**
FISKER	**MC**	**08/04/2010**	**29659**	**Registered**	**01/09/2010**	**1028062**
FISKER	**MC**	**08/04/2010**	**29660**	**Registered**	**09/01/2010**	**1028063**
FISKER	**MC**	**08/04/2010**	**29661**	**Registered**	**09/01/2010**	**1028064**
FISKER & Design	**MX**	**05/19/2020**	**1539118**	**Registered**	**09/27/2021**	**2303671**
FISKER	**MX**	**07/14/2021**	**2581304**	**Registered**	**09/30/2021**	**2306179**
FISKER	**MX**	**07/14/2021**	**2581305**	**Registered**	**09/30/2021**	**2306180**
FISKER	**MX**	**07/14/2021**	**2581306**	**Registered**	**09/30/2021**	**2306181**

FISKER	**MX**	**07/14/2021**	**2581308**	**Registered**	**10/20/2021**	**2312883**
FISKER & Design	**MX**	**07/14/2021**	**2581310**	**Registered**	**10/22/2021**	**2314941**
FISKER & Design	**MX**	**07/14/2021**	**2581312**	**Registered**	**10/20/2021**	**2313371**
FISKER & Design	**MX**	**07/14/2021**	**2581314**	**Registered**	**10/20/2021**	**2312884**
FISKER & Design	**MX**	**07/14/2021**	**2581315**	**Registered**	**10/22/2021**	**2314942**
FISKER	**NO**	**05/10/2010**	**201004926**	**Registered**	**05/11/2011**	**259954**
FISKER	**NO**	**05/10/2010**	**201004927**	**Registered**	**12/09/2011**	**262954**
Fisker	**NO**	**05/10/2010**	**201004928**	**Registered**	**09/30/2010**	**256950**
Fisker	**NO**	**05/10/2010**	**201004929**	**Registered**	**09/30/2010**	**256951**
FISKER & Design	**NO**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**201011449**
FISKER	**NZ**	**01/27/2011**	**836427**	**Registered**	**07/27/2011**	**836427**
FISKER & Design	**NZ**	**01/27/2011**	**836423**	**Registered**	**07/27/2011**	**836423**

FISKER & Design	**RS**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**RS**	**06/14/2010**	**201001062**	**Registered**	**09/07/2011**	**63185**
FISKER	**RS**	**06/14/2010**	**201001063**	**Registered**	**11/19/2010**	**61934**
FISKER	**RS**	**06/14/2010**	**201001064**	**Registered**	**11/19/2010**	**61935**
FISKER	**RS**	**06/14/2010**	**201001065**	**Registered**	**09/19/2011**	**63236**
FISKER	**RU**	**05/07/2010**	**2010715114**	**Registered**	**03/21/2011**	**432836**
FISKER	**RU**	**05/07/2010**	**2010715115**	**Registered**	**07/13/2011**	**440975**
FISKER	**RU**	**05/07/2010**	**2010715116**	**Registered**	**03/21/2011**	**432837**
FISKER	**RU**	**05/07/2010**	**2010715118**	**Registered**	**03/21/2011**	**432838**
Fisker & Design	**RU**	**06/08/2010**	**1053827**	**Registered**	**09/15/2011**	**1053827**
FISKER & Design	**RU**	**05/19/2020**	**1539118**	**Registered**	**10/20/2020**	**1539118**
FISKER	**SG**	**05/07/2010**	**T1005806E**	**Registered**	**08/06/2010**	**T1005806E**
FISKER	**SG**	**05/07/2010**	**T1005807C**	**Registered**	**11/24/2010**	**T1005807C**
FISKER	**SG**	**05/07/2010**	**T1005808A**	**Registered**	**08/12/2010**	**T1005808A**
FISKER	**SG**	**05/07/2010**	**T1005809Z**	**Registered**	**02/21/2011**	**T1005809Z**

FISKER & Design	**SG**	**06/08/2010**	**1053827**	**Registered**	**09/20/2011**	**T1014558H**
FISKER & Design	**TR**	**06/08/2010**	**1053827**	**Registered**	**08/10/2012**	**201074355**
FISKER	**TR**	**08/19/2010**	**201054305**	**Registered**	**10/20/2011**	**201054305**
FISKER	**TR**	**08/19/2010**	**201054306**	**Registered**	**10/20/2011**	**201054306**
FISKER	**TR**	**08/19/2010**	**201054307**	**Registered**	**03/01/2012**	**201054307**
FISKER	**TR**	**08/19/2010**	**201054308**	**Registered**	**03/01/2012**	**201054308**
Fisker & Design	**UA**	**06/08/2010**	**1053827**	**Registered**	**06/08/2010**	**1053827**
FISKER	**UA**	**06/10/2010**	**m201008966**	**Registered**	**06/10/2011**	**140078**
FISKER	**UA**	**06/10/2010**	**m201008967**	**Registered**	**06/10/2011**	**140079**
FISKER	**UA**	**06/10/2010**	**m201008968**	**Registered**	**06/10/2011**	**140080**
FISKER	**UA**	**06/10/2010**	**m201008969**	**Registered**	**06/10/2011**	**140081**
CALIFORNIA MODE & Design	**US**	**11/28/2019**	**88710076**	**Pending**		
RONIN	**US**	**05/04/2022**	**97394583**	**Pending**		
ALASKA	**US**	**08/15/2023**	**98132870**	**Pending**		

PEAR	**US**	**01/15/2024**	**98358018**	**Pending**		
FISKER	**US**	**04/13/2010**	**85012432**	**Registered**	**01/04/2011**	**3899607**
FISKER	**US**	**04/27/2010**	**85024473**	**Registered**	**12/28/2010**	**3896838**
FISKER	**US**	**04/27/2010**	**85024490**	**Registered**	**07/03/2012**	**4168418**
FISKER	**US**	**04/27/2010**	**85024495**	**Registered**	**11/20/2012**	**4246405**
FISKER & Design	**US**	**04/27/2010**	**85024481**	**Registered**	**11/23/2010**	**3880033**
FISKER & Design	**US**	**04/27/2010**	**85024509**	**Registered**	**11/13/2012**	**4242403**
FISKER & Design	**US**	**04/27/2010**	**85024511**	**Registered**	**07/03/2012**	**4168419**
FISKER	**US**	**04/22/2016**	**87011307**	**Registered**	**03/17/2020**	**6013877**
FISKER & Design	**US**	**05/02/2016**	**87022120**	**Registered**	**07/18/2017**	**5247488**
FISKER & Design	**US**	**05/02/2016**	**87022124**	**Registered**	**08/08/2017**	**5262153**
FISKER & Design	**US**	**05/02/2016**	**87022125**	**Registered**	**07/11/2017**	**5242662**

EMOTION (Stylized)	**US**	**07/06/2017**	**87518475**	**Registered**	**07/17/2018**	**5517053**
FISKER & Design	**US**	**10/16/2019**	**88657179**	**Registered**	**10/06/2020**	**6171096**
FISKER OCEAN	**US**	**10/24/2019**	**88668176**	**Registered**	**09/26/2023**	**7176431**
FI-PILOT	**US**	**01/02/2021**	**90445783**	**Registered**	**11/14/2023**	**7219211**
FISKER design	**VN**	**09/10/2019**	**4201939679**	**Pending**		
FISKER	**ZA**	**04/30/2010**	**201009117**	**Registered**	**10/25/2013**	**201009117**
FISKER	**ZA**	**04/30/2010**	**201009120**	**Registered**	**06/14/2012**	**201009120**
FISKER	**ZA**	**04/30/2010**	**201009121**	**Registered**	**06/14/2012**	**201009121**
FISKER	**ZA**	**04/30/2010**	**201009122**	**Registered**	**06/14/2012**	**201009122**
FISKER	**ZA**	**04/30/2010**	**201009123**	**Registered**	**06/14/2012**	**201009123**
FISKER & Design	**ZA**	**04/30/2010**	**201009116**	**Registered**	**10/25/2013**	
FISKER & Design	**ZA**	**04/30/2010**	**201009118**	**Registered**	**10/25/2013**	
FISKER & Design	**ZA**	**04/30/2010**	**201009119**	**Registered**	**10/25/2013**	**201009119**

Trademarks and Trademark Applications Owned by Platinum IPR LLC

TITLE	COUNTRY	DATE FILED	APPLICATION NUMBER	STATUS	REGISTRATION DATE	REGISTRATION NO.
FISKER	HR	06/11/2010	Z20101112A	Registered	07/15/2011	Z20101112
FISKER	HR	06/11/2010	Z20101114A	Registered	07/15/2011	Z20101114
FISKER	SG	05/07/2010	T1005808A	Registered	08/12/2010	T1005808A
FISKER	SG	05/07/2010	T1005809Z	Registered	02/21/2011	T1005809Z

Copyrights and Copyright Applications owned by Fisker Inc.

COUNTRY	TITLE	REGISTRATION DATE	REGISTRATION NUMBER
US	Fisker Logo	08/24/2021	VA0002266552
US	Fisker Ocean Ultra	01/26/2022	VA0002295401

Material unpublished patent and design applications

See attached list (strictly confidential).

Material Licenses and Material Contracts in respect of Intellectual Property

All supplier and development agreement contain IP-related terms and conditions. The Company also licenses certain trademarks in connection with advertising partnerships.

Domain Names

www.fiskerinc.com

Patent Schedule of Pending and Allowed Marks:

App Number	Country	Title	STATUS
29512447	US	HEADLAMPS FOR A VEHICLE	Allowed
29582466	US	AUTOMOTIVE VEHICLE	Allowed
29619730	US	EXTERIOR LIGHTING	Allowed
29627626	US	AUTOMOTIVE VEHICLE	Allowed
29630931	US	AUTOMOTIVE VEHICLE	Allowed
29664312	US	EXTERIOR LIGHTING FOR AN AUTOMOTIVE VEHICLE	Allowed
29735838	US	AUTOMOTIVE VEHICLE BODY	Pending
16951981	US	Automobile Having Retractable Rear Quarter Windows	Pending
29762488	US	WHEEL	Pending
17245826	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
29790196	US	VEHICLE DOOR	Pending

App Number	Country	Title	STATUS
29790197	US	VEHICLE STEERING WHEEL	Pending
29790218	US	SEAT	Pending
29790235	US	INSTRUMENT PANEL	Pending
29790237	US	VENT	Pending
29790238	US	DESIGN FOR WHEEL	Pending
29790240	US	WHEEL COVER	Pending
17455620	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
2021800806711	CN	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
218956241	EP	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
17580376	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
17580474	US	AUTOMOBILE HAVING RETRACTABLE	Pending

App Number	Country	Title	STATUS
		REAR QUARTER WINDOWS	
17580538	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	Pending
29824377	US	REAR BUMPER OF AN AUTOMOTIVE VEHICLE BODY	Pending
29791932	US	WHEEL	Pending
29791933	US	WHEEL COVER	Pending
2022800314321	CN	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
227968435	EP	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	Pending
29866240	US	VEHICLE LIGHT PATTERN	Pending
17931076	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY	Pending

App Number	Country	Title	STATUS
		BUTTONS AND TOUCH BAR	
29867242	US	EXTENDABLE TRAY	Pending
29867243	US	CONSOLE TRAY	Pending
	CN	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	Pending
228885166	EP	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	Pending
PCTUS2278828	WO	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	Pending
	CN	SUN VISOR METHOD AND APPARATUS	Pending
	US	SUN VISOR METHOD AND APPARATUS	Pending
228938809	EP	SUN VISOR METHOD AND APPARATUS	Pending

App Number	Country	Title	STATUS
PCTUS2279728	WO	SUN VISOR METHOD AND APPARATUS	Pending
29869643	US	WHEEL	Pending
PCTUS2361629	WO	SYSTEMS, METHODS, AND DEVICES FOR GRAPHICAL USER INTERFACES	Pending
29871702	US	AUTOMOTIVE VEHICLE BODY	Pending
29512447	US	HEADLAMPS FOR A VEHICLE	**STATUS**
29582466	US	AUTOMOTIVE VEHICLE	Allowed
29619730	US	EXTERIOR LIGHTING	Allowed
29627626	US	AUTOMOTIVE VEHICLE	Allowed

Design Registration Schedule of Pending Marks:

App Number	Country	Title	Status
2020013436	JP	Automotive Vehicle	Pending
2023300687004	CN	VEHICLE LIGHT PATTERN	Pending
202330166760X	CN	EXTENDABLE TRAY	Pending
2023301669041	CN	CONSOLE TRAY	Pending

App Number	Country	Title	Status
2023305440436	CN	AUTOMOTIVE VEHICLE BODY	Pending
2023308654723	CN	OUTER END OF AUTOMOTIVE WHEEL	Pending
2023308654742	CN	MAIN BODY OF AUTOMOTIVE VEHICLE	Pending
2023308654846	CN	MAIN BODY OF AUTOMOTIVE VEHICLE	Pending
2023308669057	CN	OUTER END OF AUTOMOTIVE WHEEL	Pending
2024300237469	CN	OUTER END PORTION OF AUTOMOTIVE WHEEL	Pending

SCHEDULE III

Locations of Chief Executive Office, Principal Place of Business and Books and Records

Transaction Party	Chief Executive Office	Principal Place of Business	Books and Records	Inventory, Equipment, Etc.
Fisker Inc.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker Group Inc.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Terra Energy Inc.	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Platinum IPR LLC	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Fisker TN LLC	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623
Blue Current Holding LLC	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623	14 Centerpointe Drive La Palma, CA 90623

Locations of Equipment, Fixtures, Inventory and Other Goods

Manufacturing facility located Liebenauer Hauptstraße 2-6, 8041 Graz, Austria, operated by Magna Steyr Fahrzeugtechnik AG & Co KG ("**Magna Steyr**").

In addition to the manufacturing facility operated by Magna Steyr in Graz, Austria, Fisker owns tooling and other equipment and parts that are located with various suppliers throughout the world.

Finished Vehicle Locations

Street address	Postal code	City
1309 Bay Marina Drive	91950	San Diego
Hans Kiærs gate 1A	3041	Drammen
Terminalgatan 18	211 24	Malmö
401 East Pratt Street	21202	Baltimore
Simmeringer Hauptstraße 1	1110	Vienna
Schiessstattgasse 65	8010	Graz
Gewerbeparkstraße 11	1220	Wien
Landstraße 2b	5020	Salzburg
Welserstraße 54	4060	Linz-Leonding
Langer Weg 12	6020	Innsbruck
Sint Jozefstraat 12	2840	Rumst
55 Auction Lane	L6T 5V8	Brampton
7111 No. 8 Road	V6W 1L9	Richmond
200 North Main St	8835	Manville
Chemin de l'Esparcette 6	1023	Crissier
Kantonsstrasse 2	6246	Altishofen
Industriestrasse 6	6252	Dagmersellen
Gustav-Adolf Strasse 135	90441	Nürnberg
Borsigallee 12	60388	Frankfurt
Am Ausbesserungswerk 8	80939	München
An der Hammer Brücke 5	41460	Neuss
Taastrup Hovedgade 176	2630	Taastrup
Bugattivej 9	7100	Vejle
Ydunsvej 8	3400	Hillerød

Street address	Postal code	City
638 Avenue Roland Garros	78530	BUC
Rue du 1 er Septembre 1990	67390	Marckolsheim
161 Route De Labege	31400	Toulouse
10 Rue Louis Blanc	69200	Vénissieux
Tickford Roundabout, London Rd	MK16 0RE	Newport Pagnell
Herbert Walker Ave	SO15 1HJ	Southampton
Unit 2032, Floor 1, Westfield	W12 7GF	London
West Bay Road	SO15 1HF	Southampton Docks
Driemanssteeweg 700	3084 CB	Rotterdam
Verpetveien 30	1543	Vestby
Mätarvägen 23	196 37	Kungsängen
43375 Old Ox Road	20166	Dulles
6233 Blacktop Road	95673	Rio Linda
14 Centerpointe Drive	90623	La Palma
1717 East Curry Rd	85288	Tempe
5055 Oakley Industrial Blvd	30213	Fairburn
9700 Galena Street	92509	Riverside
4701 United Dr.	73179	Oklahoma City
2785 Beverly Road	60169	Hoffman Estates
Liebenauer Hauptstraße 2-6	8041	Graz
1715 Hacienda Dr.	92081	Vista
501 Northpoint Pkwy	30102	Acworth
400 N. Beck Avenue	85226	Chandler
38-50 21st St	11101	Long Island City
P. Vandammehuis, Isabellalaan	8380	Zeebrugge
14422 Astronautics Lane	92647	Huntington Beach
CTP	21117	Owings Mills
Harbour House, Sundkrogsgade 2	2100	Copenhagen
3 boulevard de Sébastopol	75001	Paris
9th Floor, 107 Cheapside	EC2V 6DN	London
Munkedamsveien 59B	270	Oslo
P.O. Box 162 85	103 25	Stockholm
1618 Redwood Highway	94925	Corte Madera
7666 Greenwood Road	71119	Shreveport
Feldkirchenstraße 22	8401	Kalsdorf

Street address	Postal code	City
1100 Bay Street	31520	Brunswick
11837 - 11845 Teale St	90230	Culver City
Lenbachplatz 6	80333	Munich
Rue du Port	33350	Bassens
26 Park Rose Industrial Estate	B66 2DZ	Smethwick
Kokstadflaten 51	5257	Bergen

SCHEDULE IV

Pledged Equity; Pledged Debt; Pledged Accounts

Pledged Equity

Grantor	Pledged Entity	Ownership Interest	Certificate #
Fisker Inc.	Fisker Group Inc.	100%	Uncertificated
Fisker Group Inc.	Terra Energy Inc.	100%	Uncertificated
Fisker Group Inc.	Platinum IPR LLC	100%	Uncertificated
Fisker Group Inc.	Fisker TN LLC	100%	Uncertificated
Fisker Group Inc.	Blue Current Holding LLC	100%	Uncertificated
Fisker Group Inc.	Fisker GmbH (Austria)	100%	Uncertificated
Fisker Group Inc.	Fisker GmbH (Germany)	100%	Uncertificated
Fisker Group Inc.	Fisker Vigyan Indian Private Limited	99.99%	Uncertificated
Fisker Group Inc.	Fisker (GB) Limited	100%	Uncertificated
Fisker Group Inc.	Fisker Belgium B.V.	100%	Uncertificated
Fisker Group Inc.	Fisker Canada Ltd.	100%	Uncertificated
Fisker Group Inc.	Fisker Denmark ApS	100%	Uncertificated
Fisker Group Inc.	Fisker France SAS	100%	Uncertificated
Fisker Group Inc.	Fisker Norway AS	100%	Uncertificated
Fisker Group Inc.	Fisker Sweden AB	100%	Uncertificated

Fisker Group Inc.	Fisker Switzerland IP GmbH	100%	Uncertificated
Fisker Group Inc.	Fisker Switzerland Sales GmbH	100%	Uncertificated
Fisker Group Inc.	Fisker Netherlands B.V.	100%	Uncertificated
Fisker Group Inc.	Fisker Netherlands Sales B.V.	100%	Uncertificated
Fisker Group Inc.	Fisker Ireland Limited	100%	Uncertificated
Fisker Group Inc.	Fisker (Shanghai) Motors Ltd.	100%	Uncertificated
Fisker Inc.	Ocean EV, S. de R.L. de C.V.	99%	Uncertificated
Fisker Group Inc.	Ocean EV, S. de R.L. de C.V.	1%	Uncertificated
Fisker Group Inc.	Fisker Spain SL	100%	Uncertificated

Pledged Debt

None.

Deposit Accounts of Grantors

Grantor	Bank	Country	Account No	Type or Purpose of Account	Excluded Account
Fisker Group Inc.	JPM	United States	627869867	Checking - Corporate	No
Fisker Group Inc.	JPM	United States	705026539	Checking - Payroll	Yes
Fisker Group Inc.	JPM	United States	627869933	Checking - Reserved Cars	Yes
Fisker Group Inc.	JPM	United States	3835007809	MM - Corporate	No
Fisker Group Inc.	JPM	United States	3835007965	MM - Reserved Cars	Yes
Fisker Group Inc.	JPM	United States	3929058759	MM - L/C	Yes
Fisker Group Inc.	JPM	United States	901658333	US Revenue	No
Fisker Group Inc.	JPM	United States	3968272188	MM - Chase Auto	Yes
Fisker Group Inc.[1]	JPM	United States	567227106	Checking – Corporate	No
Fisker Group Inc.	Bank of America	United States	1453955220	L/C	Yes
Terra Energy Inc.	JPM	United States	788769856	Checking (Dormant)	No

Securities Accounts of Grantors

Grantor	Bank	Country	Account No	Type or Purpose of Account	Excluded Account
Fisker Group Inc.	JP Asset Mgmt	United States	5024563	Securities Account	No

[1] NTD: Account formerly owned by Fisker TN LLC.

Pledged Accounts of Non-Grantor Subsidiaries

Grantor	Bank	Country	Account No	Type or Purpose of Account	Excluded Account
Fisker GmbH	JPM	Germany	6161551681	Austrian US$ payment account	No
Fisker GmbH	JPM	Germany	6161543829	Austrian Euro payment account	No
Fisker GmbH	JPM	Germany	6161556813	Austria Payroll	Yes
Fisker GmbH	JPM	Germany	6161559098	Austria Revenue	No
Fisker France SAS	J.P. Morgan	France	609001940	France Euro Payment Account	No
Fisker France SAS	J.P. Morgan	France	609002037	France Revenue	No
Fisker GmbH (Germany)	J.P. Morgan	Germany	6161543795	Germany payment account	No
Fisker GmbH (Germany)	J.P. Morgan	Germany	6161559114	Germany revenue	No
Fisker GmbH (Germany)	J.P. Morgan	Germany	6161556821	Payroll	Yes
Fisker (GB) Limited	JP Morgan Chase Bank, NA London	UK	40066323	Payments	No
Fisker (GB) Limited	JP Morgan Chase Bank, NA London	UK	76973212	Revenue	No

SCHEDULE V

Financing Statements

Grantor	Financing Statement	Jurisdiction
Fisker Inc.	UCC-1	Delaware Secretary of State
Fisker Group Inc.	UCC-1	Delaware Secretary of State
Terra Energy Inc.	UCC-1	Delaware Secretary of State
Platinum IPR LLC	UCC-1	Delaware Secretary of State
Fisker TN LLC	UCC-1	Tennessee Secretary of State
Blue Current Holding LLC	UCC-1	Delaware Secretary of State

SCHEDULE VI

Commercial Tort Claims

None.

EXHIBIT A

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this "**IP Security Agreement**"), dated **[●]**, is made by [INSERT NAME OF GRANTORS OWNING IP] (each, a "**Grantor**" and, collectively, the "**Grantors**") in favor of CVI Investments, Inc**.,** in its capacity as collateral agent (together with its successors and permitted assigns, the "**Collateral Agent**") for the Noteholders. All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Security Agreement (as defined below).

WHEREAS, Fisker Inc., a company organized under the laws of the State of Delaware (the "**Company**"), is party to that certain Securities Purchase Agreement, dated as of May 10, 2024 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as an " Investor" on the Schedule of Investors attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, pursuant to the terms of the Securities Purchase Agreement and the Notes, each Grantor has executed and delivered that certain Security and Pledge Agreement, dated as of May 10 2024, made by the Grantors to the Collateral Agent (as amended, modified, supplemented, renewed, restated or replaced from time to time, the "**Security Agreement**");

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a Lien on and security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities; and

WHEREAS, the Grantors have determined that the execution, delivery and performance of this IP Security Agreement directly benefits, and is in the best interest of, the Grantors.

NOW, THEREFORE, in consideration of the premises and the agreements herein, each Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows

SECTION 1. Grant of Security. As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Collateral Agent and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under the following (the "**Collateral**"):

(i) all Patents and Patent applications, including those set forth in Schedule A hereto;

(ii) all Trademark and service mark registrations and applications, including those set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby;

(iii) all Copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including, without limitation, the copyright registrations and applications set forth in Schedule C hereto;

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all Proceeds, including without limitation Cash and Noncash Proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations (as provided in the Code) relating to, any and all of the collateral of or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a Lien on and security interest in, the Collateral by each Grantor under this IP Security Agreement constitutes continuing collateral security for the payment and performance of all Obligations of such Grantor now or hereafter existing under or in respect of the Notes and the Transaction Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same agreement.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the Lien and security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR 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.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

By _____
Name:
Title:

Address for Notices:

_____
_____
_____

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

By _____
Name:
Title:

Address for Notices:

_____
_____
_____

Schedule A

Patents

Grantor	Country	Title	Application or Patent No.	Application or Registration Date	Assignees

Schedule B

Trademarks

Grantor	Country	Title	Application or Patent No.	Application or Registration Date	Assignees

Schedule C

Copyrights

Grantor	Country	Title	Application or Patent No.	Application or Registration Date	Assignees

EXHIBIT B

FORM OF JOINDER AGREEMENT

This Joinder Agreement (this "**Joinder**"), dated [•], 202[•], by and among Fisker Inc., a Delaware corporation (the "**Company**"), [•](the "**Additional Grantor**"), a [•] and a Subsidiary of the Company, and [_____], in its capacity as collateral agent for the Noteholders (together with its successors and assigns, in such capacity, the "**Collateral Agent**") under that certain Security and Pledge Agreement, dated as of May 10, 2024, by and among the Company, the Collateral Agent and the other Grantors party thereto (as may from time to time be amended, the "**Agreement**"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Agreement.

Pursuant to Section 6(m) of the Agreement, by executing and delivering this Joinder, the Additional Grantor hereby becomes a party to the Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein. Without limiting the generality of the foregoing, the Additional Grantor, as collateral security for the punctual payment and performance in full of the Obligations, as and when due, hereby pledges and assigns to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of Grantor's right, title and interest in, to and under all Collateral.

By executing and delivering this Joinder, the Company and the Additional Grantor hereby agree that the schedules attached to this Joinder shall automatically, and without further action, supplement and become part of the schedules to the Agreement.

Each of the Company and the Additional Grantor represents and warrants to the Collateral Agent that (i) it has the requisite power and authority to enter into, deliver and perform its obligations under this Joinder and has taken all necessary action to authorize the execution, delivery and performance by it of this Joinder; (ii) this Joinder has been duly executed and delivered on behalf of each of the Company and the Additional Grantor; and (iii) this Joinder constitutes a legal, valid and binding obligation of each of the Company and the Additional Grantor, enforceable against such party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

[*Signature Pages Follow*]

FISKER INC.

By:_____
Name:
Title:

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

Acknowledged by:

CVI INVESTMENTS, INC.
as Collateral Agent

By: _____
Name:
Title:

EXHIBIT P

THIS DOCUMENT WAS EXECUTED OUTSIDE OF AUSTRIA. THE TAKING OF THIS DOCUMENT OR ANY CERTIFIED COPY OF IT OR ANY DOCUMENT WHICH CONSTITUTES SUBSTITUTE DOCUMENTATION FOR IT, OR ANY DOCUMENT WHICH INCLUDES WRITTEN CONFIRMATIONS OR REFERENCES TO IT, INTO AUSTRIA AS WELL AS PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO THIS DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO ANY TRANSACTION DOCUMENT TO AN AUSTRIAN ADDRESSEE MAY CAUSE THE IMPOSITION OF AUSTRIAN STAMP DUTY. ACCORDINGLY, KEEP THE ORIGINAL DOCUMENT AS WELL AS ALL CERTIFIED COPIES THEREOF AND WRITTEN AND SIGNED REFERENCES TO IT OUTSIDE OF AUSTRIA AND AVOID PRINTING OUT ANY E-MAIL COMMUNICATION WHICH REFERS TO ANY TRANSACTION DOCUMENT IN AUSTRIA OR SENDING ANY E-MAIL COMMUNICATION TO WHICH A PDF SCAN OF THIS DOCUMENT IS ATTACHED TO AN AUSTRIAN ADDRESSEE OR SENDING ANY E-MAIL COMMUNICATION CARRYING AN ELECTRONIC OR DIGITAL SIGNATURE WHICH REFERS TO THIS DOCUMENT TO AN AUSTRIAN ADDRESSEE.

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this "**IP Security Agreement**"), dated May 10, 2024, is made by **FISKER INC.** (the "**Grantor**") in favor of **CVI INVESTMENTS, INC.**, in its capacity as collateral agent (together with its successors and permitted assigns, the "**Collateral Agent**") for the Noteholders. All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Security Agreement (as defined below).

WHEREAS, Fisker Inc., a company organized under the laws of the State of Delaware (the "**Company**"), is party to that certain Securities Purchase Agreement, dated as of May 10, 2024 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as a "Buyer" on the Schedule of Buyers attached thereto (each an "**Investor**" and collectively, the "**Investors**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**");

WHEREAS, pursuant to the terms of the Securities Purchase Agreement, the Grantor has executed and delivered that certain Security and Pledge Agreement, dated as of the date hereof, made by the Grantor to the Collateral Agent (as amended, modified, supplemented, renewed, restated or replaced from time to time, the "**Security Agreement**");

WHEREAS, under the terms of the Security Agreement, the Grantor has granted to the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, a Lien on and security interest in, among other property, certain intellectual property of the Grantor, and has agreed as a condition thereof to execute this IP Security Agreement for recording with the U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities; and

WHEREAS, the Grantor has determined that the execution, delivery and performance of this IP Security Agreement directly benefits, and is in the best interest of, the Grantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein, the Grantor agrees with the Collateral Agent, for the ratable benefit of the Collateral Agent and the Noteholders, as follows

SECTION 1. Grant of Security. As collateral security for the due and punctual payment and performance in full of the Obligations, as and when due, the Grantor hereby pledges and assigns to the Collateral Agent and hereby grants to the Collateral Agent, its successors and permitted assigns, for the ratable benefit of the Collateral Agent and the Noteholders, a continuing Lien on and security interest in, all of such Grantor's right, title and interest in, to and under the following (the "**Collateral**"):

(i) the Patents and Patent applications set forth in Schedule A hereto;

(ii) the Trademark and service mark registrations and applications set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby;

(iii) all Copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including, without limitation, the copyright registrations and applications set forth in Schedule C hereto;

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all Proceeds, including without limitation Cash and Noncash Proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations (as provided in the Code) relating to, any and all of the collateral of or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a Lien on and security interest in, the Collateral by the Grantor under this IP Security Agreement constitutes continuing collateral security for the payment and performance of all Obligations of such Grantor now or hereafter existing under or in respect of the Notes and the Transaction Documents, whether direct or indirect,

absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. The Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same agreement.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. The Grantor does hereby acknowledges and confirms that the grant of the Lien and security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule of law (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York.

(ii) The Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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, defense or objection 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 Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Collateral Agent or the Noteholders from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Collateral Agent or a Noteholder.

(iii) WAIVER OF JURY TRIAL, ETC. THE GRANTOR 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.

(iv) The Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

FISKER INC.

By Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)

Name: Dr. Geeta Gupta-Fisker
Title: CFO & COO

Address for Notices:
1888 Rosecrans Avenue
Manhattan Beach, CA 90266

Schedule A

Patents

Utility Patents, Design Patents, and Patent Applications

Grantor: Fisker Inc.

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
29512447	US	HEADLAMPS FOR A VEHICLE	12/18/2014	Issued			07/05/2016	D760930
29619730	US	EXTERIOR LIGHTING	10/01/2017	Issued			9/24/2019	D861201
29582466	US	AUTOMOTIVE VEHICLE	10/27/2016	Issued			02/13/2018	D809972
29627626	US	AUTOMOTIVE VEHICLE	11/28/2017	Issued			11/06/2018	D832742
29630931	US	AUTOMOTIVE VEHICLE	12/23/2017	Issued			02/19/2019	D840874
29664312	US	EXTERIOR LIGHTING FOR AN	09/24/2018	Issued			12/10/2019	D869710

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
		AUTOMOTIVE VEHICLE						
29735838	US	AUTOMOTIVE VEHICLE BODY	05/25/2020	Issued			02/22/2022	D944119
16951981	US	Automobile Having Retractable Rear Quarter Windows	11/18/2020	Issued	20210155084	05/27/2021	03/01/2022	11260729
29762488	US	WHEEL	12/16/2020	Issued			11/22/2022	D970412
17245826	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	04/30/2021	Issued			01/11/2022	11220182
29790197	US	VEHICLE STEERING WHEEL	11/10/2021	Issued			07/04/2023	D991112
29790235	US	INSTRUMENT PANEL	11/12/2021	Issued			10/03/2023	D1000338

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
29790238	US	DESIGN FOR WHEEL	11/12/2021	Issued			10/24/2023	D1002483
17455620	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	11/18/2021	Issued	20220348079	11/03/2022	10/11/2022	11465502
17580376	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Published	20220144048	05/12/2022		
17580474	US	AUTOMOBILE HAVING RETRACTABLE REAR QUARTER WINDOWS	01/20/2022	Published	20220144359	05/12/2022		
17580538	US	AUTOMOBILE HAVING RETRACTABLE	01/20/2022	Published	20220144049	05/12/2022		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
		REAR QUARTER WINDOWS						
29791932	US	WHEEL	02/18/2022	Issued			03/05/2024	D1016709
17931076	US	ROTATING VEHICLE CENTER INFORMATION DISPLAY WITH STATIONARY BUTTONS AND TOUCH BAR	09/09/2022	Issued	US 2023-0001792 A1	01/05/2023	01/30/2024	11884157
18034304	US	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN ELECTRIC VEHICLES	04/24/2023	Pending	US 2024-0131945	04/25/2024		
PCTUS227 8828	WO	IMPROVED SYSTEMS AND METHODS FOR INTEGRATING PV POWER IN	10/27/2022	Published	WO 2023077035	05/04/2023		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
		ELECTRIC VEHICLES						
PCTUS2279728	WO	SUN VISOR METHOD AND APPARATUS	11/11/2022	Published	WO 2023086947	05/19/2023		
PCTUS2361629	WO	SYSTEMS, METHODS, AND DEVICES FOR GRAPHICAL USER INTERFACES	01/31/2023	Published	WO 2023/147575	08/03/2023		
18471428	US	VEHICLE HAVING RETRACTABLE REAR GATE	09/21/2023	Published	US 2024-0010057 A1	01/11/2024		
18472957	US	SYSTEMS AND METHODS FOR A VEHICLE INTERACTIVE DISPLAY	09/22/2023	Published	US 2024-0100950 A1	03/28/2024		
18473095	US	VEHICLE HAVING FRONT STORAGE	09/22/2023	Published	US 2024-0010131 A1	01/11/2024		

APP. NUMBER	COUNTRY	TITLE	DATE FILED	STATUS	PUBLICATION NUMBER	PUBLICATION DATE	GRANT DATE	PATENT NUMBER
18486908	US	SYSTEMS, METHODS, AND DEVICES FOR VEHICLE TRAYS	10/13/2023	Published	US 2024-0123907 A1	04/18/2024		

Schedule B

Trademarks

Grantor: Fisker Inc.

TITLE	COUNTRY	DATE FILED	APPLICATION NUMBER	STATUS	REGISTRATION DATE	REGISTRATION NO.
CALIFORNIA MODE & Design	US	11/28/2019	88710076	Pending		
RONIN	US	05/04/2022	97394583	Pending		
ALASKA	US	08/15/2023	98132870	Pending		
PEAR	US	01/15/2024	98358018	Pending		
FISKER	US	04/13/2010	85012432	Registered	01/04/2011	3899607
FISKER	US	04/27/2010	85024473	Registered	12/28/2010	3896838
FISKER	US	04/27/2010	85024490	Registered	07/03/2012	4168418
FISKER	US	04/27/2010	85024495	Registered	11/20/2012	4246405
FISKER & Design	US	04/27/2010	85024481	Registered	11/23/2010	3880033
FISKER & Design	US	04/27/2010	85024509	Registered	11/13/2012	4242403
FISKER & Design	US	04/27/2010	85024511	Registered	07/03/2012	4168419
FISKER	US	04/22/2016	87011307	Registered	03/17/2020	6013877

FISKER & Design	**US**	**05/02/2016**	**87022120**	**Registered**	**07/18/2017**	**5247488**
FISKER & Design	**US**	**05/02/2016**	**87022124**	**Registered**	**08/08/2017**	**5262153**
FISKER & Design	**US**	**05/02/2016**	**87022125**	**Registered**	**07/11/2017**	**5242662**
EMOTION (Stylized)	**US**	**07/06/2017**	**87518475**	**Registered**	**07/17/2018**	**5517053**
FISKER & Design	**US**	**10/16/2019**	**88657179**	**Registered**	**10/06/2020**	**6171096**
FISKER OCEAN	**US**	**10/24/2019**	**88668176**	**Registered**	**09/26/2023**	**7176431**
FI-PILOT	**US**	**01/02/2021**	**90445783**	**Registered**	**11/14/2023**	**7219211**

Schedule C

Copyrights

Grantor: Fisker Inc.

COUNTRY	TITLE	REGISTRATION DATE	REGISTRATION NUMBER
US	Fisker Logo	08/24/2021	VA0002266552
US	Fisker Ocean Ultra	01/26/2022	VA0002295401

EXHIBIT Q

Execution copy

WHITE & CASE

Dated 5 June 2024

Share Pledge Agreement

in respect of shares in Fisker Belgium SRL

between

Fisker Group Inc.
as Pledgor

and

CVI Investments, Inc.
as Pledgee

Table of Contents

Page

This share pledge agreement (the "Agreement") is made on 5 June 2024

between:

(1) **FISKER GROUP INC.**, a stock corporation organised and existing under the laws of the State of Delware, United States of America, having its registerr251 Little Falls Drive, Wilmington, DE 19808 and its principal address at 1888 Rosecrans Avenue, Manhattan Beach, CA 90266, United States of America (the "**Pledgor**"); and

(2) **CVI INVESTMENTS, INC.** acting for itself and for the account of the Noteholders as collateral agent in accordance with the terms of the Intercreditor Agreement and the Securities Purchase Agreement (each as defined below) in accordance with article 5 of the Collateral Law (as defined below) (the "**Pledgee**").

The parties sub (1) to and including (2) hereinafter each a "**Party**" and together the "**Parties**" (each acting, without limitation, in the capacities listed under their names on the signatory page of the Agreement).

Whereas:

(A) On 10 May 2024, a securities purchase agreement was entered into between Fisker Inc. as company and each party listed therein as an "Buyer" (the "**Securities Purchase Agreement**"), pursuant to which Fisker Inc. has sold, and may in the future be required to sell, to the Buyers, and the Buyers have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (as such Notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**").

(B) On 10 May 2024, a senior intercreditor agreement was entered into between, amongst others, Fisker Inc., CVI Investments, Inc. as first lien representative and first lien collateral agent and CVI Investments, Inc. as junior lien representative and junior lien collateral agent (the "**Intercreditor Agreement**").

(C) The Pledgor owns one million (1,000,000) shares in the Company (as defined below), together representing 100 (one hundred) % of the fully diluted share capital of the Company.

The Pledgor has agreed to grant a pledge over its Pledged Assets to the Pledgee as security interest for the Secured Obligations (as defined below) upon and subject to the terms of the Agreement.

It is agreed as follows:

1. Interpretation

1.1 Definitions

Unless otherwise defined herein, capitalised terms and expressions used in the Agreement (including the recitals hereto) will have the same respective meaning as set forth in the Securities Purchase Agreement or the Intercreditor Agreement (as the case may be). In addition, the following terms shall have the following meanings for the purposes of the Agreement unless the context otherwise requires:

"**Articles**" means the Company's current articles of association *(statuts / statuten*), dated as of 25 August 2022 (as amended from time to time).

"**Belgian Civil Code**" means the Belgian *Burgerlijk Wetboek/Code Civil*, as amended from time to time.

"**Belgian Code of Companies and Associations**" means the Belgian *Wetboek van vennootschappen en verenigingen/Code des sociétés et des associations* (as amended from time to time).

"**Belgian Old Civil Code**" means the Belgian *Oud Burgerlijk Wetboek*/*Code Civil Ancien* (as amended from time to time).

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Belgium.

"**Collateral Law**" means the Belgian law of 15 December 2004 on financial collateral (*Wet betreffende financiële zekerheden en houdende diverse fiscale bepalingen inzake zakelijke-zekerheidsovereenkomsten en leningen met betrekking tot financiële instrumenten/Loi relative aux sûretés financières et portant des dispositions fiscales diverses en matière de conventions constitutives de sûreté réelle et de prêts portant sur des instruments financiers*) (as amended from time to time).

"**Company**" means Fisker Belgium SRL, a private limited liability company (*société à responsabilité limitée/besloten vennootschap*) incorporated and existing under the laws of the Kingdom of B Belgium ("**Belgium**"), having its registered office at Avenue Marnix 23, 1000 Brussels, Belgium and registered with the Belgian Crossroads Bank for Enterprises (*Kruispuntbank van Ondernemingen/Banque-Carrefour des Entreprises*) under number 0789.997.692 (*RPM* Brussels, French-speaking section).

"**Dividends**" means, in relation to any Pledged Asset, any cash income or any benefit in kind, whether paid out of profits made by the Company during its past, current or any future financial year or paid out from retained profits or reserves of the Company.

"**Enforcement Event**" means any Event of Default which is continuing.

"**Event of Default**" shall have the meaning set forth in Section 4(a) of the Notes.

"**Existing Shares**" means the one million (1,000,000) shares in the Company, currently owned by the Pledgor, together representing 100% of the share capital of the Company.

"**Expert**" has the meaning set out in Clause 7 (*Enforcement*) of the Agreement.

"**FMV**" has the meaning set out in Clause 7 (*Enforcement*) of the Agreement.

"**Future Shares**" means any other shares in the Company that the Pledgor may subscribe to, acquire or be granted at any time in the future.

"**Noteholder**" or "**Noteholders**" means, at any time, the Holders of the Notes at such time or any of them.

"**Obligor**" or "**Obligors**" means Fisker Inc., any Guarantor or any Pledgor.

"**Other Pledged Assets**" means:

(a) any Dividends and entitlement or right to Dividends or any other distribution on the Pledged Assets;

(b) all rights relating to any of the Shares which are deposited with or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including any rights against any such person); and

(c) all warrants, subscription rights, options, convertible bonds and other rights to subscribe for, purchase, convert in or otherwise acquire any share in the Company;

in each case, existing now or in the future.

"**Party**" and "**Parties**" have the meaning set out in the recitals hereto.

"**Pledge**" means the first ranking pledge (*pand in eerste rang/gage de premier rang*) created by or pursuant to the Agreement.

"**Pledged Assets**" means the Shares and the Other Pledged Assets.

"**Pledgee**" has the meaning set out in the recitals hereto.

"**Pledgor**" has the meaning set out in the recitals hereto.

"**Secured Obligations**" has the meaning given to the term "Obligations" in the Securities Purchase Agreement.

"**Shares**" means the Existing Shares and the Future Shares, representing at all times 100% of the share capital of the Company.

"**Transaction Document**" or "**Transaction Documents**" has the meaning given to such term in the Securities Purchase Agreement.

1.2 Construction

In the Agreement, unless a contrary intention appears, a reference to:

(a) the terms "**Company**", "**Noteholder**", "**Party**", "**Pledgee**", "**Pledgor**", "**Security Agent**" and any other person referred to in the Agreement include their respective successors and, in the case of the Pledgee and Security Agent, the transferees (by way of assignment, novation or otherwise) of their respective interests;

(b) an "**agreement**" includes any legally binding arrangement, concession, contract, deed or franchise (in each case whether oral or written);

(c) an "**amendment**" includes any amendment, supplement, variation, novation, modification, replacement or restatement and "amend", "amending" and "amended" shall be construed accordingly;

(d) "**assets**" includes present and future properties, revenues and rights of every description;

(e) "**including**" means including without limitation and "includes" and "included" shall be construed accordingly;

(f) "**losses**" includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including (legal) fees) and liabilities and "loss" shall be construed accordingly;

(g) "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality); and

(h) "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 Headings

Section, Clause and Schedule headings and the table of contents are inserted for convenience of reference only and will be ignored in the interpretation of the Agreement.

1.4 References to agreements

Unless otherwise stated, any reference in the Agreement to any agreement or document (including any reference to the Agreement or any other Transaction Document or to any agreement or document entered into pursuant to or in accordance with such agreement or document) shall be construed as a reference to:

(a) such agreement or document as amended, restated, varied, novated or supplemented from time to time and which may include (as the Pledgor specifically agrees and acknowledges), without limitation (i) any increase in any amount made available thereunder and/or any alteration and/or addition to the purposes for which any such amount, or increased amount, may be used, (ii) any extension and/or any refinancing of the facilities made available thereunder, (iii) any facilities provided in substitution or in addition to the facilities originally made available thereunder, (iv) any rescheduling of the indebtedness incurred thereunder whether in isolation or in connection with any of the foregoing and (v) any combination of any of the foregoing in accordance with the terms thereof or, as the case may be, with the agreement of the relevant parties and (where any consents are, by the terms of the Agreement, any other Transaction Document or the relevant document, required to be obtained as a condition to such amendment, extension or restatement being permitted) with the requisite consents; and

(b) any agreement or document whereby such agreement or document is so amended, restated, varied, novated or supplemented; and/or which is entered into pursuant to or in accordance with such agreement or document.

2. Pledge

2.1 The Pledgor grants to the Pledgee a first ranking pledge (*pand in eerste rang/gage de premier rang*) over the Pledged Assets in order to secure the full payment, discharge and due and punctual performance of the Secured Obligations.

2.2 The Pledgee accepts the Pledge for itself and for the account of the Noteholders in accordance with article 5 of the Collateral Law.

2.3 The Pledge will not in any way be affected by any regrouping or splitting of the Pledged Assets or by any similar operation and the securities resulting from any such operation will be part of the Pledged Assets.

2.4 The Pledge is subject to the terms of the Collateral Law and to the relevant provisions of Title XVII (*Zakelijke zekerheden op roerende goederen/Des sûretés réelles mobilières*), Book III of the Belgian Old Civil Code, unless derogated from by the Agreement.

2.5 The Parties hereby confirm that the Lien vested pursuant to the Agreement shall be considered as a guarantee *in rem* (*zakelijke borgtocht/cautionnement réel*) under Belgian law.

3. Perfection

3.1 Upon execution of the Agreement, the Pledgee and the Pledgor shall record the Pledge over the Existing Shares in the Company's shareholders' register by registering, dating and signing the following notices on the relevant pages of the Company's shareholders' register and the Pledgor

shall hand-over without undue delay to the Pledgee a certified photocopy of the relevant page(s) of the Company's shareholders' register bearing the recordation of the Pledge:

> *"1,000,000 actions nominatives et toutes les actions futures dans la société détenues par Fisker Group Inc., sont données en gage en faveur de CVI Investments, Inc. en tant que créancier gagiste (« **Pledgee** »), en sa qualité d'agent de sûreté (Collateral Agent) (« **Security Agent** ») en son nom et pour le compte des déteneurs de notes (Noteholders) (« **Noteholders** »), en vertu d'une convention de gage sur actions en date du 24 mai 2024 (« **Share Pledge Agreement** »). »*

3.2 Immediately upon obtaining (in any manner whatsoever) any Future Shares, the Pledgor shall record all such Future Shares in the shareholders' register of the Company and the Pledgor and the Pledgee shall record the Pledge over such Shares by writing up, dating and signing a notice similar to that above and shall hand-over without undue delay to the Pledgee a certified photocopy of the relevant page(s) of the Company's shareholders' register bearing the recordation of the Pledge.

3.3 The Pledgor and the Pledgee hereby irrevocably appoint each director of the Company, as their attorneys, with power to act individually and with power to substitute, for the purpose of recording the notices referred to under Clauses 3.1 and 0 in the Company's share register.

None of the attorneys-in-fact appointed above shall be held liable to the Pledgor or the Pledgee or any other persons for any costs, losses, liabilities or expenses relating to the recordation of the Pledge, or from any act, default, omission or misconduct in relation to such recordation except to the extent caused by their own gross negligence (*faute grave*/*grove fout*) or willful misconduct (*dol*/*bedrog*).

3.4 The Pledgor shall cause the Company to acknowledge the Agreement and to agree to certain undertakings by executing a letter substantially in the form of Schedule 1 (*Company Letter*), upon execution of the Agreement and each future recording in the Company's shareholders' register.

4. Rights Attached to the Pledged Assets

4.1 Voting Rights

(a) Until the occurrence of an Enforcement Event, the Pledgor shall (i) be entitled to exercise or direct the exercise of the voting and other rights attached to any Pledged Asset as it sees fit in the ordinary course of business, in a manner, however, which, in general, is not inconsistent with and does not depreciate, jeopardise or negatively affect the Agreement, the Pledge, the Pledged Assets or the rights of the Pledgee under the Agreement, or cause the occurrence of an Event of Default and, in particular, does not cause or permit any resolution for the winding-up of the Company or the commencement of insolvency proceedings or other similar proceedings; *provided that*, in each case, no vote shall be cast or any consent, waiver or ratification given or any action taken or omitted to be taken which would violate any of the terms of the Agreement or any other Transaction Document or affect the validity and enforceability of the Pledge.

(b) Upon the occurrence of an Enforcement Event, the Pledgee shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Pledged Asset as it sees fit and, for the case where the Pledgee would elect to exercise those rights, the Pledgor hereby irrevocably appoints (with full power of substitution) the Pledgee as its attorney to vote (without voting instructions) at any shareholders' meeting of the Company held after the occurrence of an Enforcement Event. In case the Pledgee does

not elect to exercise those rights, the Pledgor will cast the votes attaching to the Pledged Assets, in accordance with the Pledgee's instructions, which they will seek in due time.

4.2 Dividends and Other Distributions

(a) Until the occurrence of an Enforcement Event, the Pledgor is entitled to retain any Dividend and any other distribution on the Pledged Assets (such as repayment of capital or otherwise) that would be distributed and are permitted in accordance with the Transaction Documents.

(b) Upon the occurrence of an Enforcement Event, all Dividends and other distribution on the Shares shall be distributed directly to the Pledgee, which shall be entitled to retain all or part of these returns as part of the Pledged Assets. If the Pledgor were to nevertheless receive any such Dividend or any other distribution on the Pledged Assets, it shall transfer it to the Pledgee without undue delay.

4.3 Communications

The Pledgor shall at all times give the Pledgee a copy of any convening notice (including the agenda and any other accompanying documents) of shareholders' meetings of the Company promptly upon receipt thereof and shall give the Pledgee notice of any proposed written shareholders resolution at least ten (10) Business Days prior to the execution thereof by them and the Pledgor shall not, unless with the Pledgee's prior consent, waive the right (whether statutory or in accordance with the Articles) to any notice period in respect of the convening of shareholders' meetings of the Company. The Pledgor shall duly inform the Pledgee of any resolution taken at such meetings.

As long as no Event of Default has occurred and is continuing, this Clause 4.3 shall not apply to shareholders' meetings of the Company or written shareholders' resolutions dealing exclusively with (i) the approval of the annual accounts (not including the declaration of dividends), (ii) the granting of discharge to directors and auditors (iii) the appointment, dismissal and renewal of directors and auditors, and (iv) any changes to the Company's constitutional documents which are permitted under the Transaction Documents.

5. Representations and Warranties

5.1 The Pledgor (with respect to itself and the Pledged Assets) represents and warrants to the Pledgee that:

(a) it is a limited liability company, duly incorporated and validly existing and not in liquidation under the law of its jurisdiction, with power to enter into the Agreement and to exercise its rights and perform its obligations hereunder and all corporate and other action required to authorise its execution and performance of the Agreement has been duly taken;

(b) it has the power to own its assets and carry on its business as it is being conducted;

(c) the obligations expressed to be assumed by it in the Agreement are legal, valid, binding and enforceable obligations;

(d) (without limiting the generality of paragraph (c) above), the Agreement creates the security interests which it purports to create and those security interests are valid and effective;

(e) the entry into and performance by it of, and the transactions contemplated by, the Agreement do not and will not conflict with:

(i) any law or regulation applicable to it;

(ii) its the constitutional documents; or

(iii) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;

(f) the Shares are duly authorised, validly issued and fully paid up;

(g) it is the exclusive legal and beneficial owner of its respective Pledged Assets and that the Company's shareholders' register accurately reflects the number of shares held by it;

(h) it has not received a notice of any adverse claim by any person in respect of any of the Pledged Assets that would impair the Pledge in respect of such Pledged Asset or the enforcement of the Pledge in respect of such Pledged Asset;

(i) all Authorisations required or desirable:

(i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Agreement; and

(ii) to make the Agreement admissible in evidence in its jurisdiction,

have been obtained or effected and are in full force and effect;

(j) all Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect;

(k) the choice of governing law of the Agreement will be recognised and enforced in its jurisdiction;

(l) any judgment obtained in relation to the Agreement in the jurisdiction of the governing law will be recognised and enforced in its jurisdictions;

(m) under the laws of its jurisdiction it is not necessary that the Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the the Agreement or the transactions contemplated thereunder;

(n) no certificates relating to the Shares have been issued;

(o) with respect to the Company and itself:

(i) no judicial restructuring (*gerechtelijke reorganisatie/reorganisation judiciaire*) has been initiated or obtained;

(ii) no administrator, provisional liquidator, conservator, receiver, trustee or other similar official has been appointed to it, and there is no request for such appointment;

(iii) there is no cessation of payment (*staking van betalingen/cessation de paiement*) or loss of credit (*verlies van krediet/perte de crédit*); and

(iv) no event has occurred under any similar provision as applicable to it in its respective jurisdiction;

(p) the Articles are in full force and effect;

(q) the share register of the Company is up to date and correct;

(r) the entire fully diluted share capital of the Company, on the date hereof, is represented by one million (1,000,000) shares;

(s) it owns the Pledged Assets free and clear of any encumbrances and no conflicting Lien (or mandate with a view to the creation thereof), which includes the Pledged Assets or extends to the Pledged Assets, exists, save as permitted or arising under the Transaction Documents;

(t) there are no limitations, whether pursuant to the Articles or to any agreement, injunction, judgment or otherwise, to the transferability of the Shares or to the exercise of the voting rights attached thereto which in any way would impede or adversely affect the creation and enforcement of the Lien provided under the Agreement. There is no cause for suspension of the voting rights attached to the Shares;

(u) none of the Pledged Assets are subject to any seizure or other enforcement or conservatory measure;

(v) all Pledged Assets are capable of being pledged hereunder without the consent of any other party and the enforcement of the Pledge shall not require the consent of any other party;

(w) the Company has not issued to the Pledgor any founders' shares (*oprichtersaandelen/parts de fondateur*), profit certificates (*winstbewijzen/parts bénéficiaires*), warrants, options, convertible bonds (*converteerbare obligaties/obligations convertibles*) or other instruments convertible or exchangeable into shares of the Company, which do not form part of the Pledged Assets;

(x) the Company has not declared any Dividends in respect of the Shares that are still unpaid on the date of the Agreement; and

(y) if any of the Pledged Assets have been acquired by the Pledgor, or by any earlier owner, as part of an acquisition of a business or of another set of assets falling under article 50 of the Code for amicable and forced recovery of tax and non-tax debts (*Wetboek van de minnelijke en gedwongen invordering van fiscale en niet-fiscale schuldvorderingen/Code du recouvrement amiable et forcé des créances fiscales et non-fiscales*), article 3.12.1.0.14 of the Flemish Tax Code (*Vlaamse Codex Fiscaliteit /Code flamand de la Fiscalité*), article 41*quinquies* of the Law of 27 June 1969 amending the decree law of 28 December 1944 concerning the social security of workers, or article 16*ter* of the Royal Decree No. 38 of 27 July 1967 on the social status of self-employed persons (or any legislation replacing these articles), such acquisition has been rendered effective as against the relevant authorities by the notification or registration thereof.

5.2 Times when Representations made

Each representation and warranty made in Clause 5.1 is made by the Pledgor on the date hereof and is deemed to be made or repeated by the Pledgor on each date the Pledgor acquires a Future Share, with respect to such Future Share. When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

6. Restrictions and Undertakings

The Pledgor makes to the Pledgee the restrictions and undertakings set out below.

6.1 No Change

The Pledgor shall not waive any right attached to, nor amend in any way the terms of any of the Pledged Assets, except in the normal conduct of business and in a manner which is not

inconsistent with and does not depreciate, jeopardise or negatively affect the Agreement, the Pledge, the Pledged Assets or the rights of the Pledgee under the Agreement, or cause the occurrence of an Event of Default and dispose of or transfer the Pledged Assets.

6.2 Shares

The Pledgor will not permit the conversion of the Shares into dematerialised form (*gedematerialiseerde vorm/forme dématérialisée*) or take or permit to be taken any other action that may make the Collateral Law inapplicable to the Pledge.

6.3 Transferability

The Pledgor waives any rights or restrictions on the transfer of the Pledged Assets set out in the Articles and agrees that no restrictions will apply to any transfer of the Pledged Assets that may take place as a result of the enforcement of the Pledge in accordance with Clause 7 (*Enforcement*).

6.4 Acquisition

The Pledgor shall promptly notify the Pledgee of its acquisition of, or agreement to acquire, any Pledged Asset.

6.5 Negative Pledge

The Pledgor shall not create or permit to subsist (or mandate anyone to do so) any Lien, usufruct (*vruchtgebruik/usufruit*), option or third party right of any kind in respect of or over the Pledged Assets.

6.6 Disposal

The Pledgor shall not (agree to) sell, transfer, assign, encumber or otherwise dispose of any of the Pledged Assets or any part thereof without the prior written consent of the Pledgee.

6.7 Seizure

The Pledgor procures on its own behalf that no executory seizure (*uitvoerend beslag*/*saisie exécutoire*) is made on the Pledged Assets or on any constitutive part thereof, and that any conservatory seizure (*bewarend beslag/saisie conservatoire*) on the Pledged Assets or on any constitutive part thereof will be lifted within thirty (30) calendar days of it first being made.

6.8 Further Assurance

(a) The Pledgor shall at its own expense promptly do all such acts or execute all such documents as the Pledgee may reasonably specify (and in such form as the Pledgee may reasonably require in favour of the Pledgee or its nominee(s)):

(i) to perfect the Pledge created or intended to be created under or evidenced by the Agreement or for the exercise of any rights, powers and remedies of the Pledgee or the Noteholders provided by or pursuant to the Transaction Documents or by law;

(ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Pledge.

(b) The Pledgor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of the Pledge.

6.9 Securities

The Pledgor shall not, without the express prior written consent of the Pledgee, take any action to:

(a) cancel, reduce, redeem, or put under option any shares or other securities of the Company, or issue securities convertible or exchangeable into shares, or to decrease the capital of the Company; or

(b) permit the issuance of any certificates with respect to the Shares.

7. Enforcement

7.1 Principle

At any time on or after an Enforcement Event has occurred, the Pledge shall become immediately enforceable and the Pledgee may exercise all rights and remedies it possesses under any applicable law, and may act generally in relation to the Pledged Assets in such manner as it shall reasonably determine.

The Pledgor covenants and agrees that it will co-operate fully with any requests made by the Pledgee in connection with such exercise, including (without limitation) the execution and delivery of such documents as the Pledgee shall reasonably deem necessary or advisable for any such exercise of rights and remedies including any sale or other disposition, to be made in compliance with any applicable law.

7.2 Appropriation

Without prejudice to Clause 7.1 (*Principle*), at any time on or after an Enforcement Event has occurred, the Pledgee shall, in particular and without limitation, have the right to appropriate all or part of the Pledged Assets as set forth in article 8 § 2 of the Collateral Law by sending a notice to the Pledgor. The so appropriated Pledged Assets shall be valued by an external and independent auditor (*réviseur/revisor*) who is a member of the Belgian *Institut des Réviseurs d'Entreprises/Instituut der Bedrijfsrevisoren* that will be appointed by the Pledgee.

The external auditor so appointed (the "**Expert**") will determine the value of said Pledged Assets at fair market value at the time of the enforcement of the Pledge (the "**FMV**") within twenty (20) Business Days, taking into account the following valuation principles:

(a) the Expert will calculate the FMV on the basis that the Company and its subsidiaries (if any) are a going concern, unless the Expert reasonably determines that given the circumstances at the time of the valuation, that assumption is no longer appropriate;

(b) the Expert will calculate the FMV on the basis of a multi-criteria approach consistent with best practices for business valuations and include, if the Company and its subsidiaries (if any) are a going concern, a combination of discounted cash flows peer group multiple analyses and precedent transaction multiple analysis; and

(c) the Expert must rely on any information obtained from the Pledgor, the Company and the Noteholders (including the latest audited annual consolidated financial statements of the Company and including any projections included in the latest business plan adopted by the board of directors of the Company, unless the Expert reasonably determines that given the circumstances at the time of valuation those projections are no longer accurate) to apply the valuation methods.

The valuation of the Expert shall be binding upon the Pledgor and the Pledgee, without prejudice to the Pledgee's right to determine which enforcement method to pursue.

If the Pledged Assets are appropriated as aforementioned, their value shall be applied as provided in Clause 8 (*Application of Proceeds*) and the Pledgee is irrevocably authorized, acting individually and with the right to be substituted, to record the transfer of the so appropriated Pledged Assets in the Company's shareholders' register and to do whatever is necessary or useful to implement this power and make the transfer enforceable against the Company and third parties.

7.3 Disposal

If the Pledgee, subject to the provisions of the Transaction Documents, at any time on or after an Enforcement Event has occurred, elects to sell or otherwise dispose of the Pledged Assets, it shall have the right to deliver, assign, and transfer such Pledged Assets to the purchaser thereof, free from any claim or right of whatsoever kind, together with any accessory rights attached thereto.

8. Application of Proceeds

All amounts received or recovered by the Pledgee in exercise of its rights under the Agreement shall be applied in accordance with the relevant provisions of the Intercreditor Agreement.

The Pledgor expressly waives the provisions of articles 5.208 and 5.209 of the Belgian Civil Code.

9. Rights of the Pledgee

9.1 Rights

The Pledgee shall have (either in its own name or in the name of the Pledgor or otherwise and in such manner and on such terms and conditions as the Pledgee thinks fit, and either alone or jointly with any other person) the rights set out in the Agreement and, generally, the right to do anything else it may reasonably think fit for the protection and enforcement of the Pledge or incidental to the exercise of any of the rights conferred on the Pledgee under or by virtue of any Transaction Document.

9.2 Transferability

The benefit of the Pledge and of the Agreement shall pass automatically to any transferee of all or part of the Secured Obligations, irrespective of whether such transfer shall take place by way of assignment, novation by substitution of creditor or otherwise, or to any successor Collateral Agent in accordance with the relevant provisions of the Transaction Documents. Such transferee or successor Collateral Agent shall henceforth be regarded as the Pledgee for all purposes of the Agreement, and the transferor or the original Pledgee may transfer possession of the Pledged Assets to it.

10. Duties of the Pledgee

The Pledgee shall not be under any obligation to take any steps necessary to preserve any rights in the Pledged Assets against any other parties, but may do so at its sole discretion, and all expenses incurred in connection therewith shall be for the account of the Pledgor. If any such expenses are borne by the Pledgee, the Pledgor shall on first demand reimburse the Pledgee therefore and this reimbursement obligation shall be part of the Secured Obligations.

11. Liability of the Pledgee

The Pledgee shall not be liable to the Pledgor or any other person for any costs, losses, liabilities or expenses relating to the enforcement of the Pledge or from any act, default, omission or misconduct of the Pledgee or its respective officers, employees or agents in relation to the Pledged Assets or in connection with the Agreement or any Transaction Document except to the extent caused by their own gross negligence (*zware fout/faute grave*) or wilful misconduct (*bedrog/dol*).

12. Power of Attorney

12.1 Appointment

The Pledgor irrevocably appoints the Pledgee and each director and employee of the Pledgee severally as its attorney (with full power of substitution) to, on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit, execute and do all such acts and things which the Pledgor is required to do and fails to do under the provisions of the Agreement.

12.2 Ratification

The Pledgor agrees to ratify and confirm whatever any such attorney shall reasonably do in the exercise or purported exercise of the power of attorney granted by it under Clause 12.1 (*Appointment*).

13. Saving Provisions

13.1 Waiver

The Pledgor hereby irrevocably waives any right of recourse, right, action and claim (including for the avoidance of doubt, by way of set-off) that it may have by way of subrogation against the Company and/or any direct or indirect subsidiaries of the Company and other Obligors, further to an enforcement of the Pledge by any means whatsoever. For the avoidance of doubt this waiver is final and will subsist after all Secured Obligations have been unconditionally and irrevocably paid and discharged in full.

Without affecting the intention set forth in Section 2 (*Guaranty*) of the Guaranty, to the extent applicable and permitted by applicable law, the Pledgor waives the benefit of articles 5.247, sub-paragraphs 2 and 3, 5.162, §2, sub-paragraph 2, 1° and 5.262 of the Belgian Civil Code, articles 2021, 2022, 2026 up to and including 2030, 2032, 2033 and 2036 up to and including 2039 of the Belgian Old Civil Code and any other provision of law that may have a similar effect.

Each Party hereby acknowledges that the provisions of article 5.74 of the Belgian Civil Code shall not apply to it with respect to its obligations under the Agreement and that it shall not be entitled to make any claim under article 5.74 of the Belgian Civil Code.

13.2 Continuing Security

Subject to Clause 14 (*Discharge of the Pledge*), the Pledge is a continuing Lien and will extend to the ultimate balance of the Secured Obligations, regardless of any intermediate payment or discharge in whole or in part and is in addition to and independent of, and shall not prejudice or merge with, any other Lien (or any right of set-off) which the Pledgee may hold at any time for the Secured Obligations or any of them. The Pledge will not be discharged by the entry of any Secured Obligations into any current account, in which case the Pledge will secure any

provisional or final balance of such current account up to the amount in which the Secured Obligations were entered therein.

13.3 Reinstatement

If any discharge, release or arrangement (whether in respect of any of the Secured Obligations or any security for the Secured Obligations or otherwise) is made by the Noteholders in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Pledgor under the Agreement will continue or be reinstated as if the discharge, release or arrangement had not occurred.

13.4 Waiver of Defences

Neither the obligations of the Pledgor under the Agreement nor the Pledge will be affected by an act, omission, matter or thing which would reduce, release or prejudice any of its obligations under any of the Transaction Documents unless otherwise stated therein (without limitation and whether or not known to it or to the Pledgee) including:

(a) any time, waiver or consent granted to, or composition with, any Obligor or any other person;

(b) the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the group;

(c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, any Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;

(e) any amendment (however fundamental) or replacement of a Transaction Document or any other document or security (including any increase of the facilities);

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Transaction Document or any other document or security; or

(g) any insolvency or similar proceedings to the extent permitted by law.

13.5 Immediate Recourse

The Pledgor waives any right it may have of first requiring the Pledgee (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Pledgor under the Agreement.

13.6 Deferral of Pledgor's Rights

Until all the Secured Obligations have been irrevocably paid in full and all facilities which might give rise to Secured Obligations have terminated and unless the Pledgee otherwise directs, the Pledgor will not exercise any rights which it may have by reason of performance by it of its obligations under the Transaction Documents:

(a) to be indemnified by any other Obligor;

(b) to claim any contribution from any other Obligor of its obligations under the Transaction Documents; and/or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Pledgee under the Transaction Documents or of any guarantee or other security taken pursuant to, or in connection with, the Transaction Documents by the Pledgee.

13.7 Additional Rights

All the rights of the Pledgee pursuant to the Agreement will be in addition to any other right vested in the Pledgee and all such rights may be exercised in accordance with the relevant Transaction Documents.

13.8 Novation

In accordance with article 5.247, sub-paragraphs 2 and 3 of the Belgian Civil Code and without prejudice to the scope of the Secured Obligations, the Pledgor and the Pledgee agree that in the event of novation of all or any part of the Secured Obligations or the change in or replacement of the Noteholders, the Pledge will be maintained automatically and without any further formality or consent, to secure the Secured Obligations as novated, in favour of the new Pledgee.

14. Discharge of the Pledge

14.1 The Pledge shall be discharged by, and only by, the express release thereof granted by the Pledgee, in accordance with the terms of the Intercreditor Agreement.

14.2 The Pledgee may at any time without discharging or in any way affecting the Pledge:

(a) grant the Pledgor or any other Obligor any period of time or indulgence;

(b) concur in any moratorium of the Secured Obligations;

(c) abstain from taking or perfecting any other security and discharge any other security; and

(d) abstain from exercising any right or recourse or from proving or claiming any debt and waive any right or recourse.

15. General

15.1 Election of Domicile

For the purposes of any notice in accordance with this Clause 15.1 and any legal action in connection with the Agreement, the Pledgor hereby elects domicile at the offices of the Company and undertake to maintain at all times an elected domicile in Belgium.

15.2 Costs and Expenses

The Pledgor will indemnify or reimburse the Pledgee and each other Indemnitee (as defined in the Securities Purchase Agreement) to the same extent and subject to the same terms that Fisker Inc. has agreed to indemnify the Indemnitees under Section 8(k) of the Securities Purchase Agreement, which Section 8(k) is hereby incorporated by reference, *mutatis mutandis*

The Pledgor will indemnify or reimburse the Pledgee upon demand the amount of any and all costs and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for the Pledgee and of any experts and agents (including, without limitation, any collateral trustee which may act as agent of the Pledgee), which the Pledgee may incur in connection with (i) the preparation, negotiation, execution, delivery, recordation, administration, amendment, waiver or other modification or termination of the Pledge, the Agreement and any other

Transaction Documents, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any Pledged Assets, (iii) the exercise or enforcement of any of the rights or remedies of the Pledgee hereunder, or (iv) the failure by any Pledgor to perform or observe any of the provisions hereof.

15.3 Ambiguity, Conflict or Inconsistency

(a) Where there is any ambiguity or conflict between the rights conferred by non-mandatory law and those conferred by or pursuant to the Agreement, the terms of the Agreement shall prevail.

(b) In the event of any inconsistency between the terms of the Agreement and the Securities Purchase Agreement or the Intercreditor Agreement, as applicable, the terms of the Securities Purchase Agreement or the Intercreditor Agreement, as applicable shall prevail, *provided that* the validity and enforceability of the Pledge is not affected as a consequence.

15.4 No Waiver

No failure to exercise, nor any delay in exercising, on the part of the Pledgee, any right or remedy under the Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

15.5 Delegation of Powers

The Pledgee will be entitled, at any time and as often as may be expedient, to delegate all or any of the powers and discretion vested in them by, the Agreement in such manner, upon such terms and to such person as the Pledgee in its absolute discretion may think fit.

15.6 Benefit of the Agreement

The Agreement will be binding on and inure for the benefit of the Pledgor and the Pledgee and their respective successors.

15.7 Notices

Any notice or other communication to be served pursuant to the Agreement shall be served in accordance with the provisions of Section 8(f) of the Securities Purchase Agreement.

15.8 Amendment

None of the terms and conditions of the Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Pledgor and the Pledgee and in accordance with the terms of the Transaction Documents.

15.9 Partial Invalidity

(a) If, at any time, any provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

(b) In case of any such illegality, invalidity or unenforceability, the Parties will negotiate in good faith with a view to agree on the replacement of such provision by a provision which is legal, valid and enforceable and which is to the extent practicable in

accordance with the intents and purposes of the Agreement and which in its economic effect comes as close as practicable to the provision being replaced.

15.10 Evidence of the Secured Obligations

Any determination or certificate by the Pledgee as to the amount and the terms and conditions of the Secured Obligations owing by the Pledgor is prima facie evidence of the matters to which it relates.

15.11 Counterparts

The Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.

15.12 Governing Law

The Agreement and any non-contractual obligations arising out of or in connection with it are governed by Belgian law.

15.13 Jurisdiction

The courts of Brussels have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement (including a dispute relating to the existence, validity or termination of the Agreement or any non-contractual obligation arising out of or in connection with the Agreement).

This Agreement has been executed in two (2) originals outside of Belgium on the day and year first written above, and each Party acknowledges receipt of 1 (one) signed original.

(Signature page follows)

The Pledgor

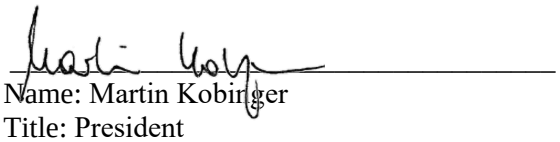
FISKER GROUP INC.

DocuSigned by:
Geeta Fisker
11A794B0BECE4B8...

Name: Mrs Geeta FISKER
Title: Authorised Signatory

The Pledgee

CVI INVESTMENTS, INC.
By: Heights Capital Management, Inc., its authorized agent



Name: Martin Kobinger
Title: President

Schedule 1

Company Letter

[On letterhead of the Company]

By Registered Mail with Acknowledgment of Receipt

To: [*Pledgee*]
[*Attn. [●]*]
[*Address*]

[*Date*]

Dear Sir, Madam,

Pledge of Shares

Reference is made to the share pledge agreement entered into on 5 June 2024 between Fisker Group Inc. as pledgor (the "**Pledgor**") and yourselves as pledgee with respect to one million (1,000,000) shares in our company (the "**Share Pledge Agreement**").

This is to confirm that:

(a) we have full knowledge of the terms and conditions of the Share Pledge Agreement;

(b) we accept the reimbursement obligation of our company set forth in Clause 0 (*Duties of the Pledgee*) of the Share Pledge Agreement;

(c) we accept the power of attorney granted under and any recording obligation set forth in Clause 3 (*Perfection*) of the Share Pledge Agreement;

(d) we accept to duly record in the share register any transfer of the Shares in accordance with Clause 7 (*Enforcement*) of the Share Pledge Agreement;

(e) we accept the election of domicile by the Pledgor as set forth in Clause 15.1 (*Notices and Election of Domicile*);

(f) to the best of our knowledge, the representations and warranties of the Pledgor in Clause 5 (*Representations and warranties*) of the Share Pledge Agreement are correct. We will let you know immediately of any change that would cause these representations to be no longer correct;

(g) Fisker Group Inc. is recorded in our share register as the holder of one million (1,000,000) shares in our company; and

(h) we have no notice of any transfer of such shares to a third party, nor of any attachment or other encumbrance thereon, so that to the best of our knowledge each Pledgor owns such shares free and clear of any encumbrances.

Yours sincerely,

Fisker Belgium SRL

_____

_____

Name:
Title:

EXHIBIT R

WHITE & CASE

Dated 30 May 2024

Securities Account Pledge Agreement

between

Fisker Group Inc.
(the Grantor)

and

CVI INVESTMENTS, INC.
(the Collateral Agent)

and

The Original Beneficiaries

as Beneficiaries

White & Case LLP
Avocats au Barreau de Paris
Toque Générale: J002
19, Place Vendôme
Paris, 75001
France

This Agreement is made on 30 May 2024

Between:

(1) **Fisker Group Inc.**, a corporation organized under the laws of Delaware, USA, having its registered office located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266, USA (the "**Grantor**"),

(2) **CVI Investments, Inc.,** a company having its registered office at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, acting in its capacity as Collateral Agent, acting in its name for and on behalf of the Beneficiaries (as such term is defined below) (the "**Collateral Agent**").

(3) **The Original Beneficiaries** listed in Annex 1 (*List of Beneficiaries*) as beneficiaries (the "**Original Beneficiaries**") represented by the Collateral Agent in accordance with the provisions of the Intercreditor Agreement (as defined below).

Recitals:

(A) Fisker Inc., a company organized under the laws of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266 (the "**Company**") is party to that certain securities purchase agreement dated 10 May 2024 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Securities Purchase Agreement**"), by and among the Company and each party listed as a "Buyer" on the "Schedule of Buyers" attached thereto (each a "**Buyer**" and collectively, the "**Buyers**"), pursuant to which the Company has sold, and may in the future be required to sell, to the Buyers, and the Buyers have purchased, and may in the future exercise their right to purchase, notes issued pursuant to the form appended as Exhibit A-1 thereto (as may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, collectively, the "**Notes**") for an aggregate original principal amount of up to $7,500,000.

(B) Pursuant to a security and pledge agreement dated 10 May 2024 (as amended, restated, extended, replaced or otherwise modified from time to time, the "**Security and Pledge Agreement**") between, among others, the Company and CVI Investments, Inc. as Collateral Agent, the Grantor has *inter alia* agreed to grant in favor of the Beneficiaries security over the Secured Assets (as such term is defined below).

(C) The respective rights of the Beneficiaries over the Secured Assets are described in the Intercreditor Agreement.

Now, therefore, it is agreed as follows:

1. Definitions and Interpretation

1.1 Definitions

(a) Capitalised terms defined in the Securities Purchase Agreement and the Notes have, unless expressly defined in this Agreement, the same meaning in this Agreement.

(b) For the purpose of this Agreement, the following terms shall have the following meanings:

"**Agreement**" means this agreement, including its Recitals and its Annexes.

"**Beneficiaries**" has the meaning given to "*Bénéficiaires*" in the Statement of Pledge. A list of the Beneficiaries at the date hereof is attached as Annex 1 (*List of Beneficiaries*).

"**Civil Code**" means the "*Code Civil*" as in effect from time to time in France.

"**Commercial Code**" means the "*Code de commerce*" as in effect from time to time in France.

"**Declared Default**" means an Event of Default in respect of which a written redemption notice has been served by a Noteholder in accordance with paragraph (b) of Section 4 (*Rights Upon Event of Default*) of the Notes.

"**Discharge Date**" means the date on which all of the Secured Obligations have been irrevocably and unconditionally discharged in full.

"**Enforcement Event**" means any failure to pay on its due date any relevant Secured Obligations

(i) which constitutes an Event of Default under paragraph (a)(iv) of Section 4 *(Rights Upon Event of Default)* of the Notes or

(ii) after the occurrence of an Event of Default in respect of which a written redemption notice has been served by a Noteholder in accordance with paragraph (b) of Section 4 (*Rights Upon Event of Default*) of the Notes or

(iii) after a mandatory redemption upon the occurrence of any Bankruptcy Event of Default in accordance with paragraph (c) of Section 4 *(Rights Upon Event of Default)* of the Notes;.

"**Event of Default**" has the meaning given to such term in Section 4(a) of the Notes.

"**Intercreditor Agreement**" means the senior intercreditor agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), dated 10 May 2024, and entered into among, *inter alios*, CVI Investment, Inc. as First Lien Representative for the First Lien Claimholder (as defined therein), CVI Investment, Inc., as collateral agent for the First Lien Claimholders, CVI Investment, Inc., as Junior Lien Representative for the Junior Lien Claimholder (as defined therein), CVI Investment, Inc., as collateral agent for the Junior Lien Claimholders, and acknowledged and agreed to by Fisker Inc. and the other Grantors (as defined therein).

"**Transaction Documents**" has the meaning given to such term in the Security and Pledge Agreement.

"**Formal Notice**" has the meaning given to such term in Clause 5.3 (*Appropriation*).

"**Monetary and Financial Code**" means the "*Code monétaire et financier*" as in effect from time to time in France.

"**Notice Period**" has the meaning given to such term in Clause 5.3 (*Appropriation*).

"**Pledged Securities Account**" means the Securities Account.

"**Secured Assets**" means the Securities, the Pledged Securities Account.

"**Secured Obligations**" has the meaning given to the term "*Obligations Garanties*" in the Statement of Pledge.

"**Securities**" means shares, convertible bonds and any other securities within the meaning of article L. 211-1-II of the Monetary and Financial Code, owned by the Grantor and credited to the Securities Account from time to time (including those listed in Annex 2 (*Secured Assets*).

"**Securities Account**" means, in respect of the Securities Issuer, the securities account listed next to its name in Annex 2 (*Secured Assets*) or in the Statement of Pledge under the heading "*Titres-Financiers*", opened in the books of the Securities Account Holder in which are registered the Securities of such Securities Issuer owned by the Grantor from time to time.

"**Securities Account Holder**" means the Securities Issuer, in its capacity as holder of the Securities Account.

"**Securities Income and Proceeds**" means all income and proceeds (*fruits et produits*) (including dividends, prepayment of dividends, reimbursements, redemption and other distributions) paid or payable in respect of the Securities in any currency.

"**Securities Issuer**" means the company set forth under the heading "Securities Issuer" in Annex 2 (*Secured Assets*).

"**Securities Pledge**" means the Security over the Secured Assets constituted pursuant to the Statement of Pledge.

"**Security**" has the meaning ascribed to such term in Clause 2 (*The Security*).

"**Security Documents**" means this Agreement and the Statement of Pledge.

"**Statement of Pledge**" means the statement of pledge (*déclaration de nantissement de compte de titres financiers*) substantially in the form attached as Annex 3 (*Form of Statement of Pledge of Securities Account*).

1.2 Construction

(a) Unless otherwise specified or implied by the context, any reference in this Agreement to:

(i) the "**Recitals**", a "**Clause**", a "**Paragraph**" or an "**Annex**" is deemed to be a reference to the recitals, a clause or a paragraph of, or an annex to, this Agreement;

(ii) an "**agreement**" or any other "**document**" is a reference to this agreement or document, including its annexes and schedules, as amended, restated and/or otherwise modified from time to time.

(b) Words importing the singular shall include the plural and vice versa.

(c) Unless a contrary indication appears, a time of day is a reference to Paris time.

(d) A reference to any person shall be construed so as to include its successors in title, permitted assignees and permitted transferees and, in the case of the Collateral Agent, any person for the time being appointed as Collateral Agent, in accordance with the Intercreditor Agreement.

2. The Security

2.1 As security for the full payment and due execution of the Secured Obligations, the Grantor hereby pledges ("*nantir*") in favor of the Beneficiaries, who hereby accept, pursuant to article L. 211-20 of the Monetary and Financial Code, its Pledged Securities Account (the "**Security**"), by signing the Statement of Pledge, and the Securities are thereby pledged in favor of the Beneficiaries; it being understood that pursuant to article L. 211-20 of the Monetary and

Financial Code, all securities registered on the Securities Account, those which are substituted for or complete them in any manner, are included in the scope of the pledge that is the subject of this Agreement and the Statement of Pledge.

2.2 In accordance with the provisions of article L.211-20 of the French *Code monétaire et financier*, each of the Grantor, the Collateral Agent and the Beneficiaries agrees to exclude the Securities Income and Proceeds from the scope of the Security.

2.3 The Statement of Pledge shall be signed simultaneously with this Agreement.

3. Securities Pledge

3.1 The Grantor agrees to as soon as reasonably practicable notify an executed copy of the Statement of Pledge to the Securities Account Holder and to instruct the Securities Account Holder to as soon as reasonably practicable issue a pledge certificate (*attestation de nantissement de compte-titres*) for the Securities Account in the form of Annex 4 (*Form of Certificate of Pledge of Securities Account*).

4. Operation of the Securities Account

4.1 Except as expressly permitted by the Transaction Documents, the Grantor may not dispose of the Securities.

5. Enforcement of the Security

5.1 General

Upon the occurrence of an Enforcement Event which is continuing, if there is any sum due under any of the Secured Obligations which remains unpaid, the Collateral Agent may, subject to the provisions of the Intercreditor Agreement, in the name and for the account of the Beneficiaries, exercise over the Secured Assets all of the rights, actions and liens that the law grants to secured creditors (*créanciers nantis*) and, in particular, may proceed with any enforcement of the Security pursuant to Clauses 5.2 (*Securities*) to 5.3 (*Appropriation*).

5.2 Securities

(a) The Collateral Agent may enforce any Security over the Securities either:

(i) through a sale by way of public auction following a formal notice of eight (8) days delivered in hands by the Collateral Agent to the debtor of the Secured Obligations or sent by letter with acknowledgement of receipt and notified to the shareholder's account holder pursuant to article L.211-20, V of the Monetary and Financial Code; or

(ii) by way of foreclosure (*attribution judiciaire*) pursuant to article 2347 of the Civil Code; or

(iii) in accordance with Clause 5.3 (*Appropriation*).

(b) For the avoidance of doubt and to the extent permitted by French Law, the Security over the Pledged Securities Account must be considered as a whole (*ensemble indivisible*) and, consequently, shall not be enforced at any time only for a portion of the collateral but for all of such collateral.

5.3 Appropriation

(a) Without prejudice to Clauses 5.1 (*General*) and 5.2 (*Securities*), the Collateral Agent may enforce any Security over the Securities through the direct appropriation by the Beneficiaries of the Securities registered in the Securities Account in accordance with article 2348 of the Civil Code, the transfer of ownership resulting from the appropriation taking place at the expiry of a period of three (3) Business Days (the "**Notice Period**") following the receipt by the Grantor of a notice (a "**Formal Notice**") sent by letter with acknowledgement of receipt by the Collateral Agent (the date of receipt of this notice being the date of the first presentation of such letter) (the "**Transfer Date**").

The valuation of the Securities at the Transfer Date (the "**Valuation**") shall be determined by an expert appointed as specified below (the "**Expert**") in accordance with the following provisions:

(i) the Expert's mission shall be the determination of the Valuation (the "**Mission**");

(ii) the Expert shall be appointed in accordance with the following provisions:

(A) the expert, which shall be based in France, shall be the first person mentioned in the following list: EY France, Deloitte France and PwC France unless the Collateral Agent and the Grantor consider by mutual agreement that such person is in a conflict of interest situation or unless such expert refuses to proceed with the Valuation or is unavailable to do so, in which case the expert shall be the first next person of the aforementioned list, and thereafter in the order of priority aforementioned until an expert is appointed;

(B) if all of the persons mentioned in the aforementioned list are in a conflict-of-interest situation or refuse to determine the Valuation or are unavailable to do so, the Expert shall be an amicable expert appointed jointly by the parties to this Agreement among the *experts près la Cour d'Appel de Paris* within five (5) Business Days from the receipt of the Formal Notice, or

(C) if the parties fail to appoint jointly such amicable expert within such period, the Expert shall be an expert appointed by the *Président* of the Tribunal de commerce de Paris acting by way of emergency proceeding (*procédure accélérée au fond*) pursuant to article 1843-4 of the Civil Code.

The Expert shall notify the Valuation to the Grantor and the Collateral Agent no later than 60 days after its appointment. Such Valuation shall be final and binding on the parties, without any recourse except in the case of manifest error. In case of manifest error, and if such manifest error is acknowledged by the *Président* of the Tribunal de commerce de Paris, a new expert shall be appointed in accordance with the provisions of paragraph (ii) above. The costs and fees of the Expert shall be borne by the Grantor.

(b) In the event that the Secured Obligations are denominated in a currency other than Euro, the exchange rate used for the valuation or the enforcement of any Security will be the daily exchange rate of the Euro against that currency as published by the ECB at the date of completion of the relevant operation.

(c) If the aggregate amount of the Valuation exceeds the amount of the Secured Obligations, the Collateral Agent shall pay to the Grantor the difference between those two amounts within a maximum period of (i) ten (10) Business Days as from the date of receipt of the proceeds of the resale of the Pledged Securities or (ii) twelve (12) months as from the date of appropriation of the Pledged Securities.

6. Representations and Warranties of the Grantor

The Grantor makes the representations and warranties to the Collateral Agent and the other Beneficiaries set forth in this Clause 6 (*Representations and Warranties of the Grantor*) only in respect of itself and its Subsidiaries and in respect of its Secured Assets and the Secured Assets of its Subsidiaries.

6.1 General

(a) It has all necessary powers and full capacity to sign and perform the Security Documents to which it is a party and all authorisations required in connection with its entry into and performance of, and the validity and enforceability of the Security Documents to which it is a party and the Security created thereby, have been obtained or effected (as appropriate) and are in full force and effect.

(b) The Security granted pursuant to this Agreement and the Statement of Pledge, is a first priority pledge, validly created and its obligations resulting from the Security Documents and the Security are legally valid, binding and enforceable against it in accordance with their terms, subject to any legal reservation included in any legal opinion obtained by the Collateral Agent in respect of the Pledge and/or this Agreement and applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to principles of general application.

6.2 Encumbrances

(a) On the date of this Agreement, (i) it has not granted, any pledge, assignment, security interest, option or other encumbrance or right in or over all or part the Secured Assets and each of the Secured Assets is free of any right, option or security interest, in each case, except for (a) the Security and (b) any statutory lien and privileges *(privileges legaux)* and (ii) the Secured Assets are not subject to any assignment, subrogation, delegation or transfer.

(b) On the date of this Agreement, the Secured Assets are not subject to any attachment (*saisie*), escrow arrangement (*séquestre*) or any other similar procedure.

6.3 Title to Secured Assets; Information on the Secured Assets

(a) All information set forth on Annex 2 (*Secured Assets*) and all other information relating to the Secured Assets and any report or certificate delivered pursuant to the Agreement is, on the date on which it is delivered, complete and accurate in respect of any material issue which, if incorrect or incomplete, would adversely affect the Security.

(b) It is the sole owner of the Secured Assets and has full ownership of and title to each Secured Asset.

(c) The Securities are fully paid up and the Securities represent (i) 100% of the securities of the Securities Issuer on the date of this Agreement or on the date of the Statement of Pledge and (ii) on the date of this Agreement the percentage of the share capital of the Securities Issuer as set forth in Annex 2 (*Secured Assets*).

(d) There is no provision (approval, preemption or other) in the by-laws (*statuts*) of the Securities Issuer which would restrict the creation of the Securities Pledges or the exercise by the Beneficiaries of their rights under the Agreement or the Statement of Pledge.

(e) The Securities Issuer has not issued any securities or other shares other than the Securities owned by the Grantor.

6.4 Repetition

Subject to paragraph (b) below, the representations and warranties in this Clause 6 are:

(a) made by the Grantor on the date of this Agreement;

(b) in the case of Clauses 6.1 (*General*), 6.3(a) and 6.3(b), deemed to be repeated by the Grantor on each date on which any representations and warranties are deemed to be repeated under the Securities Purchase Agreement,

in each case with reference to the facts and circumstances then existing.

7. Undertakings of the Grantor

The Grantor undertakes to the Beneficiaries as set forth in this Clause 7 (*Undertakings of the Grantor*) and such undertakings shall apply as of the date of this Agreement and shall remain in effect for as long as this Agreement shall continue.

7.1 Disposals and Encumbrances

It shall not:

(a) sell, transfer, in any manner whatsoever, any of the Secured Assets (in whole or in part), except as permitted under the Transaction Documents;

(b) grant or permit to exist a security interest, pledge, lien or any other right or option on the Secured Assets, except for (i) the Security and (ii) any statutory liens and privileges (*privileges légaux*);

(c) modify or restrict the rights pertaining to the Secured Assets in a manner prohibited by the Agreement and/or the Transaction Documents and, more generally, not to do or cause or permit to be done anything which may adversely affect the Security, the Secured Assets or the rights of the Beneficiaries under any Security Document.

7.2 Modifications to Rights

It shall not use any voting rights in respect of the Securities in a way which would be contrary to the provisions of the Agreement or which would prejudice the ability of the Collateral Agent to enforce the Security.

7.3 Other Dealings with Secured Assets

It shall not:

(a) debit (or cause the Securities Account Holder to debit) any Securities credited on any Securities Account from time to time, except as permitted under the Transaction Documents;

(b) enter into or permit to subsist any option or other arrangement whereby any person has the right (whether or not exercisable only on a contingency) to require the Grantor to sell or otherwise dispose of all or any part of the Secured Assets except as otherwise permitted under the Transaction Documents; or

(c) allow the Securities Issuer's by-laws (*statuts*) to contain any provision (*agrément*, preemption or other) which would limit in any way the exercise by the Beneficiaries of their rights under any Security Document.

7.4 Further Assurances

It shall:

(a) promptly cause to be registered on the Pledged Securities Account any new shares and any other new securities issued by the Securities Issuer and subscribed by the Grantor, so that all the shares and other securities issued by the Securities Issuer and held by the Grantor are pledged in favor of the Beneficiaries at any time, and immediately upon such registration, it shall instruct the Securities Issuer to notify such registration to the Collateral Agent;

(b) credit (or cause to be credited) any Securities Income and Proceeds, immediately upon the same becoming available for payment, to (i) any of the Grantor's bank accounts that are pledged in favor of the Collateral Agent and listed in the agreement entitled "Blocked Account Control Agreement Shifting Control" dated January 18, 2024 and entered into between notably the Collateral Agent, the Grantor and JPMorgan Chase Bank N.A. as Bank, as amended from time to time (the "**BACA**") or any other agreement which would supersede the BACA, or (ii) to any other bank account as agreed between the Pledgor and the Collateral Agent;

(c) promptly provide the Collateral Agent with such information as the Collateral Agent may from time to time reasonably require in relation to the Secured Assets;

(d) whenever the Beneficiaries attempt to enforce the Security in accordance with Clause 5 (*Enforcement of the Security*) above, take any action that the Beneficiaries may reasonably require in order to facilitate the sale of the Securities and the exercise by the Beneficiaries of all the rights and powers under the Security Documents or pursuant to the applicable laws; and

(e) at any time, at the request of the Collateral Agent, execute and remit any document and do all that is necessary to enable the Beneficiaries to exercise their rights, actions and privileges as such are granted to them under law and the Security Documents.

8. Term

8.1 This Agreement and the Security will remain in full force and effect until the Discharge Date and be of no further effect as soon as the Discharge Date has occurred.

8.2 To the extent that the Discharge Date has occurred, upon request from the Grantor and at the Grantor's expense, the Collateral Agent shall release the Security.

9. Irrevocability

This Agreement is irrevocable and shall remain in full force, to the extent permitted by applicable law, notwithstanding:

(a) any renewal or extension of any of the Transaction Documents and/or the Secured Obligations;

(b) any novation or other modification of any of the Transaction Documents and/or the Secured Obligations; and

(c) any nullity, invalidity, illegality or unenforceability of all or part of the provisions of any of the Transaction Documents and/or the Secured Obligations and/or any other security interest or document mentioned in or relating to any of the Transaction Documents or any annexes thereto, in particular as security for any restitution obligation of the Grantor.

10. Transfer

Any beneficiary of a transfer of all or part of the rights and/or obligations of a Beneficiary under the Notes, after the date of the Agreement, will benefit ipso jure from the Security, and any reference to the Beneficiaries will include such new beneficiary, which the Grantor acknowledges and expressly accepts.

11. Notice

11.1 Communications in writing

Each communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, shall be made by fax, electronic mail or letter.

11.2 Addresses

The address, electronic mail address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Agreement is:

(a) to the Grantor:
Fisker France c/o Fisker Inc.
Address: 1888 Rosecrans Avenue, Manhattan Beach, CA 90266
Email: legal@fiskerinc.com
Attention of: Dr. Geeta Gupta-Fisker and Corey MacGillivray

(b) to the Collateral Agent:
Address: c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111
Email: heightsnotice@sig.com
Attention of: Martin Kobinger, President

or any substitute address, fax number, electronic mail address, or department or officer as the Party may notify to the Collateral Agent (or the Collateral Agent may notify to the other Parties, if a change is made by the Collateral Agent) by not less than five (5) Business Days' notice.

11.3 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

(i) if by way of registered letter with acknowledgement of receipt, on the date of first submission;

(ii) if by way of letter delivered by hand against a receipt, on the date of delivery of the letter;

(iii) if by way of e-mail, on the date of receipt or, if the e-mail is received after 6:00 p.m., on the next Business Day;

and, if a particular department or officer is specified as part of its address details provided under Clause 11.2 if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Collateral Agent will be effective only when actually received by the Collateral Agent and then only if it is expressly marked for the attention of the department or officer mentioned in Clause 11.2 (or any substitute department or officer as the Collateral Agent shall specify for this purpose).

All notices and other communications to be made to the Beneficiaries for the purposes of this Agreement shall be effective only if made to the Collateral Agent.

12. Expenses

The Grantor shall pay to the Collateral Agent any expense (including the reasonable fees, costs, expenses and disbursements of counsel) and costs which the Collateral Agent may incur in connection with (i) the preparation, negotiation, execution, delivery, administration, amendment, waiver or other modification, or termination of this Agreement or release of any of the Collateral Agent's rights under this Agreement and the Security, (ii) the custody, preservation, collection from, or other enforcement of the Security, (iii) the exercise or enforcement of any of the rights or remedies of the Collateral Agent or the Beneficiaries hereunder, or (iv) the failure by the Grantor to perform or observe any of the provisions hereof, in accordance with the provisions of the Transaction Documents.

13. Miscellaneous

13.1 In the event any provision hereof is or becomes illegal, invalid or unenforceable pursuant to a ruling of any applicable authority or court, such invalidity or nullity or unenforceability shall not affect the validity or enforceability of the other provisions hereof which are, as hereby expressly agreed, deemed to be several.

13.2 This Agreement and the Security will not and may not affect in any manner the nature and the scope of any obligation, security interest or guarantee that has been or might be contracted or furnished, either by the Grantor or by any third party and any such obligations, security interests or guarantees will be cumulative.

13.3 No failure or delay of the Collateral Agent or any Beneficiary to exercise any right or remedy will constitute a waiver of such right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise by the Collateral Agent or the Beneficiary or the exercise of any other right or remedy.

13.4 The Collateral Agent will have the right to enforce or seek the enforcement of this Agreement (or any provisions hereof) and the Security without any requirement to (i) exhaust any other remedies against the Grantor which may be available to it or to the Beneficiaries, (ii) enforce the Security in any particular order or (iii) enforce any other security or guarantees in favour of it or the Beneficiaries in connection with the Secured Obligations.

14. Governing Law – Jurisdiction

14.1 This Agreement shall be governed by, and interpreted in accordance with, French law.

14.2 The Commercial Court of Paris (*Tribunal de Commerce de Paris*) has exclusive jurisdiction to settle any dispute arising out or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**").

Made on 30 May 2024.

Fisker Group Inc.
as Grantor

By: Dr. Geeta Gupta-Fisker

CVI INVESTMENTS, INC.
as Collateral Agent, acting in its own name and for its own account as well as in the name and for the account of the Beneficiaries

By: Heights Capital Management, Inc., its authorized agent

By: MARTIN KOBINGER

The Original Beneficiaries (represented by the Collateral Agent)

CVI INVESTMENTS, INC.

By: Heights Capital Management, Inc., its authorized agent

By: MARTIN KOBINGER

Annex 1

List of Beneficiaries

The Beneficiaries as of the date of this Agreement are the following:

Beneficiary/ Registered Office/ Registration Number	**Capacity**
Entity: **CVI Investments, Inc.** Form: company formed in the Cayman Islands, the identification number being 301588 Registered office: c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111	Collateral Agent acting in its own name and in the name and on behalf of the Beneficiaries in this capacity
Entity: **CVI Investments, Inc.** Form: formed in the Cayman Islands, the identification number being 301588 Registered office: c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111	Noteholder

Annex 2

Secured Assets

Grantor	Securities Issuer	Securities Account	Securities/ % share capital
Fisker Group Inc.	Fisker France	2 bis	100 shares with a nominal value of €0.01 per share 100% of total share capital

Annex 3

Form of Statement of Pledge of Securities Account

Déclaration de Nantissement de Compte de Titres Financiers

La présente déclaration est soumise aux dispositions de l'article L.211-20 du Code Monétaire et Financier.

La soussignée :

Fisker Group Inc., une société de droit américain dont le siège social est situé 1888 Rosecrans Avenue, Manhattan Beach, California 90266, USA, immatriculée au Delaware, dûment représentée à l'effet des présentes, (ci-après désignée le « **Constituant** »)

Constitue en nantissement le compte spécial prévu à l'article L.211-20 du Code monétaire et financier identifié comme suit :

(a) Titres-Financiers :

le compte-titres n° 2 bis ouvert au nom du Constituant dans les livres de :

Fisker France, une société par actions simplifiée au capital social de 1€ dont le siège social est situé 3 boulevard de Sebastopol, 75001 Paris, France, immatriculée au registre du commerce et des sociétés de Paris sous le numéro unique d'identification 909 963 704 RCS Paris (ci-après désignée, en cette qualité, le « **Teneur de Compte** »), (ci-après désigné le « **Compte-Titres** » ou « **Compte Nanti** »),

Dans lequel sont inscrits initialement les Titres Financiers ci-après :

Emetteur	**Nature**	**Nombre**	**Valeur Nominale**
Fisker France	Actions ordinaires (les « **Actions** »)	cent (100) Actions	0,01 €

Au bénéfice des Créanciers Nantis suivants (les « Bénéficiaires ») :

Les Sociétés et les Établissements Financiers parties en qualité

(1) de mandataire des autres Bénéficiaires spécialement habilité à cet effet au titre de la Section 5.06 (*Appointment of the First Lien Collateral Agent for French Security Documents*) d'une convention inter-créanciers de droit américain en date du 10 mai 2024 en langue anglaise intitulée « *Senior Intercreditor Agreement* » (cette convention,

y compris ses annexes, étant ci-après définie comme la « **Convention Inter-Créanciers** ») conclue entre, entre autres, Fisker Inc. en qualité de société (au sens donné au terme « *Company* » dans la Convention de Subordination) et CVI Investments, Inc. en qualité d'agent des sûretés (au sens donné au terme « *First Lien Collateral Agent* » dans la Convention Inter-Créanciers) agissant tant en son propre nom et pour son propre compte qu'au nom et pour le compte des Bénéficiaires, ci-après en cette qualité, ainsi que ses successeurs, subrogés et ayants droit, l'« **Agent des Sûretés** »,

(2) d'obligataires (au sens donné au terme « *Noteholders* » dans une convention de garantie de droit américain en date du 10 mai 2024 en langue anglaise intitulée « *Guaranty Agreement* » (cette convention, y compris ses annexes, étant ci-après définie comme la « **Convention de Garantie** »), et ensemble avec leurs successeurs, subrogés et ayants droits, les « **Obligataires** », à savoir à ce jour ;

Bénéficiaire/ Siege social/ n° d'immatriculation	**Capacité**
CVI Investments, Inc., dont le siège social est situé c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111,USA, immatriculée aux Iles Caïmans sous le numéro 301588	Agent des Sûretés
CVI Investments, Inc., dont le siège social est situé c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111,USA, immatriculée aux Iles Caïmans sous le numéro 301588	Obligataire

En garantie du paiement des sommes dues au titre des obligations ci-après définies :

1. Nature :

Les obligations de paiement (présentes, futures, actuelles ou contingentes) de toutes les sommes en principal, intérêts, intérêts de retard ou autre (y compris des commissions, frais, dépenses ou indemnisation de quelque nature que ce soit dues ou pouvant être dues (y compris à la suite d'une accélération) à l'un quelconque des Bénéficiaires par :

(a) le Constituant en qualité de « *Guarantor* » au titre de la Convention de Garantie; et

(b) le Constituant au titre de la Convention (tel que ce terme est défini ci-après),

en ce inclus, à chaque fois, (x) les sommes dues au titre de la résiliation, résolution ou annulation de la convention concernée, et (y) les sommes dues au titre de la modification par avenant de cette convention, notamment par changement de la monnaie, par extension de la date de maturité, extension de la période de tirage, dans la limite toutefois d'un doublement de cette période, ou modification du calcul de l'intérêt, de l'indexation ou du taux de référence.

(ci-après, les « **Obligations Garanties** »).

2. Montant :

Toute somme en principal (en quelque monnaie que ce soit) due ou pouvant être due par le Constituant en sa qualité de Garant, y compris en cas de déchéance du terme, à l'un quelconque

des Bénéficiaires, au titre des « *Notes* » au sens donné à ce terme dans la Convention de Garantie d'un montant cumulé maximum en principal de 7.500.000€, augmentée de tous intérêts, intérêts de retard, commissions, frais et autres accessoires, calculés conformément aux termes de la convention concernée et/ou des lettres de commissions y afférentes.

Dans les conditions suivantes:

Conformément aux dispositions de l'article L.211-20 du Code Monétaire et Financier et aux stipulations d'une convention (la « **Convention** ») de nantissement de langue anglaise en date du 30 mai 2024 dont un exemplaire est remis à la Société avec la présente déclaration de nantissement.

Les termes en français commençant par une majuscule utilisés dans la présente déclaration et qui n'y ont pas été autrement définis auront la signification attribuée à leur équivalent anglais dans la Convention, le cas échéant, par renvoi aux termes définis dans la Convention de Garantie.

Fait le 30 mai 2024.

Le Constituant

Fisker Group Inc.

_____

Par :

Annex 4

Form of Certificate of Pledge of Securities Account

(Article L.211-20 of the Monetary and Financial Code)

After examination of the *déclaration de nantissement* of the securities account (the "**Statement of Pledge**"), dated 30 May 2024, signed by **Fisker Group Inc.**, a corporation organized under the laws of Delaware, USA, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266, USA, (the "**Grantor**") for the benefit of the *Bénéficiaires* (as defined in Statement of Pledge) (the "**Beneficiaries**"),

we, the undersigned, acting in our capacity as account holder (*teneur de compte*):

1. hereby certify the pledge for the benefit of the Beneficiaries of the securities account, the references of which appear in the Statement of Pledge, and the registration of such pledge in our books (the "**Securities Account**"),

2. hereby attach an inventory of the securities included in the Securities Account,

3. duly note that, in accordance with the provisions of the Securities Account Pledge Agreement dated 30 May 2024 among, *inter alios*, the Grantor and CVI Investments, Inc., as Collateral Agent (the "**Pledge Agreement**"), a copy of which we have received, the Grantor is prohibited from disposing of the securities recorded in the Securities Account, except in accordance with the provisions of clause 4.1(a) of the Pledge Agreement, and

4. accept all of our responsibilities arising under the provisions of the Pledge Agreement.

Signed on _____ 2024

The Account Holder

Fisker France

_____

By:

Annex

Inventory of Securities included in the Securities Account

Issuer	**Nature**	**Number of Securities**	**Nominal Value**
Fisker France	Ordinary shares (the "**Shares**")	one hundred (100) Shares	€0.01

EXHIBIT S

WHITE & CASE

Dated 10 **May 2024**

Charge Over Shares

Fisker Inc.
as Chargor

and

CVI Investments, Inc.
as Collateral Agent

White & Case LLP
5 Old Broad Street
London EC2N 1DW

Table of Contents

Page

This Deed (the "**Deed**") is dated 10 May 2024 and made between**:**

(1) **Fisker Inc.,** a company organized under the laws of the State of Delaware, with offices located at 1888 Rosecrans Avenue, Manhattan Beach, California 90266, United States of America (the "**Chargor**"); and

(2) **CVI Investments, Inc.**, a company incorporated and registered in the Cayman Islands with offices located at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, United States of America in its capacity as collateral agent ("**Collateral Agent**") for the Noteholders (as defined below).

Whereas:

(A) The Chargor is party to that certain securities purchase agreement, dated as of 10 May 2024 (the "**Securities Purchase Agreement**"), by and among the Chargor and each party listed as a "Buyer" on the "Schedule of Buyers" attached thereto (each a "**Buyer**" and collectively, the "**Buyers**"), pursuant to which the Chargor has sold, and may in the future be required to sell, to the Buyers, and the Buyers have purchased, and may in the future exercise their right to purchase, the "Notes" issued pursuant thereto (collectively, the "**Notes**").

(B) Pursuant to a security and pledge agreement, dated 10 May 2024 (the "**Security and Pledge Agreement**") between, among others, the Chargor and CVI Investments, Inc. as Collateral Agent, the Chargor has *inter alia* agreed to procure that it and certain of its direct and indirect subsidiaries would grant certain security interests for the benefit of the Noteholders.

(C) Therefore, as security for the due performance of the Secured Liabilities, the Chargor has agreed to grant a charge to the Collateral Agent for the benefit of the Noteholders over the Charged Shares, in accordance with the terms of this Deed.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

Any word or expression defined in Security and Pledge Agreement and not otherwise defined in this Deed shall have the same meaning when used in this Deed.

In addition:

"**Charged Property**" means the Initially Charged Shares and any other shares in each company specified in the Schedule to this Deed of which the Chargor is or becomes the beneficial or registered owner together with all dividends, stocks, shares, warrants, securities, rights, monies or other property accruing on or derived from such shares, including any such property as may result from the exercise by the Collateral Agent of any of its rights under Clause 3.2 (*After Security Enforceable*).

"**Charged Shares**" means any shares from time to time forming part of the Charged Property.

"**Group**" means the Chargor and each of its Subsidiaries from time to time.

"**Guarantee**" means that certain guarantee, dated as of 10 May 2024, made by certain subsidiaries of the Chargor in favour of the Collateral Agent with respect to the Obligations (as defined in Section 4 of the Security and Pledge Agreement) of the Chargor.

"**Initially Charged Shares**" means all the shares in each company specified in the Schedule to this Deed of which the Chargor is the beneficial or registered owner on the date of this Deed, as described and identified in that Schedule.

"**Legal Reservations**" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Limitation Act 1980 or the Foreign Limitation Periods Act 1984, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

(c) similar principles, rights and defences under the laws of the jurisdiction of incorporation of the Chargor or the jurisdiction where any asset subject to, or intended to be subject to, the Security is situated; and

(d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered to the Collateral Agent in connection with this Deed or the Security and Pledge Agreement, as applicable.

"**Obligor**" means each member of the Group that has provided Transaction Security.

"**Perfection Requirements**" means the making or the procuring of registrations, filings, endorsements, notarisations, translations, stampings, notifications, acknowledgements and/or acceptances of this Deed (and/or the Security created thereunder) necessary for the validity, enforceability (as against the Chargor as well as any third party) and/or perfection thereof.

"**Quasi-Security**" means a transaction in which the Chargor:

(a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by a Chargor or any other member of the Group;

(b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;

(c) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(d) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising financial indebtedness or of financing the acquisition of an asset.

"**Receiver**" means a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Collateral Agent under this Deed.

"**Restrictions Notice**" means a restrictions notice issued pursuant to paragraph 1(3) of Schedule 1B to the Companies Act 2006.

"**Secured Assets**" means all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed.

"**Secured Liabilities**" means:

(a) all present and future monies, obligations and liabilities owed by the Chargor and each other Grantor to the Noteholders, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with (i) in the case of the Chargor and each other Grantor, the Securities Purchase Agreement, the Security and Pledge Agreement, the Notes and the other Transaction Documents, and (ii) in the case of the Guarantors, the Guaranties, including, without limitation, in each case, (A) all principal of, interest, make-whole and other amounts on the Notes (including, without limitation, all interest, make-

whole and other amounts that accrues after the commencement of any Insolvency Proceeding of any Grantor, whether or not the payment of such interest is enforceable or is allowable in such Insolvency Proceeding), and (B) all fees, interest, premiums, penalties, contract causes of action, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under the Security and Pledge Agreement or any of the Transaction Documents; and

(b) the due and punctual performance and observance by each Grantor of all of its other obligations from time to time existing in respect of any of the Transaction Documents, including without limitation, with respect to any conversion or redemption rights of the Noteholders under the Notes.

"**Security**" means any mortgage, charge, pledge, lien, assignment or other Security securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Period**" means the period starting on the date of this deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

"**Trust Property**" means:

(a) the Security created or evidenced or expressed to be created or evidenced under or pursuant to any of the Transaction Documents (being the "**Transaction Security**"), and expressed to be granted in favour of the Collateral Agent as trustee for the Noteholders and all proceeds of that Transaction Security;

(b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of its liabilities to the Collateral Agent as trustee for the Noteholders and secured by the Transaction Security together with all representations and warranties expressed to be given by an Obligor in favour of the Collateral Agent as trustee for the Noteholders;

(c) the Collateral Agent's interest in any trust fund created pursuant to any turnover of receipt provisions in any Transaction Documents; and

(d) any other amounts or property, whether rights, entitlements, chooses in action or otherwise, actual or contingent, which the Collateral Agent is required by the terms of the Transaction Documents to hold as trustee on trust for the Noteholders.

"**Warning Notice**" means a warning notice given pursuant to paragraph 1(2) of Schedule 1B to the Companies Act 2006.

1.2 Construction

(a) Words importing the singular shall (unless the contrary intention appears) include the plural and vice versa.

(b) Reference to a Clause is reference to a clause of this Deed.

(c) A provision of law is a reference to that provision as amended or re-enacted from time to time, and to any regulations made by the appropriate authority pursuant to such law.

(d) Reference to a document is to be construed as a reference to such document as amended or supplemented (with any necessary consent) from time to time.

(e) Reference to a party to any agreement shall be construed so as to include its successors in title, permitted assigns and permitted transferees.

1.3 Third party rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

1.4 Declaration of trust

(a) The Collateral Agent hereby accepts its appointment as agent and trustee by the Noteholders and declares (and the Chargor hereby acknowledges) that the Trust Property is held by the Collateral Agent as a trustee for and on behalf of the Noteholders on the basis of the duties, obligations and responsibilities set out in the Security and Pledge Agreement and the other Transaction Documents.

(b) Section 1 of the Trustee Act 2000 shall not apply to the duties of the Collateral Agent in relation to the trusts created by this Deed or any other Transaction Document. In performing its duties, obligations and responsibilities, the Collateral Agent shall be considered to be acting only in a mechanical and administrative capacity or as expressly provided in this Deed and the other Transaction Documents.

(c) In acting as trustee for the Noteholders under this Deed, the Collateral Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments. Any information received by some other division or department of the Collateral Agent may be treated as confidential and shall not be regarded as having been given to the Collateral Agent's trustee division.

2. CHARGE

2.1 Covenant to pay

The Chargor as primary obligor covenants with the Collateral Agent (for the benefit of itself and the other Noteholders) that it will on written demand pay the Secured Liabilities when they fall due for payment at the times and in the manner provided for in the relevant Transaction Document.

2.2 Charge

As continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Collateral Agent by way of first fixed charge the Charged Property.

2.3 Deposit of Share Certificates

Within 3 Business Days of the date of this Deed, the Chargor shall deposit with the Collateral Agent all share certificates and other documents of title relating to the Initially Charged Shares together with stock transfer forms in respect of the Initially Charged Shares duly executed in blank by or on behalf of the Chargor.

2.4 Further Shares

Immediately upon its becoming the beneficial or registered owner of any Charged Shares (other than the Initially Charged Shares) the Chargor shall ensure that such Charged Shares (unless already so registered) are registered in the name of the Chargor and shall promptly notify the Collateral Agent of such circumstances and deposit with the Collateral Agent any share certificates and other documents of title representing such Charged Shares together with blank stock transfer forms in respect of such Charged Shares duly executed by or on behalf of the Chargor.

2.5 Calls on Shares

The Chargor shall pay when due all calls or other requests for payments made in respect of any of the Charged Property, but if the Chargor fails to make any such payment the Collateral Agent may (but shall not be obliged to) make such payment on behalf of the Chargor and if the Collateral Agent does so the Chargor shall promptly on demand of the Collateral Agent pay to the Collateral Agent an amount equal to such payment.

3. Dividends, Voting and Information

3.1 Before Security Enforceable

Unless and until the Security created by this Deed has become enforceable the Chargor shall continue to be entitled to:

(a) receive and retain all dividends, interest and other monies arising from the Charged Property; and

(b) exercise all voting rights in relation to the Charged Shares;

provided that the Chargor shall not exercise such voting rights, or otherwise permit or agree to (i) any variation of the rights attaching to or conferred by all or any part of the Charged Property or (ii) any increase in the issued share capital of any company whose shares are charged pursuant to this Deed, in any manner which, in the opinion of the Collateral Agent, would, or would be reasonably likely to, impair the value of, or prejudice the ability of the Collateral Agent to realise, the Security created by this Deed.

3.2 After Security Enforceable

At any time after the Security created by this Deed has become enforceable the Collateral Agent shall be entitled to cause the Charged Shares to be registered in its name and may at its discretion (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

(a) exercise or refrain from exercising any voting rights in respect of the Charged Shares and revoke, or cause to be revoked, any proxies given pursuant to Clause 3.1 (*Before Security Enforceable*);

(b) apply all dividends, interest and other monies arising from the Charged Property as if they were proceeds of sale under this Deed;

(c) exercise or refrain from exercising the rights of a legal owner of the Charged Property, including the right, in relation to any company whose shares or other securities are included in the Charged Property, to concur or participate in:

(i) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof),

(ii) the realisation, modification or variation of any rights or liabilities attaching to any such shares or securities and

(iii) the exercise, renunciation or assignment of any right to subscribe for any such shares or securities,

in each case in such manner and on such terms as the Collateral Agent may think fit.

3.3 Information

If the Chargor receives a balance sheet, profit and loss account or any notice, report, statement or circular sent or delivered by the issuer of any Charged Share to its members, it shall promptly deliver a copy to the Collateral Agent.

3.4 Representations

The Chargor represents and warrants to the Collateral Agent on the date of this Deed that:

(a) it is a limited liability corporation, duly incorporated and validly existing under the law of Delaware;

(b) it has the power to own its assets and carry on its business as it is being conducted;

(c) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations;

(d) without limiting the generality of paragraph (c) above and subject to the Legal Reservations and the Perfection Requirements, this Deed creates the security interests which this Deed purports to create and those security interests are valid and effective;

(e) the entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Security pursuant to this Deed do not and will not conflict with:

(i) any law or regulation applicable to it;

(ii) its constitutional documents; or

(iii) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;

(f) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

(g) all authorisations required or desirable:

(i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and

(ii) to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

(h) it is the legal and beneficial owner of the Charged Property; and

(i) it has full power to enter into and deliver and to create the Security constituted by this Deed; and

(j) each Charged Share is fully paid or credited as fully paid, no calls have been made in respect thereof and remain unpaid and the terms of each Charged Share and of the Memorandum and Articles of Association of the issuer of such Charged Share do not restrict or otherwise limit the Chargor's right to transfer or charge such Charged Share;

(k) no Warning Notice or Restrictions Notice has been issued to it in respect of all or any part of any Investment which remains in effect; and

(l) it has delivered to the Collateral Agent a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) in respect of each company incorporated in the United Kingdom whose shares are subject to the Security under this Deed and such copy of that PSC register:

(i) is correct, complete and in full force and effect; and

(ii) has not been amended or superseded as at a date no earlier than the date of this Deed.

3.5 Negative Pledge

During the Security Period, the Chargor shall not create any Security or Quasi-Security over the Charged Property other than the Security created hereunder without the Collateral Agent's prior written consent.

3.6 Chargor's waiver

The Chargor hereby waives the entitlement conferred by Section 93 of the Law of Property Act 1925 and agrees that Section 103 of that Act shall not apply to the security created by this Deed.

3.7 Appropriation Under the Financial Collateral Regulations

(a) To the extent that any of the Secured Assets constitute "financial collateral" and this Deed and the obligations of the Chargor hereunder constitute "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (as amended) (the "**Regulations**")), the Collateral Agent shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities and may exercise that right to appropriate by giving notice to the Chargor at any time after an Event of Default has occurred and is continuing.

(b) The parties agree that the value of any such appropriated financial collateral shall be: (x) in the case of securities, the price at which such securities can be disposed of by the Collateral Agent; and (y) in the case of any other asset, the market value of such financial collateral as determined by the Collateral Agent, in each case, in a commercially reasonable manner (including by way of an independent valuation). The parties agree that the methods of valuation provided for in this paragraph shall constitute commercially reasonable methods of valuation for the purposes of the Regulations.

3.8 PSC

The Chargor shall:

(a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of this Deed; and

(b) promptly provide the Collateral Agent with a copy of that notice.

3.9 Articles of association

The Chargor shall, and shall procure that Fisker (GB) Limited (the "**Company**") shall, take all steps necessary or desirable to amend the articles of association of the Company to remove

the directors' discretion to refuse to register a transfer of shares and make such further amendments to the articles of association as may be necessary or desirable (including, without limitation, in relation to the disapplication of liens and disapplication of pre-emption rights) as reasonably requested by the Collateral Agent for the creating, perfecting or protecting the security intended to be created by this Deed or facilitating the realisation of any Secured Asset or the exercise of any right, power, authority or discretion exercisable by the Collateral Agent or any Receiver in respect of any Secured Asset, or perfecting or protecting the security intended to be created by this Deed, in each case with such amendments to be made within 2 Business Days of the date of this Deed.

4. CONTINUING SECURITY

The Secured Assets shall be held by the Collateral Agent as a continuing security for the Secured Liabilities and:

(a) shall not be satisfied by any intermediate payment or discharge of any part of the Secured Liabilities;

(b) shall be in addition to, and shall not be prejudiced or affected by any other security given at any time for any of the Secured Liabilities; and

(c) shall not be affected by an act, omission, matter or thing which, but for this clause 3, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or the Collateral Agent) including:

(i) any time, waiver or consent granted to, or composition with, the Chargor or any other person;

(ii) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of any member of the Chargor's group of companies;

(iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security interest over assets of, the Chargor or other person or any non-presentation or nonobservance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security interest;

(iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;

(v) any unenforceability, illegality or invalidity of any obligation of any person under any Transaction Document or any other document or security; or

(vi) any insolvency or similar proceedings.

5. FURTHER ASSURANCE

The Chargor shall, at its own expense, take any action which the Collateral Agent may, at any time, reasonably require for:

(a) creating, perfecting or protecting the security intended to be created by this Deed;

(b) facilitating the realisation of any Secured Asset; or

(c) facilitating the exercise of any right, power, authority or discretion exercisable by the Collateral Agent or any Receiver in respect of any Secured Asset, perfecting or protecting the security intended to be created by this Deed,

including, without limitation (if the Collateral Agent or Receiver thinks (acting reasonably) it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Collateral Agent or to its nominee) and the giving of any notice, order or direction and the making of any registration.

6. POWER OF ATTORNEY

After the security constituted by this Deed becomes enforceable, by way of security, the Chargor irrevocably appoints the Collateral Agent and every Receiver separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

(a) the Chargor is required to execute and do under this Deed; or

(b) any attorney deems proper in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Collateral Agent or any Receiver.

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 5.

7. ENFORCEMENT

(a) The Security created by or pursuant to this Deed shall become immediately enforceable at any time after the occurrence of an Event of Default that is continuing.

(b) After the Security created by or pursuant to this Deed has become enforceable, the Collateral Agent may in its absolute discretion enforce all or any part of this Deed in any manner it sees fit provided that all amounts received shall be applied to the Secured Liabilities in the order of priority specified in Section 8(b) of the Security and Pledge Agreement.

(c) The Collateral Agent shall be entitled at any time after the Security has become enforceable to complete any stock transfer forms then held by the Collateral Agent pursuant to this Deed in the name of the Collateral Agent and the Chargor shall do whatever the Collateral Agent requires in order to procure the prompt registration of such transfer and the prompt issue of a new certificate or certificates for the relevant Charged Shares in the name of the Collateral Agent.

8. EXERCISE OF RIGHT

The rights of the Collateral Agent under this Deed:

(a) may be exercised as often as the Collateral Agent thinks fit; and

(b) are cumulative and not exclusive of its rights under the Transaction Documents or the general law.

No delay in exercising, or failure to exercise, any such right is a waiver of that right.

9. SEVERABILITY

If a provision of this Deed is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the validity or enforceability in that jurisdiction of any other provision of this Deed or the validity or enforceability in other jurisdictions of that or any other provision of this Deed.

10. NOTICES

All notices and other communications under or in connection with this Deed shall be given or made in accordance with the details inserted in the relevant appendices hereto.

11. DISCHARGE OF SECURITY

Once all the Secured Liabilities have been irrevocably paid in full in cash, the Collateral Agent shall, at the request and cost of the Chargor, execute any documents (or procure that its nominees execute any documents) or take any other action which may be necessary to release the Charged Property from the Security constituted by this Deed.

12. GOVERNING LAW AND JURISDICTION

12.1 Law

This Deed, and any non-contractual obligations arising out of or in connection with this Deed, shall be governed by English law.

12.2 Jurisdiction

(a) The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed, and a dispute relating to any non-contractual obligations arising out of or in connection with this Deed) (a "**Dispute**").

(b) The parties agrees that the courts of England are appropriate and convenient courts to settle any Dispute and accordingly will not argue to the contrary.

12.3 Service of Process

The Chargor agrees that the process by which any Proceedings are begun may be served on it by being delivered in connection with any Proceedings in England to Fisker (GB) Limited at 9 Floor 107 Cheapside London United Kingdom EC2V 6DN or, if different, its registered office for the time being. If the appointment of the person mentioned in this Clause ceases to be effective, the Chargor shall immediately appoint another person in England to accept service of process on its behalf in England and if it fails to do so within 15 days the Collateral Agent shall be entitled to appoint such a person by notice to the Chargor. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

13. COUNTERPARTS

This Deed may be executed (either by autographic signature or by a Party applying its signature by some digital, electronic, mechanical or other means) in any number of counterparts, each of which shall constitute an original and all the counterparts shall together constitute one and the same deed. The exchange of a fully executed (either by autographic signature or by a Party applying its signature by some digital, electronic, mechanical or other means) version of this Deed (in counterparts or otherwise) by electronic transmission in PDF

format or otherwise shall be sufficient to bind the parties to the terms and conditions of this Deed and no exchange of originals is necessary.

IN WITNESS of which the parties have executed this Deed as a deed and it is intended to be and is delivered on the date first mentioned above.

Schedule 1

The Initially Charged Shares

A. Company Name: Fisker (GB) Limited Company No: 11706245

Number of Shares	Share Type	Certificate Number(s)
1000	Ordinary	

B. Company Name Company No:

Number of Shares	Share Type	Certificate Number(s)

C. Company Name Company No:

Number of Shares	Share Type	Certificate Number(s)

THIS DEED has been duly executed as a deed on the date stated on the first page.

CHARGOR

EXECUTED as a **DEED** by

FISKER INC

by) GEETA GUPTA-FISKER

a director) Geeta Gupta

In the presence of:) fish

Witness signature:

Name (print): HENRIK FISKER

Address:) 1505 COLLINGWOOD PLACE
WEST HOLLYWOOD, CA 90069

Occupation: CHAIRMAN & CEO, FISKER INC

COLLATERAL AGENT

EXECUTED as a **DEED** by)

CVI INVESTMENTS, INC.)

acting by Heights Capital Management Inc.,)

its authorized agent

the laws of that territory, is acting under the authority of the Chargor.

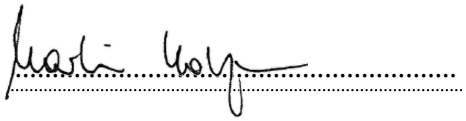


EXHIBIT T

CERTIFIED COPY

No. 225 of the Register of Deeds 2024 S

CIVIL LAW NOTARY

DR. GEORG THOMAS SCHERL

An der Welle 3
60322 Frankfurt am Main,
State of Hesse, Germany

I hereby certify that this instrument is a true and complete photocopy of the original which was presented to me.

Frankfurt am Main, Germany, 17 May 2024

Dr. Georg Thomas Scherl
Civil Law Notary

/mde
Fisker GmbH / Share Pledge Agreement

Register of Deeds No. 225 /2024 S
(the "**Notarial Deed**")

Negotiated

in Frankfurt am Main

on 17 May 2024

Before me

the acting Civil Law Notary

Dr. Georg Thomas Scherl
(the "**Civil Law Notary**")

with my official place of business in Frankfurt am Main, Germany,

appeared today

1. Mr **Tobias von Gostomski,** born on 17 April 1972, with business address at Orrick, Herrington & Sutcliffe LLP, Lenbachplatz 6, 80333 Munich, Germany, and who is personally known to the Civil Law Notary,

   hereafter not acting in his own name, but, excluding any personal liability,

   a) by virtue of a non-revoked notarial certified power of attorney dated 16 May 2024, a pdf-copy of which was present during the notarization, promising to furnish the original of which to the Civil Law Notary, a certified copy of the original will be attached to this Notarial Deed, in the name and on behalf of

      Fisker Group Inc., a corporation organised under the laws of the State of Delaware, United States of America, registered at the State of Delaware, Divisions of Corporations, with entity file number 6136073, having its business address at 1888 Rosecrans Avenue, Manhattan Beach, CA 90266, United States of America,

      (the "**Security Grantor**");

   b) by virtue of a non-revoked written power of attorney dated 14 May 2024, a pdf-copy of which was present during the notarization, promising to furnish the original of which to the Civil Law Notary, a certified copy of the original will be attached to this Notarial Deed, in the name and on behalf of

Fisker GmbH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) organised under the laws of the Federal Republic of Germany with registered seat at Lenbachplatz 6, c/o Orrick, Herrington & Sutcliffe LLP, 80333 Munich, which is registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich, under registration number HRB 260452,

(the "**Company**");

the Civil Law Notary confirms upon inspection of the electronic commercial registry (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under HRB 260452 on today, that Fisker GmbH, having its seat at Munich, is registered there and that Ms Geeta Gupta as managing director was on the day of signing the power of attorney on 14 May 2024 and is still entitled to represent Fisker GmbH solely and that she is exempted from the restrictions of sec. 181 German Civil Code;

2. Mr **Yannick Louis Couturier**, born on 08 September 1993, with business address at White & Case LLP, Bockenheimer Landstraße 20, 60323 Frankfurt am Main, Germany, and who identified himself by presenting his valid identity card,

hereafter not acting in his own name, but, excluding any personal liability, by virtue of a non-revoked written power of attorney dated 16 May 2024, a pdf-copy of which was present during the notarization, promising to furnish the original of which to the Civil Law Notary, a certified copy of the original will be attached to this Notarial Deed, in the name and on behalf of

CVI Investments, Inc., a company formed in the Cayman Islands, having its registered office at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, United States of America,

(the "**Collateral Agent**" and/or the "**Original Pledgee**").

The Security Grantor and the Collateral Agent are hereinafter collectively referred to as the "**Parties**" and each as a "**Party**".

The persons appearing declared that the represented parties requested the Civil Law Notary to notarize this Deed ("**Notarial Deed**"), with the exception of certain technical terms of German law, in the English language. The Civil Law Notary, himself in command of the English language, assured himself that the persons appearing are also in command of the English language. The persons appearing were advised by the Civil Law Notary of their right to be provided with a written translation of this Notarial Deed and expressly waived any such right.

The Civil Law Notary has pointed out to the represented parties that he is obliged to verify the powers of representation of the persons appearing and to examine the documents provided to evidence such power of representation.

With respect to the power of attorney provided by the foreign entities Fisker Group Inc. and CVI Investments, Inc., acting under or represented in this Notarial Deed, the Civil Law Notary pointed out that he is neither able to verify the power of representation (*Vertretungsbefugnis*) of the signatories nor the authenticity of the signatures. The Civil Law Notary has pointed out that in the absence of a valid and binding power of attorney, declarations in this Notarial Deed on behalf of a represented entity remain ineffective, unless a consent declaration (*Genehmigung*) is granted by an authorized person.

The Civil Law Notary asked the persons appearing prior to the notarization whether he or any of his partners acts or acted in the matter to be recorded for any of the represented parties of this Notarial Deed outside his or, as the case may be, their notarial function in terms of section 3 paragraph 1 sentence 1 no. 7 German Notarization Act (*Beurkundungsgesetz, "BeurkG"*). The answer was negative.

The Civil Law Notary advised the persons appearing in their obligations by the German anti-money laundering act (*Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten (Geldwäschegesetz - GwG)*). They declared that they are acting as described in this Notarial Deed and not for other third parties.

The persons appearing, acting as set forth above, declared for notarization the following:

Fisker Group Inc. as Security Grantor, Fisker GmbH as Company and CVI Investments, Inc. as Collateral Agent and Original Pledgee enter into the following

Share Pledge Agreement
(*Vertrag über die Verpfändung von GmbH-Geschäftsanteilen*)
over the shares in Fisker GmbH

as set forth in the **EXHIBIT** of this Notarial Deed.

Instructions by the Civil Law Notary

The Civil Law Notary advised the persons appearing as follows:

1. A pledge is a security instrument of strictly accessory nature (which means that it comes into legal existence only if, to the extent that, and so long as the underlying secured claims do in fact exist, and that the owners of secured claims and the pledgees must be identical). A pledge expires by operation of statutory law if the secured claims are novated.

2. German property law does not provide for disposals to the benefit of a third party (*keine Verfügungen zugunsten Dritter*).

3. All agreements of the represented parties pertaining to the share pledge above need to be notarized. There is no generally acknowledged principle under German law that the notarization requirement applies only to the pledge and transfer and assignment declaration.

4. Notwithstanding Section 16 (3) German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) there is no *bona fide* creation, acquisition nor ranking of a pledge of shares (in the sense that the pledgees are protected if the shares purported to be pledged do not exist or have been previously encumbered for the benefit of a third party).

5. The Civil Law Notary is not in a position to verify whether the statements regarding the specification and denomination of shares as set forth in the shareholder's list made available to him are complete and accurate.

6. A company whose shares are pledged can make payments with discharging effect against secured claims arising from the relationship of the shareholders, as long as the company is not aware of the pledge.

7. The English original version of this Agreement will not be acceptable for enforcement, but will have to be translated by a certified translator into German for such purposes.

8. The parties to this Deed are irrespective of the agreement between the parties on cost allocation jointly and severally liable for notary fees.

9. The Civil Law Notary has not rendered any tax advice.

Final Provisions

The pledge set forth in this Notarial Deed shall not be affected and shall in any event extend to any or all shares in the Company whose shares are pledged even if the number or nominal value of the pledged share or the aggregate stated share capital of the Company as stated in the Exhibit of this Notarial Deed are inaccurate or deviate from the actual facts. The validity and effect of the pledge shall be independent from the validity and the effect of the other pledges created hereunder.

The Parties confirm that they have been informed about collection, storage, purpose, processing and disclosure of data connected with this matter by the Civil Law Notary. They confirm to the Civil Law Notary their approval to communicate by email, also with not directly involved persons and institutions, for example authorities, courts or advisors.

This Notarial Deed and the EXHIBIT have been read out aloud to the persons appearing by the Civil Law Notary and were confirmed and approved by the persons appearing. The persons appearing and the Civil Law Notary then signed this Notarial Deed as follows in their own hand:

at 11:06 a.m

Notary

DR. GEORG THOMAS SCHERL NOTAR IN FRANKFURT AM MAIN 3

Notar / Civil Law Notary

DR. GEORG THOMAS SCHERL NOTAR IN FRANKFURT AM MAIN 3

EXHIBIT

Execution Version

Dated 17 May 2024

Share Pledge Agreement

(*Vertrag über die Verpfändung von GmbH-Geschäftsanteilen*)
over the shares in Fisker GmbH

between

Fisker Group Inc.
as Security Grantor

Fisker GmbH
as Company

CVI Investments, Inc.
as Pledgee and Collateral Agent

Table of Contents

This Share Pledge Agreement (the "**Agreement**") is made on 17 May 2024

Between:

(1) **Fisker Group Inc.**, a corporation organized under the laws of the State of Delaware, United States of America, having its principal executive offices in Manhatten Beach, California, United States of America, under registration number 6136073, as security grantor (the "**Security Grantor**");

(2) **Fisker GmbH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) organised under the laws of the Federal Republic of Germany with registered seat at Lenbachplatz 6 c/o Orrick, Herrington & Sutcliffe LLP, 80333 Munich, which is registered at the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Munich, under registration number HRB 260452, as Company (the "**Company**") for the purpose of notification under paragraph (c) of Clause 2.1 (*Pledge in Shares of the Company*) and the appointment as process agent under Clause 15 (*Process Agent*); and

(3) **CVI Investments, Inc.** a company formed in the Cayman Islands having its registered office at c/o Heights Capital Management, 101 California Street, Suite 3250, San Francisco, CA 94111, acting in its capacity as Collateral Agent (the "**Collateral Agent**" and "**Original Pledgee**").

(The Security Grantor and the Collateral Agent are collectively referred to as the "**Parties**".)

Whereas:

(A) *inter alia*, Fisker Inc. is party to a securities purchase agreement dated 10 May 2024 (as amended and restated from time to time and together with its annexes and schedules, the "**Securities Purchase Agreement**") between Fisker Inc., as company and CVI Investments, Inc. as investor (the "**Investor**"), pursuant to which Fisker Inc. has sold, and may in the future be required to sell, to the Investor, and the Investor has purchased, and may in the future be required or have the right to purchase, the notes issued pursuant to the Securities Purchase Agreement (as such notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms and conditions thereof, collectively, the "**2024 Notes**").

(B) *inter alia*, Fisker Inc., the Security Grantor and the Collateral Agent entered into an agreement dated 10 May 2024 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms thereof, the "**Guaranty**").

(C) in connection with the security created by or pursuant to this Agreement, the Collateral Agent has entered into a security trust agreement between, *inter* alia, the Security Grantor, the Company and the Collateral Agent dated 10 May 2024 (the "**Security Trust Agreement**").

(D) *inter alia*, Fisker Inc. has granted a parallel debt to the Collateral Agent under the Security Trust Agreement (the "**Parallel Debt**") pursuant to which Fisker Inc. acknowledged debt to the Collateral Agent in an amount equal to and in the currency of each amount payable by it to each of the Investors and/or the Noteholders under, inter alia, the Securities Purchase Agreement and the 2024 Notes.

(E) The Security Grantor is the sole shareholder of the Company, which is registered with the commercial register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Munich under registration number HRB 260452 and is registered as such in the shareholders list (*Gesellschafterliste*) of the Company filed (*aufgenommen*) with the commercial register (*Handelsregister*).

(F) The registered share capital of the Company is EUR 25,000 and is fully paid in and consists exclusively of 25,000 shares with sequential numbers 1 to 25,000 held by the Security Grantor.

1. Interpretation

1.1 Definitions

In this Agreement:

"**Articles of Association**" means the constitutional documents (*Gesellschaftsvertrag*) of the Company.

"**BGB**" means the German Civil Code (*Bürgerliches Gesetzbuch*).

"**Enforcement Event**" means the occurrence of an Event of Default which has resulted in a written redemption notice having been served by a Noteholder pursuant to the 2024 Notes.

"**Event of Default**" means each event which entitles the Collateral Agent to declare any or all amounts outstanding under any of the Transaction Documents immediately due and payable.

"**Future Pledgee**" means each entity or person which becomes a Pledgee hereunder by way of (i) transfer of the Pledges by operation of law following the transfer or assignment (including by way of assumption (*Vertragsübernahme*)) of any of the Secured Obligations from any of the Pledgees to such entity or person, (ii) by way of accession to this Agreement pursuant to Clause 2.3 (*Future Pledgees*) hereof and/or (iii) by otherwise becoming a Noteholder (and together the "**Future Pledgees**").

"**Future Shares**" means any and all shares in the Company in whatever nominal value which the Security Grantor may hold in the future in addition to the Initial Shares.

"**GmbHG**" means the German Limited Liability Companies Act (Gesetz betreffend die Gesellschaften mit beschränkter Haftung).

"**Initial Shares**" means any and all shares held by the Security Grantor in the Company as at the date hereof.

"**InsO**" means the German Insolvency Code (*Insolvenzordnung*).

"**Noteholders**" means, at any time, the holders of the 2024 Notes at such time.

"**Pledge**" means each pledge constituted under this Agreement.

"**Pledgees**" means the Original Pledgee and any Future Pledgees and "**Pledgee**" means any of them.

"**Secured Obligations**" means all liabilities of Fisker Inc. to the Collateral Agent under or in connection with any of the Transaction Documents (including, without limitation, the Parallel Debt) together with all costs, charges and expenses incurred by the Collateral Agent in connection with the protection, preservation or enforcement of its rights under any of the Transaction Documents on a full indemnity basis. The Secured Obligations shall in particular include any claims based on unjust enrichment (*ungerechtfertigte Bereicherung*) or tort (*Delikt*) including any claims arising from the insolvency administrator's discretion to perform obligations in agreements according to section 103 of the InsO.

"**Security Documents**" means each document entered into by Fisker Inc. or any of its direct and indirect subsidiaries creating or evidencing security for all or any part of the obligations of Fisker Inc. under any Transaction Document.

"**Shares**" means the Initial Shares and the Future Shares.

"**Transaction Document**" means, inter alia, the Securities Purchase Agreement, this Agreement, the 2024 Notes, the Guaranty, the Security Documents 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.

1.2 Construction

Unless a contrary indication appears, a reference in this Agreement to:

(a) any person or entity shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Collateral Agent, any person for the time being appointed as Collateral Agent or Collateral Agents in accordance with the Transaction Documents; and

(b) a "**Transaction Document**" or any other agreement or document is a reference to that Transaction Document or other agreement or document as amended, supplemented, extended or restated from time to time (whether or not such amendment, supplement, extension or restatement is contemplated as at the date of this Agreement), and including cases where the amendments concerned involve an increase, extension or other change (however great) to any facility or the grant of any additional facility (however great).

2. The Pledges

2.1 Pledge in Shares of the Company

(a) The Security Grantor hereby pledges (*verpfändet*) as security the Shares in the Company together with all ancillary rights and claims associated with such Shares as more particularly specified in Clause 4.1 (*Extent of the Pledges*) hereof to the Pledgee. The Pledgee hereby accepts the Pledge.

(b) The Pledge shall, without prejudice to Section 16 para. 3 of the GmbHG, extend to the actual number and actual nominal value of the Initial Shares even if the actual number and/or nominal value of the Initial Shares as stated in the recitals of this Agreement is inaccurate or incomplete.

(c) The Security Grantor hereby notifies the Company of the Pledge and the Company hereby acknowledges this notification and confirms that to the date hereof no other pledge nor security transfer, sale or other disposal or encumbrance of, or over, the relevant Shares has been notified to it.

2.2 Independent Pledges

(a) The Pledges are in addition, and without prejudice, to any other security the Collateral Agent and/or the Pledgee may now or hereafter hold in respect of the Secured Obligations. The Parties agree that nothing in this Agreement shall exclude a transfer of all or part of the Pledges created hereunder by operation of law upon the transfer or assignment, including by way of assumption (*Vertragsübernahme*), of all or part of the Secured Obligations by any Pledgee to a future pledgee.

(b) The validity and effect of each of the Pledges to the Pledgee shall be independent from the validity and the effect of the other Pledges created hereunder. The Pledges to the Pledgee shall be separate and individual pledges ranking *pari passu* with the other Pledges created hereunder.

2.3 Future Pledgees

(a) The Collateral Agent accepts the Pledges pursuant to Clause 2.1 as representative without power of attorney (*Vertreter ohne Vertretungsmacht*) for and on behalf of each Future Pledgee. Each Future Pledgee ratifies and confirms the declarations and acts so

made by the Collateral Agent on its behalf by accepting the transfer or assignment (including by way of assumption (*Vertragsübernahme*)) of the Secured Obligations (or part of them) from a Pledgee or by otherwise becoming a Noteholder, as the case may be. Upon such ratification (*Genehmigung*) such Future Pledgee becomes a party to this Agreement. It is being understood that any future or conditional claim (*zukünftiger oder bedingter Anspruch*) of such Future Pledgee arising under the Transaction Documents shall be secured by the Pledges constituted hereunder.

(b) All Parties hereby confirm that the validity of the Pledges granted hereunder shall not be affected by the Collateral Agent acting as representative without power of attorney for each Future Pledgee. The Collateral Agent disclaims any liability for acting as representative without power of attorney.

(c) The Security Grantor herewith authorizes the Collateral Agent to notify the identity of such Future Pledgee and the new pledges created pursuant to this Clause 2.3 (*Future Pledgees*) above to the Company. Upon written request of the Collateral Agent, the Security Grantor shall without undue delay give such notice and provide the Collateral Agent with a copy thereof.

3. Security Purpose

The security interest granted pursuant to this Agreement is made as a continuing security in order to secure the prompt, full and final discharge of any and all Secured Obligations. The security interest granted pursuant to this Agreement shall also cover any future extension, prolongation or increase of the Secured Obligations. The Security Grantor hereby expressly agrees that the provisions of section 1210 paragraph 1 sentence 2 of the BGB shall not apply to this Agreement.

4. Membership Rights

4.1 Extent of the Pledges

The Pledges constituted by this Agreement include the present and future rights:

(a) to receive and/or withdraw (subject to Section 4.2 (*Entitlement to Receive Dividend Payments*) hereof) dividends and any other similar cash payments and other forms of profit distribution (*Nutzungspfandrecht*) and the right, if any, to participate in capital increases in respect of the relevant Shares;

(b) to receive liquidation proceeds, consideration for redemption (*Einziehungsentgelt*), repaid capital in relation to a capital decrease, any compensation in the case of termination (*Kündigung*) and/or withdrawal (*Austritt*) and/or expulsion (*Ausschluss*) and/or exclusion for good cause (*Ausschluss aus wichtigem Grund*) of a shareholder of the Company, the surplus in case of surrender (*Preisgabe*), the repayment claim for any additional capital contribution (*Nachschüsse*) and all other pecuniary claims associated with the relevant Shares;

(c) to subscribe for newly issued shares of the Company; and

(d) all pecuniary claims of the Security Grantor against the Company arising under or in connection with any domination and/or profit transfer agreement (*Beherrschungs- und/oder Gewinnabführungsvertrag*) or partial profit transfer agreement (*Teilgewinnabführungsvertrag*) which may be entered into between that Security Grantor and that Company.

4.2 Entitlement to Receive Dividend Payments

(a) Prior to:

(i) the date on which the Collateral Agent is entitled, in accordance with Section 8 (*Enforcement*) hereof, to enforce the Pledges (or any part thereof); or

(ii) insolvency proceedings over the assets of the Security Grantor are commenced, an application for commencement of such proceedings is filed, a reason for opening insolvency proceedings exists or any other event occurs in relation to the Security Grantor having under the laws of any applicable jurisdictions an analogous effect,

the Security Grantor shall be entitled to receive and retain all cash dividend payments and any other similar cash payments in respect of the relevant Shares to the extent permitted under the Transaction Documents.

(b) Any dividends in kind (*Sachausschüttungen*) and any benefits received by the Security Grantor against the terms of this Agreement shall be received by the Security Grantor as trustee for the benefit of the Pledgee and shall be segregated from other property or funds of the Security Grantor and shall be forthwith delivered to the Collateral Agent as security in the form so received.

4.3 Pledgee's Rights

(a) During the term of this Agreement, the Security Grantor shall notify the Collateral Agent without undue delay of any shareholders' meetings at which a resolution is intended to be adopted which may adversely affect the Pledges and deliver to the Collateral Agent without undue delay a copy of the notice of such shareholders' meeting setting forth the agenda and all other motions and decisions to be taken and a copy of the minutes of any such shareholders' meeting. During the term of this Agreement, the Security Grantor shall allow the Collateral Agent or, as the case may be, a proxy or any other person designated by the Collateral Agent, to attend such shareholders' meetings of the Company. In cases where resolutions by the shareholders of the Company are adopted outside a shareholders' meeting the foregoing shall apply *mutatis mutandis*.

(b) On and from the date on which the Collateral Agent is entitled, in accordance with Section 8 (*Enforcement*) hereof, to enforce the Pledges (or any part thereof), or in the event insolvency proceedings over the assets of the Security Grantor are commenced, an application for commencement of such proceedings is filed, a reason for opening insolvency proceedings exists or any other event occurs in relation to the Security Grantor having under the laws of any applicable jurisdictions an analogous effect:

(i) all dividends paid or payable (other than in cash) and any other property received, receivable or otherwise distributed in respect of or in exchange for the Shares;

(ii) all dividends or other distributions or payments paid or payable in cash in respect of the Shares in connection with the partial or total liquidation or dissolution of the Company or in connection with the reduction of the amount of the registered share capital of the Company; and

(iii) all cash paid, payable or otherwise distributed in respect of the principal of, or in redemption of, or in exchange for the Shares,

shall be forthwith delivered to the Collateral Agent and held as security. If such proceeds or property are received by the Security Grantor, they shall be received as

trustee for the benefit of the Pledgee and shall be segregated from other property or funds of the Security Grantor and shall be forthwith delivered to the Collateral Agent as security in the form so received.

4.4 Exercise of Membership Rights

The membership rights (other than those referred to in Section 4.1 (*Extent of the Pledges*) hereof), including the voting rights attached to the Shares, remain with the Security Grantor. The Pledgee shall not give any instructions to the Security Grantor in relation to such membership rights. The Security Grantor shall at all times during the term of this Agreement be required, in exercising its membership rights, to act in good faith to ensure that the Pledges are not in any way adversely affected.

5. Representations and Warranties

The Security Grantor represents and warrants to the Pledgee that each of the following is true and accurate as at the date hereof:

(a) the statements in the recitals to this Agreement with respect to the Security Grantor and the Company are complete and correct;

(b) the Shares are free and clear of any encumbrance or other right, title, adverse claims or interest of any person;

(c) it is the legal and beneficial owner of the Shares;

(d) there is no obligation for the Security Grantor to make any contributions with respect to the Initial Shares (either in kind or in cash);

(e) there are no shareholder resolutions amending the Articles of Association which have not yet been entered into the commercial register nor any side agreements with respect to the constitution and organisation of the Companies;

(f) there is no purchase option or right outstanding or in existence in relation to all or any part of the Shares, no scheme exists for the purchase or subscription of any of the Shares and, in particular, no agreement exists by virtue of which any person or entity is entitled to have issued or transferred to it any share, option, warrant or other interest of whatever nature or giving access to the registered share capital (*Stammkapital*) of the Company;

(g) there are no silent partnership agreements, profit and loss pooling agreements, or similar arrangements by which any third party is entitled to a participation in the profits or revenue of the Company;

(h) it has the right to transfer or grant a first ranking pledge over or otherwise freely dispose of the relevant Shares without the consent of any person and there is no restriction on the right to receive dividends in relation to such Shares other than as provided by German statutory law;

(i) all necessary corporate action has been taken to authorise the execution of this Agreement and the performance of its obligations hereunder and the exercise of its rights and performance of its obligations hereunder will not violate any provision of any existing law or any contractual undertaking to which the Security Grantor is a party or which is binding on the Security Grantor or any of its assets and this Agreement creates legal, valid and binding obligations of the Security Grantor which are enforceable in accordance with their terms; and

(j) the Company is validly existing under the laws of the Federal Republic of Germany and neither the Security Grantor nor the Company are over-indebted, insolvent or subject to any insolvency proceedings.

6. Positive Undertakings

At all times during the term of this Agreement, the Security Grantor covenants with the Pledgee that it shall:

(a) inform the Collateral Agent without undue delay of any change made, in the shareholding or the registered share capital (*Stammkapital*) of the Company or the relevant Articles of Association (without prejudice to paragraph (c) of Section 7 (*Negative Undertakings*) hereof) and to promptly deliver to the Collateral Agent a copy of the updated shareholders list (*Gesellschafterliste*) and a copy of the amended Articles of Association, both as filed (*aufgenommen*) with the commercial register (*Handelsregister*);

(b) effect without undue delay any payments or contributions in kind to be made in respect of calls made on Future Shares, in its capacity as shareholder of the Company; and

(c) inform the Collateral Agent without undue delay of any attachments (*Pfändungen*) in respect of the Shares or any part thereof, or any other event which may impair or jeopardise the Pledgee's rights relating to the Shares or of the registration of an objection (*Widerspruch*) in relation to the Shares of the Security Grantor in the shareholders list (*Gesellschafterliste*) as filed (*aufgenommen*) with the commercial register (*Handelsregister*). In the event of any such attachment, the Security Grantor shall provide the Collateral Agent without undue delay with a copy of the attachment order (*Pfändungsbeschluss*) and all other documents which are requested by the Collateral Agent and which are necessary or expedient, in the opinion of the Collateral Agent, for a defence against such attachment. In addition, the Security Grantor shall without undue delay inform the attaching creditor of the existence and effect of this Agreement.

7. Negative Undertakings

At all times during the term of this Agreement, the Security Grantor covenants with the Pledgee that it shall:

(a) not sell, transfer, assign, encumber or otherwise dispose of any of the Shares (or any part thereof) or any interest therein or agree to do so. Any proceeds paid out to the Security Grantor in breach hereof shall be held for the benefit of the Pledgee;

(b) refrain from any acts or omissions, the purpose or effect of which is the Shares ceasing to exist;

(c) not change the Articles of Association of the Company, in particular to restrict or prohibit the transfer of the Shares, including any change pursuant to which the transfer of shares would require the consent of the shareholders, shareholders' meeting, any other body of the Company or the Company itself; and

(d) not resolve or otherwise approve the issuance of new shares in relation to the Company to any other party than the Security Grantor.

8. Enforcement

(a) If an Enforcement Event has occurred and the requirements set forth in sections 1273, 1204 et seq. of the BGB being satisfied with regard to the enforcement of the Pledges (*Pfandreife*), the Collateral Agent may enforce the Pledges (or any part thereof) in any way permitted under the laws of the Federal Republic of Germany. The Parties agree to waive the requirements set out in section 1277 of the BGB (including the requirement of any prior enforceable title judgment or other instrument (*vollstreckbarer Titel*)).

(b) The Collateral Agent shall notify the Security Grantor of its intention to enforce the Pledges (or any part thereof) by giving the Security Grantor not less than 5 (five) business days prior notice (*Androhung*). Such notice shall not be required if it is inappropriate (*untunlich*), in particular, if (i) the Security Grantor has generally ceased to make payments to its creditors; or (ii) insolvency proceedings have been initiated in respect of the Security Grantor.

(c) The Collateral Agent may at its sole discretion determine the place in the Federal Republic of Germany where a public auction shall be held and which of several security interests (*persönliche und dingliche Sicherheiten*) created under this or other agreements shall be realised to satisfy the Secured Obligations.

(d) In addition, the Collateral Agent shall be entitled to enforce all of the Pledges *uno actu* and by way of a single public auction (*Gesamtversteigerung*). By waiving any and all rights of the Security Grantor pursuant to section 1230 sentence 2 of the BGB the Collateral Agent is entitled to enforce more Pledges than are required to satisfy the Secured Obligations. The Collateral Agent shall in its sole discretion (taking into account the legitimate interests of the Security Grantor) determine whether it enforces the Pledges separately or all of the Pledges by acceptance of a single tender (or in any other way permitted under the laws of the Federal Republic of Germany).

(e) If the Pledges are enforced, Section 1225 of the German Civil Code (*Forderungsübergang auf den Pfandgeber*) shall not apply, and no rights of the Collateral Agent shall pass to the Security Grantor by subrogation or otherwise unless and until all of the Secured Obligations have been satisfied and discharged in full. Until then, the Collateral Agent shall be entitled to treat all enforcement proceeds as additional security for the Secured Obligations.

9. Immediate Recourse

The Security Grantor waives any right it may have of first requiring the Pledgee to proceed against or enforce any other rights or security or claim for payment from any person prior to enforcing this Agreement.

10. Assignments and Transfers

10.1 Collateral Agent

The Collateral Agent shall at any time have the right to assign, to transfer or to dispose of its rights and obligations (*Vertragsübernahme*) under this Agreement to any person who becomes a Collateral Agent. The Security Grantor hereby explicitly and irrevocably consents to such assignment, transfer or disposal.

10.2 Pledgee

The Pledgee shall at any time have the right to assign, to transfer or to dispose of its rights and obligations in the Secured Obligations together with any rights and obligations under this Agreement (other than the Pledges which will be transferred by operation of law in the event that the Secured Obligations are transferred by way of assignment) to any person who is or becomes a creditor of the 2024 Notes in accordance with any of the Transaction Documents. The Security Grantor hereby explicitly and irrevocably consents to such assignment, transfer or disposal.

10.3 Security Grantor

The Security Grantor shall not be entitled to assign, to transfer or to dispose of all or any part of its rights or obligations or both under this Agreement.

11. Release of Security

11.1 Prior to Full Satisfaction

If the Collateral Agent is obliged to release all or part of the security granted under the Security Documents due to mandatory German law and are requested to do so by the Security Grantor prior to the end of the term of this Agreement, the Collateral Agent may, at its discretion, determine which part of the security may be released.

For the purpose of determining the value of the security the Collateral Agent may appoint a certified accountant (*Wirtschaftsprüfer*) to evaluate the security interest created under the Security Documents.

11.2 After Full Satisfaction

(a) The parties hereto are aware that the Pledges are accessory rights and as such will expire automatically by operation of law once the Secured Obligations have been irrevocably repaid in full.

(b) After the expiry of the Pledges, the Collateral Agent shall, at the request of the Security Grantor, arrange for the execution and delivery to the Security Grantor of a written acknowledgement of satisfaction of the Secured Obligations and termination of this Agreement (other than any indemnity referred to herein which shall survive such termination) and stating that the security interest created hereunder is released. This shall not apply to the extent that a third party is legally entitled to the security interest (or any part thereof). The Security Grantor shall reimburse the Collateral Agent for all out-of-pocket expenses (including legal fees), if any, incurred in connection with the acknowledgement referred to above.

12. Termination

12.1 Final Discharge

Subject to any release of all or any part of the security interest created hereunder pursuant to and in accordance with Clause 11 (*Release of Security*) hereof, the security interest created hereunder shall remain in full force and effect until the expiry of the Pledges. The security interest created hereunder shall not cease to exist if any payments made in satisfaction of the Secured Obligations have only temporarily discharged the Secured Obligations.

12.2 Payments Avoided

If an amount paid to the Pledgee under any Transaction Document is capable of being avoided or otherwise set aside on the liquidation, administration, winding-up or other similar proceedings in the jurisdiction of the person by whom such payment was made, then

(a) such amount shall not be considered to have been finally and irrevocably paid for the purposes hereof if any such proceedings could be expected on an objective basis at the time when the payments were made; and

(b) the Security Grantor undertakes to do all such things as the Collateral Agent may require in order to reinstate the security interest granted hereunder at its own expense and the Security Grantor waives all defences (*Einwendungen*) it may have against the claim of the Collateral Agent to reinstate the security interest granted hereunder.

13. Indemnity

(a) The Collateral Agent shall not be liable for any loss or damage suffered by the Security Grantor save in respect of such loss or damage which is suffered as a result of the gross negligence (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*) of the Collateral Agent.

(b) The Security Grantor shall indemnify the Collateral Agent and keep the Collateral Agent indemnified against any and all damages, losses, actions, claims, expenses, demands and liabilities which may be incurred by or made against the Collateral Agent for anything done or omitted in the exercise or purported exercise of the powers contained herein or occasioned by any breach of the Security Grantor of any of their obligations or undertakings contained herein other than to the extent that such damages, losses, actions, claims, expenses, demands and liabilities are incurred by or made against the Collateral Agent as a result of the gross negligence (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*) of the Collateral Agent.

14. Invalidity and Waiver

14.1 Invalidity

The Parties agree that should at any time, any provisions of this Agreement be or become void (*nichtig*), invalid or due to any reason ineffective (*unwirksam*) this will indisputably (*unwiderlegbar*) not affect the validity or effectiveness of the remaining provisions and this Agreement will remain valid and effective, save for the void, invalid or ineffective provisions, without any Party having to argue (*darlegen*) and prove (*beweisen*) the Parties' intent to uphold this Agreement even without the void, invalid or ineffective provisions.

The void, invalid or ineffective provision shall be replaced by such valid and effective provision that in legal and economic terms comes closest to what the Parties intended or would have intended in accordance with the purpose of this Agreement if they had considered the point at the time of conclusion of this Agreement.

The security interest created hereunder shall not be affected by recital (E) and (F) being inaccurate or incomplete.

14.2 Waiver

No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other

right or remedy. The rights and remedies provided hereunder are cumulative and not exclusive of any rights or remedies provided by law or by any other Transaction Document.

15. Process Agent

The Security Grantor hereby appoints the Company as process agent (*Zustellungsbevollmächtigter*) to accept service of process in connection with this Agreement before German courts. The Company accepts the appointment.

16. Costs and Expenses

All costs, charges, fees, taxes and expenses incurred in connection with (i) the preparation, execution, amendment, perfection, waiver, transfer, assignment, novation and release of this Agreement and (ii) the maintenance, protection and enforcement of the security interest created hereunder shall be borne by the Security Grantor.

17. Amendments

Changes and amendments to and waivers of this Agreement including this Clause 17 shall be made in writing (and in notarial form if required by law).

18. Notices and Language

18.1 Notices

Any notice or communication under or in connection with this Agreement shall be in writing in the English language (or, if in any other language, accompanied by an English translation).

18.2 Language

This Agreement is written in the English language. In the event of any conflict in this Agreement, any notice or any other communication under or in connection with this Agreement between the English text and the text in any other language, the English text shall prevail provided that if a German term has been inserted in the English text such German term shall prevail.

19. Law and Jurisdiction

19.1 Law

The parties hereto understand that this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

19.2 Jurisdiction

(a) The courts of Munich, Germany have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) ("**Dispute**").

(b) The Parties agree that the courts of Munich, Germany are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) This Clause 19.2 (*Jurisdiction*) is for the benefit of the Collateral Agent. As a result, the Collateral Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Collateral Agent may take concurrent proceedings in any number of jurisdictions.

Power of Attorney

Fisker Group Inc., a corporation, organized under the laws of Delaware, USA, having its principal executive offices in Manhatten Beach, California, USA, registered with the State of Delaware Secretary of State under entity file number 6136073

- **"Principal"** -,

hereby grants a power-of-attorney (*rechtsgeschäftliche Vollmacht*) to each of the following natural persons individually

Dr. Timo Holzborn
Tobias von Gostomski,
Adrian Dengler
Martina Pfaffinger,
Marvin Noussayaba Ambi Aideyan,
Onur Öztürk,
Carl Oldenbourg
Stefan Riedl
and
Dr. Lina Alami

each with official address at Orrick, Herrington & Sutcliffe LLP, Lenbachplatz 6, 80333 Munich, Germany and

Jonas Bücker,
Julia Fabian,
Dr. Michael Gläsner,
Dr. Odey Hardan,
Dr. Benedikt Kamann,
Margareta Kramer,
Dr. Carsten Kern,
Dr. Carolin Ostendorf,
Kevin Riehle,
Alessandro Saitta,
Tobias Stephan,
David Hamala,
Kjell Tönjes
and
Martha Verhaelen

each with official address at Orrick, Herrington & Sutcliffe LLP, Heinrich-Heine-Allee 12, 40213 Düsseldorf, Germany

- each a **"Proxy"** -,

each acting on his/her own, to represent the Principal within the scope as described below:

Fisker Inc. (the "**Company**") and others are party to a securities purchase agreement dated 9 May 2024 (as amended and restated from time to time and together with its annexes and schedules, the "**2024 Securities Purchase Agreement**") between the Company, as company, and each of the entities listed as an investor on the Schedule of Investors attached to the 2024 Securities Purchase Agreement (each an "**Investor**" and collectively, the "**Investors**"), as investors, pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future be required or have the right to purchase, the notes issued pursuant to the 2024 Securities Purchase Agreement (as such notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms and conditions thereof, collectively, the "**2024 Notes**").

The Principal has, *inter alia*, agreed to enter into a notarial share pledge agreement relating to the shares and related rights in Fisker GmbH, a company with limited liability (*Gesellschaft mit beschränkter Haftung*), organized under the laws of the Federal Republic of Germany, having its business address at Lenbachplatz 6, c/o Orrick Herrington & Sutcliffe LLP, 80333 Munich, Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under register number HRB 260452 (the "**Company**"), between, among others, the Principal as security grantor, CVI Investments, Inc., as collateral agent and pledgee, and others as pledgees (the "**Share Pledge Agreement**").

THIS AFORESAID, the Principal hereby authorizes each Proxy individually to represent the Principal on the occasion of all actions, measures, declarations and legal transactions in connection with the 2024 Notes and the Share Pledge Agreement to the extent permitted by law, in particular with respect to the following actions, measures, declarations and legal transactions:

1. The arrangement, negotiation, signing, consummation, implementation and execution of the Share Pledge Agreement;

2. the arrangement, negotiation, signing, consummation, implementation and execution as well as, as the case may be, the amendment and/or the termination of all other additional agreements as well as ancillary documents and any other agreements necessary or deemed useful by the Proxy in connection with the preparation, implementation, consummation and execution of the 2024 Notes and the Share Pledge Agreement;

3. any actions, declarations or measures which are in furtherance of the 2024 Notes and the Share Pledge Agreement and the purposes mentioned above; and

4. the submission and receipt of all declarations as well as the taking of all actions necessary or deemed useful by the Proxy in connection with the preparation, implementation, the consummation and the execution of the 2024 Notes and the Share Pledge Agreement.

Each Proxy is moreover authorized to do everything in the Principal's name and on the Principal's behalf which in his/her opinion shall support the purposes mentioned above.

Each Proxy is authorized to make all necessary declarations in notarized form if notarization is required by law or if notarization is preferable for other reasons. If this power-of-attorney refers to the "notarized form", this shall not only include the German notarization but also similar form requirements under other applicable jurisdictions.

In case of doubt, this power-of-attorney shall be interpreted extensively to realize the purpose of its granting.

Any reference in this power-of-attorney to one gender shall include all other genders.

Each Proxy may within the exercise of this power-of-attorney, i.e., in particular in the course of the execution and the consummation of the 2024 Notes and the Share Pledge Agreement as well as all declarations, actions and measures made in connection with such execution and consummation, not be held liable by the Principal. The Principal hereby waives all relevant rights to which the Principal is entitled. The Principal shall indemnify the Proxy against all costs, claims, expenses and liabilities incurred by or asserted against the Proxy in connection with the exercise of the rights granted under this power-of-attorney. These provisions do not apply to any claims against the Proxy resulting from wilful misconduct.

In case individual provisions of this power-of-attorney are invalid, this shall not affect the validity of the remaining provisions. Sec. 139 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) is hereby waived.

The Principal is aware and agrees that each Proxy is entitled to act on behalf of the Principal and that, at the same time, the Proxy is entitled to act on behalf of any third parties. Each Proxy is exempted from the restrictions of sec. 181 German Civil Code as well as any corresponding restrictions of the representation of multiple parties according to other jurisdictions.

The Proxy may appoint sub representatives (*ist ermächtigt, Untervollmacht zu erteilen*) with the same scope of authority as set forth in this power-of-attorney, also with the exemption from the restrictions of sec. 181 German Civil Code as well as any corresponding restrictions of the representation of multiple parties according to other jurisdictions.

The Principal promises to ratify any and all actions that the Proxy will execute in good faith pursuant to the foregoing.

Each Proxy may use this power-of-attorney repeatedly in connection with its purpose.

This power-of-attorney is subject to German law excluding its conflict of law rules. The courts of Munich, Germany, shall, to the extent permitted by applicable law, have exclusive jurisdiction.

(*Signature page follows.*)

Signed for and on behalf of the Principal

Los ANGELES, this 16 MAY, 2024

(Place)

Fisker Group Inc.

Name(s) of signatory: Dr. Geeta Gupta-Fisker

Title(s) of signatory: Chief Financial Officer and Chief Operating Officer

STATE OF California)

COUNTY OF Los Angeles) ss.:

On the 16th day of May, in the year, 2024, before me, the undersigned, personally appeared Geeta Gupta Fisker, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Ryan Matthew McDuffie
COMM. 2379110
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires Oct. 19, 2025

Notary Public

My commission expires: 10/19/2025

Power of Attorney

Fisker GmbH, a limited liability company (*Gesellschaft mit beschränkter Haftung*), organized under the laws of the Federal Republic of Germany, having its business address at Lenbachplatz 6, c/o Orrick Herrington & Sutcliffe LLP, 80333 Munich, Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under register number HRB 260452

- "**Principal**" -,

hereby grants a power-of-attorney (*rechtsgeschäftliche Vollmacht*) to each of the following natural persons individually

Dr. Timo Holzborn
Tobias von Gostomski,
Adrian Dengler
Martina Pfaffinger,
Marvin Noussayaba Ambi Aideyan,
Onur Öztürk,
Carl Oldenbourg
Stefan Riedl
and
Dr. Lina Alami

each with official address at Orrick, Herrington & Sutcliffe LLP, Lenbachplatz 6, 80333 Munich, Germany and

Jonas Bücker,
Julia Fabian,
Dr. Michael Gläsner,
Dr. Odey Hardan,
Dr. Benedikt Kamann,
Margareta Kramer,
Dr. Carsten Kern,
Dr. Carolin Ostendorf,
Kevin Riehle,
Alessandro Saitta,
Tobias Stephan,
David Hamala,
Kjell Tönjes
and
Martha Verhaelen

each with official address at Orrick, Herrington & Sutcliffe LLP, Heinrich-Heine-Allee 12, 40213 Düsseldorf, Germany

- each a "**Proxy**" -,

each acting on his/her own, to represent the Principal within the scope as described below:

Fisker Inc. (the "**Company**") and others are party to a securities purchase agreement dated 9 May 2024 (as amended and restated from time to time and together with its annexes and schedules, the "**2024 Securities Purchase Agreement**") between the Company, as company, and each of the entities listed as an investor on the Schedule of Investors attached to the 2024 Securities Purchase Agreement (each an "**Investor**" and collectively, the "**Investors**"), as investors, pursuant to which the Company has sold, and may in the future be required to sell, to the Investors, and the Investors have purchased, and may in the future be required or have the right to purchase, the notes issued pursuant to the 2024 Securities Purchase Agreement (as such notes may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms and conditions thereof, collectively, the "**2024 Notes**").

Fisker Group, Inc. (the "**Pledgor**") has, *inter alia*, agreed to enter into a notarial share pledge agreement relating to the shares and related rights in the Principal, between, among others, the Pledgor as security grantor, CVI Investments, Inc., as collateral agent and pledgee, and others as pledgees (the "**Share Pledge Agreement**").

THIS AFORESAID, the Principal hereby authorizes each Proxy individually to represent the Principal on the occasion of all actions, measures, declarations and legal transactions in connection with the 2024 Notes and the Share Pledge Agreement to the extent permitted by law, in particular with respect to the following actions, measures, declarations and legal transactions:

1. The arrangement, negotiation, signing, consummation, implementation and execution of the Share Pledge Agreement;

2. the arrangement, negotiation, signing, consummation, implementation and execution as well as, as the case may be, the amendment and/or the termination of all other additional agreements as well as ancillary documents and any other agreements necessary or deemed useful by the Proxy in connection with the preparation, implementation, consummation and execution of the 2024 Notes and the Share Pledge Agreement;

3. any actions, declarations or measures which are in furtherance of the 2024 Notes and the Share Pledge Agreement and the purposes mentioned above; and

4. the submission and receipt of all declarations as well as the taking of all actions necessary or deemed useful by the Proxy in connection with the preparation, implementation, the consummation and the execution of the 2024 Notes and the Share Pledge Agreement.

Each Proxy is moreover authorized to do everything in the Principal's name and on the Principal's behalf which in his/her opinion shall support the purposes mentioned above.

Each Proxy is authorized to make all necessary declarations in notarized form if notarization is required by law or if notarization is preferable for other reasons. If this power-of-attorney refers to the "notarized form", this shall not only include the German notarization but also similar form requirements under other applicable jurisdictions.

In case of doubt, this power-of-attorney shall be interpreted extensively to realize the purpose of its granting.

Any reference in this power-of-attorney to one gender shall include all other genders.

Each Proxy may within the exercise of this power-of-attorney, i.e., in particular in the course of the execution and the consummation of the 2024 Notes and the Share Pledge Agreement as well as all declarations, actions and measures made in connection with such execution and consummation, not be held liable by the Principal. The Principal hereby waives all relevant rights to which the Principal is entitled. The Principal shall indemnify the Proxy against all costs, claims, expenses and liabilities incurred by or asserted against the Proxy in connection with the exercise of the rights granted under this power-of-attorney. These provisions do not apply to any claims against the Proxy resulting from wilful misconduct.

In case individual provisions of this power-of-attorney are invalid, this shall not affect the validity of the remaining provisions. Sec. 139 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) is hereby waived.

The Principal is aware and agrees that each Proxy is entitled to act on behalf of the Principal and that, at the same time, the Proxy is entitled to act on behalf of any third parties. Each Proxy is exempted from the restrictions of sec. 181 German Civil Code as well as any corresponding restrictions of the representation of multiple parties according to other jurisdictions.

The Proxy may appoint sub representatives (*ist ermächtigt, Untervollmacht zu erteilen*) with the same scope of authority as set forth in this power-of-attorney, also with the exemption from the restrictions of sec. 181 German Civil Code as well as any corresponding restrictions of the representation of multiple parties according to other jurisdictions.

The Principal promises to ratify any and all actions that the Proxy will execute in good faith pursuant to the foregoing.

Each Proxy may use this power-of-attorney repeatedly in connection with its purpose.

This power-of-attorney is subject to German law excluding its conflict of law rules. The courts of Munich, Germany, shall, to the extent permitted by applicable law, have exclusive jurisdiction.

(*Signature page follows.*)

Signed for and on behalf of the Principal

LA PALMA, CALIFORNIA, this 14th of May 2024

(Place)

Fisker GmbH

Name(s) of signatory: Dr. Geeta Gupta-Fisker

Title(s) of signatory: Managing Director

Vollmacht **Power of Attorney**

CVI Investments, Inc.

c/o Heights Capital Management
101 California Street
Suite 3250
San Francisco
CA 9411
United States of America

ein auf den Kaimaninseln gegründetes Unternehmen, (die „**VOLLMACHTGEBERIN**“)

a company formed in the Cayman Islands (the "**Principal**")

erteilt hiermit Einzelvollmacht unter vollständiger Befreiung von dem Verbot, im Namen der Vollmachtgeberin mit sich im eigenen Namen als Vertreter Dritter Rechtsgeschäfte abzuschließen (Befreiung von der Beschränkung des § 181, 2. Alternative BGB sowie etwaiger entsprechender Vorschriften einer anderen auf diese Vollmacht anwendbaren Rechtsordnung), an jeweils

hereby grants a power of attorney, with the authority to represent alone, and with full exemption from the prohibition of contracting as agent of the Principal with him/herself as agent of a third party (release from the restriction of section 181, 2nd alternative of the German Civil Code or of similar provisions under any other law, if applicable), to each of

Dr. Sascha H. Schmidt, Michael Georg Bittner, Daniel Gillenkirch, Melanie Schubert, Marie-Christin Frowerk, Markus Stelzig, Ann Marie Hovey, Yannick Louis Couturier, Maral Nasseri, Georgina Coroneos, Xenia Ute Schmalstieg, Jana Göldner, Lotte Blumhoff, Paul Ludwig, Ines Manero Flock, Junes Boukaboub, Jonas Drosdeck, Frederike Ring

jeweils geschäftsansässig bei

each with business address at

White & Case LLP, Bockenheimer Landstr. 20, 60323 Frankfurt am Main, Deutschland/ Germany

– jeweils ein „**BEVOLLMÄCHTIGTER**“ –

– each a "**Proxy**" –

die VOLLMACHTGEBERIN bei folgenden Rechtsgeschäften, Maßnahmen und Handlungen zu vertreten:

to represent the Principal in the following legal transactions, measures and acts:

Abschluss, Änderung, Neufassung, Aufhebung und Durchführung des nachfolgend aufgeführten Sicherheitenvertrages, sowie Abgabe und Entgegennahme aller darin vorgesehenen oder damit im Zusammenhang stehenden Vereinbarungen, Erklärungen und Handlungen:

conclusion, amendment, revision, termination and implementation of the security agreement listed below, as well as making and accepting all agreements, declarations and actions provided therein or in connection therewith:

- Geschäftsanteilsverpfändungsvertrag betreffend sämtliche von Fisker Group Inc. gehaltenen bestehenden und künftigen Geschäftsanteile an Fisker GmbH (eingetragen im Handelsregister des Amtsgerichts München unter HRB 260452) sowie die damit verbundenen Nebenrechte und Forderungen mit, *inter alios*, Fisker

- share pledge agreement concerning all existing and future shares held by Fisker Group Inc. in Fisker GmbH (registered with the commercial register of the local court of Munich under HRB 260452) and all ancillary rights and claims associated therewith with, *inter alios*, Fisker Group Inc. as pledgor and the Principal as collateral agent and pledgee.

Group Inc. als Pfandgeber, und der VOLLMACHTGEBERIN als Sicherheitenverwalter und Pfandnehmer.

Jeder BEVOLLMÄCHTIGTE ist jeweils einzeln berechtigt, alle sonstigen Verträge abzuschließen, alle Handlungen vorzunehmen und alle Erklärungen gegenüber Gerichten, Grundbuchämtern, dem Handelsregister, Behörden, Notaren und sonstigen Dritten abzugeben oder entgegenzunehmen, die er im Zusammenhang mit den oben genannten Vorgängen für erforderlich oder für zweckmäßig halten darf.

Each Proxy shall individually be authorised to execute any and all such other agreements, to do any and all such other acts and to make and receive any and all declarations *vis-à-vis* courts, land registries, the commercial register, administrative authorities, notaries and any other third parties, as he/she may deem necessary or appropriate in connection with the above mentioned transactions.

Die VOLLMACHTGEBERIN wird jeden BEVOLLMÄCHTIGTEN sowie White & Case LLP für sämtliche Kosten entschädigen und von sämtlichen Kosten bzw. Ansprüchen, Haftungen und Auslagen freistellen und schadlos halten (einschließlich etwaiger Rechtsverteidigungskosten), die dem BEVOLLMÄCHTIGTEN oder White & Case LLP im Zusammenhang mit der Ausübung von Rechten entstehen, die dem BEVOLLMÄCHTIGTEN durch diese Vollmacht tatsächlich oder dem Anschein nach übertragen wurden, es sei denn, der BEVOLLMÄCHTIGTE hat grob fahrlässig oder vorsätzlich zum Nachteil der VOLLMACHTGEBERIN gehandelt.

The Principal shall indemnify and keep indemnified each Proxy and White & Case LLP against any and all costs, claims, liabilities and expenses (including, but not limited to, payment of all legal costs) that may be incurred by the Proxy or White & Case LLP in connection with the exercise of any powers conferred or purported to be conferred on the Proxy by this power of attorney unless the Proxy has acted with gross negligence or wilful misconduct to the detriment of the Principal.

Die VOLLMACHTGEBERIN wird sämtliche Dokumente, Urkunden, Handlungen, Erklärungen und Dinge, die ein BEVOLLMÄCHTIGTER unterzeichnet, abgibt oder vornimmt im Zusammenhang mit der Ausübung von Rechten, die ihm durch diese Vollmacht tatsächlich oder dem Anschein nach übertragen wurden, auf Verlangen des BEVOLLMÄCHTIGTEN genehmigen und bestätigen.

The Principal undertakes to ratify and confirm on the request of the Proxy any and all documents, deeds, acts, declarations and things which a Proxy shall execute, make or do in connection with the exercise of any powers conferred or purported to be conferred on it by this power of attorney.

Jeder BEVOLLMÄCHTIGTE kann stets ausdrückliche Anweisungen durch Telefax, E-Mail oder Brief verlangen, bevor er von dieser Vollmacht im Einzelfall Gebrauch macht; er darf sich auf derartige Anweisungen verlassen ungeachtet späterer abweichender Anweisungen bzw. eines Widerrufs einer derartigen Anweisung.

Each Proxy shall have the right to request express instructions in writing by telefax, e-mail or letter before acting pursuant to this power of attorney and shall have the right to rely on whatever instruction it so receives notwithstanding it receives contrary instructions or revocation thereof at any time thereafter.

Wenn die Anweisungen, die ein BEVOLLMÄCHTIGTER erhält, nach Ansicht des BEVOLLMÄCHTIGTEN unklar oder mehrdeutig sind bzw. geändert oder widerrufen worden sein könnten, kann der Vertreter die Vertretung ablehnen.

If a Proxy believes, in its sole discretion and judgment, that any instructions received are ambiguous, unclear or may have been modified or revoked, it shall have the unconditional right to refuse to act as a Proxy.

Die Haftung jedes BEVOLLMÄCHTIGTEN gegenüber der VOLLMACHTGEBERIN ist beschränkt auf Vorsatz. Im Falle der fahrlässigen Verletzung vertragswesentlicher Pflichten ist die Haftung beschränkt auf den voraussehbaren Schaden.

No Proxy shall have any liability to the Principal other than for the Proxy's wilful misconduct. In the case of a negligent breach of fundamental duties of the Proxy, the claims of the Principal shall be limited to foreseeable damages.

Jeder BEVOLLMÄCHTIGTE darf von der Echtheit der ihm übergebenen Dokumente bzw. Unterschriften ausgehen (sowohl bei Originalen als auch bei Kopien), soweit diese ihm als echt erscheinen.

Each Proxy may assume the genuineness of any document or signature which appears to it to be genuine (whether or not an original or a copy).

Diese Vollmacht verliert nach Ablauf von drei Monaten ab dem Datum der Ausstellung ihre Gültigkeit, es sei denn, sie wird vorher schriftlich widerrufen.

This power of attorney shall be valid for a period of three months from the date hereof unless it is revoked in writing before the expiry of such period.

Die von einem BEVOLLMÄCHTIGTEN vor dem Erlöschen der Vollmacht oder vor deren Widerruf vorgenommenen Handlungen werden durch Widerruf oder Erlöschen der Vollmacht nicht beeinträchtigt.

Any act done or declaration made by a Proxy prior to the expiry or revocation of this power of attorney shall not be affected by such expiry or revocation.

Jeder BEVOLLMÄCHTIGTE ist berechtigt, diese Vollmacht einmalig oder mehrmalig zu nutzen, auch zum Zwecke der Änderung oder Ergänzung von Erklärungen, die bereits unter dieser Vollmacht abgegeben wurden.

Each Proxy may make use of this power of attorney once or several times, also for modifying, supplementing or amending declarations or statements already made or given pursuant to this power of attorney.

Im Zweifel soll diese Vollmacht weit ausgelegt werden, um den Zweck ihrer Erteilung zu verwirklichen. Änderungen hinsichtlich der Parteien und/oder des Umfangs der oben genannten Verträge haben keine Auswirkungen auf diese Vollmacht.

In case of doubt, this power of attorney shall be interpreted broadly to achieve the purpose for which it was granted. Amendments with respect to the parties and/or the scope of the above mentioned agreements shall not affect this power of attorney.

Diese Vollmacht unterliegt deutschem Recht.

This power of attorney is governed by the law of Germany.

Diese Vollmacht enthält eine deutsche und eine englische Fassung. Im Fall von Abweichungen und für Zwecke der Auslegung ist der deutsche Wortlaut maßgebend.

This power of attorney contains a German and an English version. In case of inconsistencies and for purposes of interpretation, the German wording shall prevail.

[*absichtlich freigelassen*]

[*intentionally left blank*]

Ort, Datum/ Place, Date: San Francisco, 16. Mai/May 2024

CVI Investments, Inc.
by Heights Capital Management Inc. as its authorised agent

Durch/
By: _____

Name/
Name: MARTIN KOBINGER

Funktion/
Title: President

EXHIBIT U

Dated May 10, 2024

Senior Intercreditor Agreement

between

CVI Investments, Inc.
as First Lien Representative and First Lien Collateral Agent

CVI Investments, Inc.
as Junior Lien Representative and Junior Lien Collateral Agent

Fisker Inc.
as the Company

and others

Table of Contents

Page

Page

SENIOR INTERCREDITOR AGREEMENT

This **SENIOR INTERCREDITOR AGREEMENT** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of May 10, 2024, and entered into by and among **CVI INVESTMENTS, INC.** as First Lien Representative for the First Lien Claimholder (as defined below) (in such capacity and together with its successors and assigns from time to time in such capacity "First Lien Representative"), **CVI INVESTMENTS, INC.**, as collateral agent for the First Lien Claimholders (in such capacity and together with its successors and assigns from time to time in such capacity, the "First Lien Collateral Agent"), **CVI INVESTMENTS, INC.**, as Junior Lien Representative for the Junior Lien Claimholder (as defined below) (in such capacity and together with its successors and assigns from time to time in such capacity the "Junior Lien Representative"), **CVI INVESTMENTS, INC.**, as collateral agent for the Junior Lien Claimholders (in such capacity and together with its successors and assigns from time to time in such capacity, the "Junior Lien Collateral Agent"),and acknowledged and agreed to by **FISKER INC.**, a Delaware corporation (the "Company") and the other Grantors (as defined below). Capitalized terms used in this Agreement have the meanings assigned to them in Section 1 below or in the Initial First Lien Note Agreements, as applicable.

RECITALS

The Company and the First Lien Claimholders have entered into the Senior Secured Note Due 2024 dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time the "May 10 Initial First Lien Secured Note"). The Company, the First Lien Claimholder and the other parties party thereto have entered into that certain Securities Purchase Agreement, dated May 10, 2024 (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Initial First Lien Securities Purchase Agreement", and together with the May 10 Initial First Lien Secured Note any additional Initial First Lien Secured Notes, in each case, as amended, amended and restated, modified or supplemented from to time, collectively, the "Initial First Lien Note Agreements").

The Company, the Junior Lien Claimholder and the other parties party thereto have entered into (i) that certain Securities Purchase Agreement, dated July 11, 2023 (as amended on September 29, 2023 and as further amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Junior Lien Securities Purchase Agreement"), (ii) that certain Indenture, dated as of July 11, 2023 (the "Junior Lien Base Indenture"), as supplemented by (x) a first supplemental indenture with respect to the Series A-1 Senior Convertible Notes Due 2025 (the "Junior Lien Series A-1 Notes"), dated as of July 11, 2023 (the "Junior Lien First Supplemental Indenture"), (y) a second supplemental indenture with respect the Series B-1 Senior Convertible Notes Due 2025 (the "Junior Lien Series B-1 Notes," and together with the Series A-1 Notes, the "Junior Lien Secured Notes"), dated as of September 29, 2023 (the "Junior Lien Second Supplemental Indenture"), pursuant to which, among other things, the Junior Lien Claimholder agreed, subject to the terms and conditions set forth in the Junior Lien Securities Purchase Agreement, the Junior Lien Secured Notes and the Junior Lien Base Indenture, to purchase the Junior Lien Secured Notes from the Company, and (z) a third supplemental indenture with respect to the Junior Lien Secured Notes, dated as of November 22, 2023 (the "Junior Lien Third Supplemental Indenture," and together with the Junior Lien Base Indenture, the Junior Lien First Supplemental Indenture, and the Junior Lien Second Supplemental Indenture, and as otherwise amended, amended and restated, modified or supplemented from to time, the "Junior Lien Note Agreements").

Pursuant to the various Initial First Lien Note Documents, (a) the Company incurred the Initial First Lien Obligations, (b) Fisker Group and certain subsidiaries of Fisker Group have provided or will provide guarantees of the Initial First Lien Obligations (such subsidiaries of Fisker Group providing a guaranty

thereof, the "First Lien Subsidiary Guarantors") and (c) all of the First Lien Grantors have provided or will provide security for the Initial First Lien Obligations.

Pursuant to the various Junior Lien Note Documents, (a) the Company has incurred the Junior Lien Obligations, (b) Fisker Group and certain subsidiaries of Fisker Group have provided guarantees of the Junior Lien Obligations (such subsidiaries of Fisker Group providing a guaranty thereof, the "Junior Lien Subsidiary Guarantors") and (c) all of the Junior Lien Grantors have provided security for the Junior Lien Obligations.

Accordingly, 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, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Additional First Lien Debt" means any Indebtedness (other than the Initial First Lien Debt) and guarantees thereof that are incurred, issued or guaranteed by the Company and/or any other Grantor, which Indebtedness and guarantees are secured by the First Lien Collateral (or a portion thereof) on a basis senior to the Junior Lien Obligations; provided, however that with respect to any such Indebtedness such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by each First Lien Note Document and Junior Lien Note Document.

"Additional First Lien Note Documents" means, with respect to any Series of Additional First Lien Debt, promissory notes, indentures, securities purchase agreements and other operative agreements evidencing or governing such Indebtedness and the First Lien Collateral Documents securing such Series of Additional First Lien Debt.

"Additional First Lien Obligations" means, with respect to any Series of Additional First Lien Debt, (a) all principal, interest (including any Post-Petition Interest), premium (if any), penalties, fees, expenses (including fees, expenses and disbursements of agents, professional advisors and legal counsel), indemnifications, reimbursement obligations, damages and other liabilities, and guarantees of the foregoing amounts, in each case whether or not allowed or allowable in an Insolvency or Liquidation Proceeding, payable with respect to such Additional First Lien Debt, (b) all other amounts payable under the related Additional First Lien Note Documents and (c) any renewals or extensions of the foregoing, in each case, other than in respect of any Indebtedness not constituting Additional First Lien Debt.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

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

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended, modified, succeeded, or replaced from time to time.

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Claimholders" means the First Lien Claimholders and/or the Junior Lien Claimholders, as the context may require.

"Collateral" shall mean, at any time, all of the assets and property of any Grantor, whether real, personal or mixed, in which the holders of any First Lien Obligations and the holders of any Junior Lien Obligations (or their respective Collateral Agents or Representatives) hold, purport to hold or are required to hold, a security interest at such time (or are required pursuant to Section 2.03 to be granted a security interest) pursuant to any First Lien Collateral Document and any Junior Lien Collateral Document, as applicable.

"Collateral Agent" means any First Lien Collateral Agent and/or any Junior Lien Collateral Agent, as the context may require.

"Collateral Documents" means the First Lien Collateral Documents and the Junior Lien Collateral Documents.

"Company" has the meaning set forth in the Preamble to this Agreement.

"DIP Financing" has the meaning set forth in Section 6.01(a).

"Discharge" means, except to the extent otherwise provided in Section 5.05 or Section 6.05, (i) with respect to any Series of First Lien Obligations or Series of Junior Lien Obligations, the payment in full in cash of such Obligations (other than any indemnification for which no claim or demand for payment, whether oral or written, has been made at such time). The term "Discharged" shall have a corresponding meaning.

"Discharge of First Lien Obligations" means, except to the extent otherwise provided in Section 5.05, the Discharge of all First Lien Obligations under each additional Series of First Lien Obligations has occurred; provided, that the Discharge of First Lien Obligations shall be deemed not to have occurred if any First Lien Note Document is Refinanced in accordance with Section 5.03 and such Refinanced Indebtedness is then in effect and has not itself been Discharged or Refinanced in accordance with Section 5.03.

"Discharge of Junior Lien Obligations" means the Discharge of all Junior Lien Obligations has occurred.

"Disposition" has the meaning set forth in Section 5.01(b).

"Enforcement Action" means any action to:

(a) foreclose, execute, levy, or collect on, take possession or control of (other than for purposes of perfection), sell or otherwise realize upon (judicially or non- judicially), or lease, license, or otherwise dispose of (whether publicly or privately), First Lien Collateral, or otherwise exercise or enforce remedial rights with respect to First Lien Collateral under the First Lien Note Documents or the Junior Lien Note 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);

(b) solicit bids from third Persons, approve bid procedures for any proposed disposition of First Lien Collateral, conduct the liquidation or disposition of First Lien Collateral or engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third Persons for the purposes of valuing, marketing, promoting, and selling First Lien Collateral;

(c) receive a transfer of First Lien Collateral in satisfaction of Indebtedness or any other Obligation secured thereby;

(d) otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the First Lien Collateral at law, in equity, or pursuant to the First Lien Note Documents or Junior Lien Note Documents (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the First Lien Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of equity interests comprising First Lien Collateral); or

(e) effectuate or cause the Disposition of First Lien Collateral by any Grantor after the occurrence and during the continuation of an Event of Default (or similar term) under any of the First Lien Note Documents or the Junior Lien Note Documents with the consent of the applicable First Lien Collateral Agent (or First Lien Claimholders) or Junior Lien Collateral Agent (or Junior Lien Claimholders).

"First Lien Claimholders" means any "Holder" as defined in the Initial First Lien Note Agreements and any Additional First Lien Note Documents.

"First Lien Collateral" shall mean, collectively, all assets of any Grantor, whether real, personal, or mixed, now owned or existing or hereafter acquired or arising and wherever located (including, for the avoidance of doubt, any such First Lien Collateral that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute First Lien Collateral) that has been secured by First Lien Collateral Document.

"First Lien Collateral Agent" has the meaning set forth in the Preamble to this Agreement.

"First Lien Collateral Documents" means the First Lien Security Agreement, the First Lien International Collateral Documents and the other "Security Documents" (as such term (or similar term) is defined in the Initial First Lien Note Agreements and in any Additional First Lien Note Documents (or any like term used in any Additional First Lien Note Documents)).

"First Lien Debt" means the Initial First Lien Debt and any Additional First Lien Debt.

"First Lien Grantors" means the Company, Fisker Group, each of the First Lien Subsidiary Guarantors and each other Subsidiary that has executed and delivered or may from time to time hereafter execute and deliver any First Lien Collateral Document as a "grantor" or "pledgor" (or the equivalent thereof) to secure any First Lien Obligations.

"First Lien Guaranty" means that certain Guaranty Agreement, dated as of the date of this Agreement (as amended, amended and restated, supplemented and/or otherwise modified from time to time) between the Company, Fisker Group, the other First Lien Subsidiary Guarantors and the First Lien Collateral Agent.

"First Lien International Collateral Documents" means each security document not governed by New York law granted by any Grantor securing the First Lien Obligations.

"First Lien Note Documents" means the Initial First Lien Note Documents and any Additional First Lien Note Documents.

"First Lien Obligations" means the Initial First Lien Obligations and any Additional First Lien Obligations.

"First Lien Representative" has the meaning set forth in the Preamble to this Agreement.

"First Lien Security Agreement" means that certain Pledge and Security Agreement, dated as of May 10, 2024, by and among the Company, the other First Lien Grantors party thereto from time to time and the First Lien Collateral Agent.

"First Lien Subsidiary Guarantors" has the meaning set forth in the Recitals to this Agreement.

"Fisker Group" means Fisker Group, Inc. a Delaware corporation.

"French Security Documents" means any Collateral Agreement governed by French law, including any Additional Security Documents.

"Governmental Authority" means the government of the United States or any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government including any supra-national bodies (such as the European Union or the European Central Bank).

"Grantors" means the First Lien Grantors and the Junior Lien Grantors (as applicable).

"Indebtedness" means and includes all indebtedness for borrowed money.

"Initial First Lien Debt" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Initial First Lien Note Documents.

"Initial First Lien Note Agreements" has the meaning set forth in the Recitals.

"Initial First Lien Note Documents" means the Initial First Lien Note Agreements, the First Lien Guaranty, the First Lien Collateral Documents and the other "Transaction Documents" (or similar term) as defined in the Initial First Lien Note Agreements and any other document or agreement entered into for the purpose of evidencing, governing, securing or perfecting the Initial First Lien Obligations.

"Initial First Lien Obligations" means the "Obligations" as defined in the Initial First Lien Note Agreements.

"Initial First Lien Secured Notes" means the May 10 Initial First Note Agreement and any other Senior Secured Notes due 2024 entered into by the Company and the First Lien Claimholder pursuant to the Initial First Lien Securities Purchase Agreement.

"Initial First Lien Securities Purchase Agreement" has the meaning set forth in the Recitals.

"Insolvency or Liquidation Proceeding" means:

(a) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law with respect to any Grantor;

(b) 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;

(c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) 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 **Error! Reference source not found.** hereto required to be delivered by any Grantor pursuant to Section 8.20.

"Junior Lien Adequate Protection Payments" has the meaning set forth in Section 6.03(b).

"Junior Lien Base Indenture" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Claimholders" means the holder of the Junior Lien Obligations and the Junior Lien Representative.

"Junior Lien Collateral" means any First Lien Collateral that constitutes "Collateral" (as defined in the Junior Lien Note Agreements).

"Junior Lien Collateral Agent" has the meaning set forth in the Preamble to this Agreement.

"Junior Lien Collateral Documents" means the Junior Lien Security Agreement, the Junior Lien International Collateral Documents and the "Security Documents" (as such term is defined in the Junior Lien Note Agreements).

"Junior Lien Debt" means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Junior Lien Note Documents.

"Junior Lien First Supplemental Indenture" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Grantors" means the Company, Fisker Group, each of the Junior Lien Subsidiary Guarantors and each other Subsidiary that has executed and delivered or may from time to time hereafter execute and deliver any Junior Lien Collateral Document as a "grantor" or "pledgor" (or the equivalent thereof) to secure any Junior Lien Obligations.

"Junior Lien Guaranty" means that certain Guaranty Agreement, dated December 28, 2023 (as amended, amended and restated, supplemented and/or otherwise modified from time to time) between the Company, Fisker Group, the other Junior Lien Subsidiary Guarantors and the Junior Lien Collateral Agent.

"Junior Lien International Collateral Documents" means each security document not governed by New York law granted by any Grantor securing the Junior Lien Obligations.

"Junior Lien Note Agreements" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Note Documents" means the Junior Lien Note Agreements, the Junior Lien Guaranty, the Junior Lien Collateral Documents and the other "Transaction Documents" as defined in the Junior Lien Note Document and any other document or agreement entered into for the purpose of evidencing, governing, securing or perfecting the Junior Lien Obligations.

"Junior Lien Obligations" means the "Obligations" as defined in the Junior Lien Note Agreements.

"Junior Lien Representative" has the meaning set forth in the Preamble to this Agreement.

"Junior Lien Second Supplemental Indenture" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Secured Notes" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Securities Purchase Agreement" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Security Agreement" means that certain Amended and Restated Pledge and Security Agreement, dated as of December 28, 2023, by and among the Company, the other Grantors party thereto and the Junior Lien Collateral Agent (amending and restating that certain Pledge Agreement dated November 22, 2023 between the Company, Fisker Group, Fisker GmbH and the Junior Lien Collateral Agent).

"Junior Lien Series A-1 Notes" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Series B-1 Notes" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Subsidiary Guarantors" has the meaning set forth in the Recitals to this Agreement.

"Junior Lien Third Supplemental Indenture" has the meaning set forth in the Recitals to this Agreement.

"Lien" means, with respect to any asset, (i) any mortgage, deed of trust, lien, pledge, option, levy, execution, attachment, garnishment, hypothecation, assignment for security, deposit arrangement, encumbrance, charge, security interest or other preferential arrangement in the nature of a security interest of any kind or nature whatsoever, on or of such asset, and (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"May 10 Initial First Lien Secured Note" has the meaning set forth in the Recitals.

"Obligations" means all obligations of every nature of the Company and each other Grantor from time to time owed to any agent or trustee, the First Lien Claimholders, the Junior Lien Claimholders or any of them or their respective Affiliates, in each case, under the First Lien Note Documents or the Junior Lien Note Documents, whether for principal, interest, fees, expenses, indemnification or otherwise and all guarantees of any of the foregoing and including any interest and fees that accrue after the commencement by or against any Person of any Insolvency or Liquidation Proceeding naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Pay-Over Amount" has the meaning set forth in Section 6.03(b).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

"Pledged Collateral" has the meaning set forth in Section 5.04(a).

"Post-Petition Interest" means interest, fees, expenses and other charges that, pursuant to the First Lien Note Documents or the Junior Lien Note 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 applicable Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

"Recovery" has the meaning set forth in Section 6.05.

"Refinance" means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other Indebtedness in exchange or replacement for, such Indebtedness in whole or in part and regardless of whether the principal amount of

such Refinanced Indebtedness is the same, greater than, or less than the principal amount of the Refinanced Indebtedness. "Refinanced" and "Refinancing" shall have correlative meanings.

"Representative" means any First Lien Representative and/or any Junior Lien Representative, as the context may require.

"Responsible Officer" means the chief executive officer, president, chief financial officer, principal accounting officer, treasurer, vice president of finance or controller of any Person. Any document delivered hereunder that is signed by a Responsible Officer of any Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person.

"Series" means, (x) with respect to First Lien Debt or Junior Lien Debt, all First Lien Debt or Junior Lien Debt, as applicable, represented by the same Representative acting in the same capacity and (y) with respect to First Lien Obligations or Junior Lien Obligations, all such obligations secured by the same First Lien Collateral Documents or the same Junior Lien Collateral Documents, as the case may be.

"Short Fall" has the meaning set forth in Section 6.03(b).

"Stock" means shares of the capital stock (including common and preferred shares), partnership interests, membership interest in a limited liability company, beneficial interests in a trust, or other equity interests.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which more than 50% of the Stock or more than 50% of the ordinary voting power, are as of such date, owned, controlled or held by the parent (either directly or through one or more intermediaries or both) or (b) the management of which is, as of such date, otherwise controlled, by the parent (either directly or through one or more intermediaries or both).

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any First Lien Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

Section 1.02 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 in a manner consistent with, and not in contravention of any of, the terms hereof 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;

(e) any restrictions on actions by Junior Lien Representatives, Junior Lien Collateral Agents or Junior Lien Claimholders under this Agreement shall not apply to such Persons in their separate capacities as First Lien Representatives, First Lien Collateral Agents or First Lien Claimholders (where applicable);

(f) any reference to the consent, approval, taking of an action or omission to take an action by a Representative or Collateral Agent shall be construed to mean the consent, approval or taking of an action or omission to take an action by a Representative or Collateral Agent at the direction of, or with the consent of, the applicable requisite Claimholders under the applicable First Lien Note Documents or Junior Lien Note Documents; and

(g) 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.

ARTICLE II

LIEN PRIORITIES.

Section 2.01 **Relative Priorities**. Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the Junior Lien Obligations granted on the First Lien Collateral or of any Liens securing the First Lien Obligations granted on the First Lien Collateral and notwithstanding any provision of the UCC or any other applicable law or the Junior Lien Note 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 First Lien Obligations, the subordination of the Liens securing the Junior Lien Obligations to the Liens securing the First Lien Obligations, the subordination of Liens to any other Liens securing any other obligation of the Company, any other Grantor or any other Person, or any other circumstance whatsoever, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, hereby agrees, subject to Section 4.01, that:

(a) any Lien on the First Lien Collateral securing any First Lien Obligations now or hereafter held by or on behalf of any First Lien Representative, any First Lien Collateral Agent or any First 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 and remain senior in all respects and prior to any Lien on the First Lien Collateral securing any Junior Lien Obligations for all purposes; and

(b) any Lien on the First Lien Collateral securing any Junior Lien Obligations now or hereafter held by or on behalf of any Junior Lien Representative, any Junior Lien Collateral Agent, any Junior 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 and remain junior and subordinate in all respects to all Liens on the First Lien Collateral securing any First Lien Obligations for all purposes.

(c) Grantors may grant additional French Security to secure new liabilities provided that the priority set out in this Section shall be preserved as set out in Section 2.05.

Section 2.02 Prohibition on Contesting Liens. Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, and each First Lien Representative and each First Lien Collateral Agent, for itself and on behalf of each other First Lien Claimholder represented by it, 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 First Lien Claimholders in the First Lien Collateral or by or on behalf of any of the Junior Lien Claimholders in the Junior Lien Collateral, as the case may be, or the amount, nature or extent of the First Lien Obligations or Junior Lien Obligations or the provisions of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of any First Lien Representative, any First Lien Collateral Agent or any First Lien Claimholder to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens on the First Lien Collateral securing the First Lien Obligations as provided in Sections 2.01 and 3.01.

Section 2.03 No New Liens. So long as the Discharge of First Lien 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 Company and each Grantor shall not, and shall not permit any other Grantor to grant or permit any additional Liens on any asset or property to secure any Junior Lien Obligation unless it has granted or concurrently grants a Lien on such asset or property to secure the First Lien Obligations, the parties hereto agreeing that any such Lien shall be subject to Section 2.01 and the other provisions of this Agreement.

If any Junior Lien Representative, any Junior Lien Collateral Agent or any Junior Lien Claimholder shall hold any Lien on any assets or property of any Grantor constituting Junior Lien Collateral securing any Junior Lien Obligations that are not also subject to the first-priority Liens securing all First Lien Obligations under the First Lien Collateral Documents, such Junior Lien Representative, Junior Lien Collateral Agent or Junior Lien Claimholder shall notify the First Lien Representative promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, on such assets or property to each First Lien Collateral Agent as security for the First Lien Obligations represented by it, such Junior Lien Representative, Junior Lien Collateral Agent and Junior Lien Claimholders shall be deemed to hold and have held such Lien for the benefit of each First Lien Representative, First Lien Collateral Agent and the other First Lien Claimholders as security for the First Lien 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 First Lien Representative, First Lien Collateral Agent and/or the First Lien Claimholders, each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of each Junior Lien Claimholder represented by it, 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 2.03 shall be subject to Section 4.02.

Section 2.04 Perfection of Liens. Except for the arrangements contemplated by Section 5.04, none of the First Lien Representatives, the First Lien Collateral Agents or the First Lien Claimholders shall be responsible for perfecting and maintaining the perfection of Liens with respect to the First Lien Collateral for the benefit of the Junior Lien Representatives, the Junior Lien Collateral Agents or the Junior Lien Claimholders. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the First Lien Claimholders on the one hand and the Junior Lien Claimholders on the other hand, with respect to the First Lien Collateral and such provisions shall not impose on the First Lien Representatives, the First Lien Collateral Agents, the First Lien Claimholders, the Junior Lien Representatives, the Junior Lien Collateral Agents, the Junior Lien Claimholders or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any First Lien 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.

Section 2.05. French Security: Priorities not affected. Upon additional commitments or new debt financing being provided under the First Lien Obligations at any time after the date hereof or refinancing or replacing facilities being granted in respect of First Lien Obligations or any amendment is made after the date hereof to the First Lien Note Documents resulting or expecting to result in more onerous payment obligations upon the relevant Grantor, then, to the extent that the relevant new liabilities are permitted to be created and to be secured by French Security pursuant to this Agreement and the First Lien Note Documents (together "**Post-Closing Liabilities**"): (i) the relevant Grantor may grant to the providers of such Post-Closing Liabilities, additional security and guarantee by executing additional French Security Documents and guarantee agreements on a second or, based on the chronological order in which such security is taken, lesser ranking basis (the "**Additional Security Documents**") which, irrespective of such ranking, will benefit from the order of priority and ranking set out in Section 2.01 (*Relative Priorities*) and in Section 4.01 (Application of Proceeds); and (ii) each Claimholder under the then existing French Security Documents (the "**Existing Security Documents**") consents to and authorizes the creation of any Additional Security Document on any charged property and, for that purposes, authorizes and/or appoints and instructs the Collateral Agent (acting on behalf of each relevant Claimholder, including the creditor of any Post-Closing Liabilities) to enter into any Additional Security Documents.

The Parties expressly agree that the Claimholders which are beneficiaries of any French Security under any French Security Documents will receive the proceeds of enforcement of any French Security created pursuant to such French Security Documents in accordance with Section 4.01 (*Application of Proceeds*), regardless of the ranking of the security stated in the French Security Document.

Nothing in this Section restricts the Claimholders benefiting from any French Security under an Existing Security Document from enforcing, perfecting and/or releasing such existing French Security under such Existing Security Documents in accordance with, and to the extent permitted by this Agreement and subject to the terms of such Existing Security Document.

Any decision to enforce any French Security under the French Security Documents must be taken in accordance with the provisions of this Agreement regardless of the ranking of the relevant French Security and, unless otherwise decided, any decision to enforce the French Security under the Existing Security Documents shall entail enforcement of the French Security under all the Additional Security Documents.

Each Claimholder agrees not to take any action to challenge the validity, the perfection or enforceability of any French Security Document (including any Existing Security Document and Additional Security Document) by reason of it being expressed to be lower ranking or otherwise.

The Claimholders including any Claimholder which becomes the beneficiary of lower ranking security under an Additional Security Document agrees not to take any action to challenge the validity or enforceability of any other French Security Document (including any Existing Security Document and Additional Security Document) by reason of it being expressed to be prior ranking, lower ranking or otherwise.

No Claimholder benefiting from any French Security under the Existing Security Documents shall incur any liability to the beneficiaries of any Additional Security Document for the manner of exercise or any non-exercise of their rights, remedies, powers, authority or discretions under such already existing French Security or for any waivers, consents or releases.

ARTICLE III

ENFORCEMENT.

Section 3.01 Exercise of Remedies. (a) Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Junior Lien Representatives, the Junior Lien Collateral Agents and the Junior Lien Claimholders:

(i) will not commence or maintain, or seek to commence or maintain, any Enforcement Action or otherwise exercise any rights or remedies with respect to (or join or support any other Person undertaking any of the forgoing) any First Lien Collateral without the prior written consent from the First Lien Collateral Agent, including any Insolvency or Liquidation Proceeding of any Grantor (provided that in any such Insolvency or Liquidation Proceeding any Junior Lien Representative, Junior Lien Collateral Agent or Junior Lien Claimholder may take any action expressly permitted by Section 6 hereof);

(ii) will not contest, protest or object to (or join or support any other Person undertaking any of the forgoing) any foreclosure proceeding or action brought by any First Lien Representative, any First Lien Collateral Agent or any First Lien Claimholder or any other exercise by any First Lien Representative, any First Lien Collateral Agent or any First Lien Claimholder of any rights and remedies relating to the First Lien Collateral under the First Lien Note Documents or otherwise (including any Enforcement Action initiated by or supported by any First Lien Representative, any First Lien Collateral Agent or any First Lien Claimholder); and

(iii) will not object to (or join or support any other Person that objects to) the forbearance by any First Lien Representative, any First Lien Collateral Agent or any First Lien Claimholder from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the First Lien Collateral, in each case so long as any proceeds received by any First Lien Representative or First Lien Collateral Agent in excess of those necessary to achieve a Discharge of First Lien Obligations are distributed in accordance with Section 4.01 and applicable law.

(b) Until the Discharge of First Lien 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 3.01(a)(i), the First Lien Representatives, the First Lien Collateral Agents and the First Lien Claimholders shall have the exclusive right to commence and maintain an Enforcement Action or otherwise enforce rights, exercise remedies with respect to the First Lien Collateral (including set-off, recoupment and the right to credit bid their debt, except that Junior Lien Representatives shall have the credit bid rights set forth in Section 3.01(c)(vi)), and subject to Section 5.01, make determinations regarding the release, disposition, or restrictions with respect to the First Lien Collateral, in each case, without any consultation with or the consent of any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder; provided that any proceeds received by any First Lien Representative or First Lien Collateral Agent in excess of those necessary to achieve a Discharge of First Lien Obligations are distributed in accordance with Section 4.01 and applicable law. In commencing or maintaining any Enforcement Action or otherwise exercising rights and remedies with respect to the First Lien Collateral, the First Lien Representatives, the First Lien Collateral Agents and the First Lien Claimholders may enforce the provisions of the First Lien Note Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion and without consultation with any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder and regardless of whether any such exercise is adverse to the interest

of any Junior Lien Claimholder. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of First Lien 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.

(c) Notwithstanding the foregoing, any Junior Lien Representative, any Junior Lien Collateral Agent and any other Junior Lien Claimholder may:

(i) file a proof of claim or statement of interest with respect to the Junior Lien Obligations; provided that an Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor;

(ii) take any action (not adverse to the priority status of the Liens on the First Lien Collateral securing the First Lien Obligations, or the rights of any First Lien Representative, any First Lien Collateral Agent or the First Lien Claimholders to exercise remedies in respect thereof or otherwise inconsistent with or in contravention of this Agreement) in order to create, perfect, preserve or protect its Lien on the First Lien Collateral;

(iii) 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 Junior Lien Claimholders, including any claims secured by the First Lien Collateral, if any, in each case in accordance with the terms of this Agreement;

(iv) vote on any plan of reorganization, arrangement, compromise or liquidation, make other filings and make any arguments and motions that are, in each case, in accordance with the terms of this Agreement, with respect to the Junior Lien Obligations and the First Lien Collateral; provided that no filing of any claim or vote, or pleading related to such claim or vote, to accept or reject a disclosure statement, plan of reorganization, arrangement, compromise or liquidation, or any other document, agreement or proposal similar to the foregoing by any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder, may be inconsistent with or in contravention of the provisions of this Agreement;

(v) exercise any of its rights or remedies with respect to the First Lien Collateral to the extent permitted by Section 3.01(a)(i) and subject to the other terms of this Agreement; and

(vi) bid for or purchase First Lien Collateral at any public, private or judicial foreclosure upon such First Lien Collateral initiated by any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder, or any sale of First Lien Collateral during an Insolvency or Liquidation Proceeding; provided that, unless previously consented to in writing by the First Lien Collateral Agent, such bid may not include a "credit bid" in respect of any Junior Lien Obligations unless the cash proceeds included in such bid are at least sufficient to cause the Discharge of First Lien Obligations (and, if such bid is ultimately successful, such bid does cause the Discharge of First Lien Obligations).

Each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, agrees that it will not take or receive any First Lien Collateral or any proceeds of First Lien Collateral in connection with the exercise of any right or remedy (including set-off and recoupment) with respect to any First Lien Collateral in its capacity as a creditor or

as a distribution in an Insolvency or Liquidation Proceeding, unless and until the Discharge of First Lien Obligations has occurred, except in connection with any foreclosure expressly permitted by Section 3.01(a)(i) to the extent such Junior Lien Representative or such Junior Lien Collateral Agent and Junior Lien Claimholders represented by it are permitted to retain the proceeds thereof in accordance with Section 4.02 of this Agreement. Without limiting the generality of the foregoing, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in this Section 3.01(c) and Sections 3.01(a), 3.01(b), 3.01(e) and Article VI, the sole right of the Junior Lien Representatives, the Junior Lien Collateral Agents and the other Junior Lien Claimholders with respect to the First Lien Collateral is to hold a Lien on the First Lien Collateral pursuant to the Junior Lien Collateral Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of First Lien Obligations has occurred.

(d) Subject to Sections 3.01(a), 3.01(b) and 3.01(c):

(i) each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, agrees that such Junior Lien Representative or such Junior Lien Collateral Agent and such Junior Lien Claimholders represented by it will not take any action (or join or support any Person taking any action) that would hinder any exercise of remedies under the First Lien Note Documents with respect to the First Lien Collateral or is otherwise prohibited hereunder or inconsistent herewith, including any sale, lease, exchange, transfer or other disposition of the First Lien Collateral, whether by foreclosure or otherwise;

(ii) each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, hereby waives any and all rights such Junior Lien Representative or such Junior Lien Collateral Agent and such Junior Lien Claimholders represented by it may have as a junior lien creditor with respect to the First Lien Collateral or otherwise to object to (or join or support any Person objecting to) the manner in which any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder seeks to enforce the Liens granted in the First Lien Collateral undertaken in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder is adverse to the interest of any Junior Lien Claimholder; and each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Junior Lien Note Document (other than those (if any) expressly included in this Agreement) shall be deemed to restrict in any way the rights and remedies of any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder with respect to the First Lien Collateral as set forth in this Agreement and the First Lien Note Documents.

(e) The Junior Lien Representatives, the Junior Lien Collateral Agents and the other Junior Lien Claimholders may exercise rights and remedies as unsecured creditors against the Company or any other Grantor that has guaranteed or granted Liens in the First Lien Collateral to secure the Junior Lien Obligations in accordance with the terms of the Junior Lien Note Documents and applicable law except for rights and remedies otherwise restricted or limited by this Agreement, all of which restrictions and limitations shall apply to the Junior Lien Representatives, Junior Lien Collateral Agents and the other Junior Lien Claimholders in their capacities as both secured creditors and unsecured creditors; provided that in the event that any Junior Lien Claimholder becomes a judgment Lien creditor in respect of First Lien Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Junior Lien Obligations, such judgment Lien in the First Lien Collateral shall be subject to the terms of this Agreement

for all purposes (including in relation to the First Lien Obligations) in the same manner as the other Liens in the First Lien Collateral securing the Junior Lien Obligations are subject to this Agreement.

(f) Except as specifically set forth in Sections 3.01(a) and 3.01(d), nothing in this Agreement shall prohibit the receipt by any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder of the required payments of interest, principal and other amounts owed in respect of the Junior Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder of rights or remedies as a secured creditor (including set-off and recoupment) in respect of the First Lien Collateral, enforcement in contravention of this Agreement of any Lien held by any of them in respect of the First Lien Collateral, as a result of any other violation by any Junior Lien Claimholder of the express terms of this Agreement or in connection with an Insolvency or Liquidation Proceeding except as set forth in Section 6.03. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder may have with respect to the First Lien Collateral.

Section 3.02 Actions Upon Breach; Specific Performance. If any Junior Lien Claimholder, in contravention of the terms of this Agreement, in any way takes, attempts to or threatens to take (or joins or supports any Person taking or attempting or threatening to take) any action with respect to the First Lien Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or fails to take any action required by this Agreement, this Agreement shall create an irrebuttable presumption and admission by such Junior Lien Claimholder that relief against such Junior Lien Claimholder by injunction, specific performance and/or other appropriate equitable relief is necessary to prevent irreparable harm to the First Lien Claimholders, it being understood and agreed by each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of each Junior Lien Claimholder represented by it, that (i) the First Lien Claimholders' damages from actions of any Junior Lien Claimholder may at that time be difficult to ascertain and may be irreparable and (ii) each Junior Lien Claimholder waives any defense that the Grantors and/or the First Lien Claimholders cannot demonstrate damage and/or be made whole by the awarding of damages. Each of the First Lien Representatives and/or First Lien Collateral Agents may demand specific performance of this Agreement. Each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, hereby irrevocably waives 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 any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder. No provision of this Agreement shall constitute or be deemed to constitute a waiver by any First Lien Representative or any First Lien Collateral Agent on behalf of itself and each other First Lien Claimholder represented by it of any right to seek damages from any Person in connection with any breach or alleged breach of this Agreement.

ARTICLE IV

COLLATERAL PAYMENTS.

Section 4.01 Application of Proceeds. So long as the Discharge of First Lien 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 First Lien Collateral or any proceeds thereof and any insurance proceeds to be distributed pursuant to Section 5.02 received in connection with any Enforcement Action or

other exercise of remedies by any First Lien Representative, any First Lien Collateral Agent or any First Lien Claimholder in respect of the First Lien Collateral shall be applied as follows:

FIRST, by the First Lien Collateral Agent and the other First Lien Collateral Agents or the First Lien Representatives, as applicable, to the First Lien Obligations in such order as specified in the relevant First Lien Note Documents until a Discharge of First Lien Obligations;;

SECOND, by the Junior Lien Collateral Agent and the other Junior Lien Collateral Agents or the Junior Lien Representatives, as applicable, to the applicable Junior Lien Obligations in such order as specified in the applicable Junior Lien Collateral Documents until a Discharge of Junior Lien Obligations;

THIRD, to the Grantors, their successors or assigns from time to time, or to whomever may be lawfully entitled to receive the same.

Section 4.02 Payments Over. (a) So long as the Discharge of First Lien 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 First Lien Collateral or any proceeds thereof (including assets or proceeds subject to Liens referred to in the second to last paragraph of Section 2.03 and any assets or proceeds subject to Liens that have been avoided or otherwise invalidated, but excluding any debt obligations of the reorganized debtor distributed as contemplated by Section 6.06) received by any Junior Lien Representative, Junior Lien Collateral Agent or any other Junior Lien Claimholder in connection with any Enforcement Action or other exercise of any right or remedy, in each case, relating to the First Lien Collateral, less any reasonable out-of-pocket expenses incurred in connection with such Enforcement Action, in all cases shall be segregated and held in trust and forthwith paid over to the First Lien Collateral Agent for the benefit of the First Lien Claimholders in the same form as received, with any necessary endorsements (which endorsements shall be without recourse and without any representations or warranties) or as a court of competent jurisdiction may otherwise direct. The First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Junior Lien Representatives, Junior Lien Collateral Agents or any such other Junior Lien Claimholder. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

(b) So long as the Discharge of First Lien Obligations has not occurred, if in any Insolvency or Liquidation Proceeding any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder shall receive any distribution of money or other property in respect of the First Lien Collateral or proceeds thereof (including any assets or proceeds subject to Liens referred to in the second to last paragraph of Section 2.03 and assets or proceeds subject to Liens that have been avoided or otherwise invalidated) such money or other property (other than debt obligations of the reorganized debtor distributed as contemplated by Section 6.06) shall be segregated and held in trust and forthwith paid over to the First Lien Collateral Agent for the benefit of the First Lien Claimholders in the same form as received, with any necessary endorsements (which endorsements shall be without recourse and without any representations or warranties). The First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Junior Lien Representatives, the Junior Lien Collateral Agents or any such other Junior Lien Claimholder. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations. Any Lien on assets constituting First Lien Collateral (or in the nature of First Lien Collateral) received by any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder in respect of any of the Junior Lien Obligations in any Insolvency or Liquidation Proceeding shall be subject to the terms of this Agreement.

ARTICLE V

OTHER AGREEMENTS.

Section 5.01 Releases. (a) If in connection with any Enforcement Action or other exercise of rights and remedies in respect of the First Lien Collateral by any First Lien Representative or any First Lien Collateral Agent, in each case prior to the Discharge of First Lien Obligations, such First Lien Collateral Agent, for itself or on behalf of any of the First Lien Claimholders represented by it, releases any of its Liens on any part of the First Lien Collateral or such First Lien Representative, for itself or on behalf of any of the First Lien Claimholders represented by it, releases any Grantor that owns First Lien Collateral from its obligations under its guaranty of the First Lien Obligations, then the Liens, if any, of each Junior Lien Collateral Agent, for itself or for the benefit of the Junior Lien Claimholders, on such First Lien Collateral, and the obligations of such Grantor under its guaranty of the Junior Lien Obligations, shall be automatically, unconditionally and simultaneously released. If in connection with any Enforcement Action or other exercise of rights and remedies in respect of the First Lien Collateral by any First Lien Representative or any First Lien Collateral Agent, in each case prior to the Discharge of First Lien Obligations, the equity interests of any Person are foreclosed upon or otherwise disposed of and such First Lien Collateral Agent releases its Lien on the First Lien Collateral of such Person then the Liens of each Junior Lien Collateral Agent with respect to the First Lien Collateral of such Person (other than Liens on any proceeds of such First Lien Collateral remaining after the Discharge of First Lien Obligations) will be automatically released to the same extent as the Liens of such First Lien Collateral Agent; provided that any proceeds of any First Lien Collateral realized therefrom shall be applied pursuant to Section 4.01 hereof. Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself or on behalf of any Junior Lien Claimholder represented by it, shall promptly execute and deliver to the First Lien Representatives, First Lien Collateral Agents or such Grantor such termination statements, releases and other documents as any First Lien Representative, First Lien Collateral Agent or such Grantor may request to effectively confirm the foregoing releases.

(b) If in connection with any sale, assignment, lease, license, transfer or other disposition of any First Lien Collateral by any Grantor (collectively, a "Disposition") permitted under the terms of the First Lien Note Documents and the terms of the Junior Lien Note Documents (other than in connection with an Enforcement Action or other exercise of rights and remedies in respect of the First Lien Collateral by any First Lien Representative or any First Lien Collateral Agent, which shall be governed by Section 5.01(a)), any First Lien Collateral Agent, for itself or on behalf of any First Lien Claimholder represented by it, releases any of its Liens on any part of the First Lien Collateral, or any First Lien Representative, for itself or on behalf of any First Lien Claimholder represented by it, releases any Grantor that owns First Lien Collateral from its obligations under its guaranty of the First Lien Obligations, then the Liens, if any, of each Junior Lien Collateral Agent, for itself or for the benefit of the Junior Lien Claimholders represented by it, on such First Lien Collateral, and the obligations of such Grantor under its guaranty of the Junior Lien Obligations, shall be automatically, unconditionally and simultaneously released (other than Liens on any proceeds of such First Lien Collateral (or any First Lien Collateral not disposed of in such Disposition) remaining after the Discharge of First Lien Obligations); provided that any proceeds of any First Lien Collateral realized therefrom shall be applied pursuant to Section 4.01 hereof. Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, shall promptly execute and deliver to the First Lien Representatives, the First Lien Collateral Agents or such Grantor such termination statements, releases and other documents as any First Lien Representative, First Lien Collateral Agent or such Grantor may request to effectively confirm such release.

(c) Until the Discharge of First Lien Obligations occurs, each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, hereby irrevocably constitutes and appoints the First Lien Collateral Agent

and any officer or agent of the First Lien 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 such Junior Lien Representative, such Junior Lien Collateral Agent and such Junior Lien Claimholders or in the First Lien Collateral Agent's own name, from time to time in the First Lien Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.01, 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 5.01, including any endorsements or other instruments of transfer or release. This power is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

(d) Until the Discharge of First Lien Obligations occurs, to the extent that any First Lien Collateral Agent, any First Lien Representative or any First Lien Claimholder (i) has released any Lien on First Lien Collateral or any Grantor from its obligation under its guarantee in respect thereof and any such Liens or guarantee are later reinstated or (ii) obtains any new Liens in respect of First Lien Collateral or additional guarantees from any Grantor in respect thereof, then each Junior Lien Collateral Agent, for itself and for the Junior Lien Claimholders represented by it, shall be granted a Lien on any such First Lien Collateral, subject to this Agreement, and each Junior Lien Representative, for itself and for the Junior Lien Claimholders represented by it, shall be granted an additional guarantee, as the case may be, in each case with such Liens and guarantees subject to the terms of this Agreement.

Section 5.02 Insurance. Unless and until the Discharge of First Lien Obligations has occurred, the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Claimholders shall have the sole and exclusive right, subject to the rights of the Grantors under the First Lien Note Documents, to adjust settlement for any insurance policy covering the First Lien 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 First Lien Collateral. Unless and until the Discharge of First Lien Obligations has occurred, and subject to the rights of the Grantors under the First Lien Note 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 First Lien Collateral shall be distributed in accordance with the terms of Section 4.01. Until the Discharge of First Lien Obligations has occurred, if any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder 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 First Lien Collateral Agent in accordance with the terms of Section 4.02.

Section 5.03 Amendments to First Lien Note Documents and Junior Lien Note Documents.

(a) The First Lien Note Documents of any Series may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms and the First Lien Debt of any Series may be Refinanced subject to Section 8.07 without notice to, or the consent of, any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder, all without affecting the lien subordination or other provisions of this Agreement; provided that any such amendment, restatement, supplement, modification or Refinancing is not inconsistent with the terms of this Agreement and, in the case of a Refinancing, the holders of such Refinancing debt (directly or through their agent) bind themselves in a writing addressed to each Junior Lien Collateral Agent to the terms of this Agreement.

(b) The Junior Lien Note Documents may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with their terms without notice to, or the consent of, any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder, all without affecting the lien subordination or other provisions of this Agreement; provided that any such amendment, restatement, supplement or modification is not inconsistent with the terms of this Agreement and the First Lien Note Documents.

(c) In the event any First Lien Collateral Agent or the applicable First Lien Claimholders and the relevant Grantor enter into any amendment, waiver or consent in respect of any of the First Lien Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any First Lien Collateral Document relating to First Lien Collateral or changing in any manner the rights of the applicable First Lien Collateral Agent with respect to First Lien Collateral, such First Lien Claimholders, the Company or any other Grantor thereunder, then such amendment, waiver or consent shall apply automatically to any comparable provision of a Junior Lien Collateral Document without the consent of any Junior Lien Representative, Junior Lien Collateral Agent, any other Junior Lien Claimholder, the Company or any other Grantor and without any action by any Junior Lien Representative, any Junior Lien Collateral Agent, any other Junior Lien Claimholder, the Company or any other Grantor, provided that:

(i) no such amendment, waiver or consent shall have the effect of:

(A) removing assets subject to the Lien of the Junior Lien Collateral Documents, except to the extent that a release of such Lien is permitted or required by Section 5.01 and provided that there is a corresponding release of the Liens securing the First Lien Obligations on such removed assets;

(B) imposing duties on any Junior Lien Collateral Agent or any Junior Lien Representative without its consent;

(C) permitting other Liens on the First Lien Collateral not permitted under the terms of the Junior Lien Note Documents or Section 6; or

(D) being prejudicial to the interests of the Junior Lien Claimholders to a greater extent than the First Lien Claimholders (other than by virtue of their relative priority and the rights and obligations hereunder); and

(ii) notice of such amendment, waiver or consent shall have been given by the Company to each Junior Lien Collateral Agent within 10 Business Days after the effective date of such amendment, waiver or consent.

Section 5.04 Gratuitous Bailee/Agent for Perfection. (a) Each 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) (if any), to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC (such First Lien Collateral being the "Pledged Collateral"), as collateral agent for the Claimholders and on behalf of and for the benefit of and as gratuitous bailee for any other Collateral Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2), 9-104, 9-105, 9-106, 9-107 and 9-313(c) of the UCC) and any assignee thereof solely for the purpose of perfecting the security interest granted under the First Lien Note Documents and the Junior Lien Note Documents, respectively, subject to the terms and conditions of this Section 5.04.

(b) No First Lien Collateral Agent shall have any obligation whatsoever to the other First Lien Claimholders, the Junior Lien Representatives, the Junior Lien Collateral Agents or the Junior Lien Claimholders to ensure that the Pledged Collateral is genuine or owned by any of the Grantors, to perfect the security interests of the Junior Lien Collateral Agents or other Junior Lien Claimholders or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.04. The duties or responsibilities of any First Lien Collateral Agent under this Section 5.04 shall be limited solely to holding or having control of the Pledged Collateral for the benefit of and on behalf of the other Collateral Agents in accordance with this Section 5.04 and delivering the Pledged Collateral upon a Discharge of First Lien Obligations as provided in Section 5.04(d).

(c) No First Lien Collateral Agent or any other First Lien Claimholder shall have by reason of the First Lien Collateral Documents, the Junior Lien Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of any Junior Lien Representative or any other Junior Lien Claimholder and the Junior Lien Representatives, the Junior Lien Collateral Agents and the Junior Lien Claimholders hereby waive and release the First Lien Collateral Agents and the other First Lien Claimholders from all claims and liabilities arising pursuant to any First Lien Collateral Agent's role under this Section 5.04 as gratuitous bailee and gratuitous agent with respect to the Pledged Collateral. It is understood and agreed that the interests of the First Lien Collateral Agents and the other First Lien Claimholders, on the one hand, and the Junior Lien Representatives, the Junior Lien Collateral Agents and the other Junior Lien Claimholders on the other hand, may differ and the First Lien Collateral Agents and the other First Lien Claimholders shall be fully entitled to act in their own interest without taking into account the interests of the Junior Lien Representatives, the Junior Lien Collateral Agents or other Junior Lien Claimholders.

(d) So long as this Agreement is in effect, Pledged Collateral in the possession of any Collateral Agent or any Representative shall be delivered to the First Lien Collateral Agent or the Junior Lien Collateral Agent, as applicable, together with any necessary endorsements (which endorsements shall be without recourse and without any representation or warranty), in the following manner:

(i) to the First Lien Collateral Agent until a Discharge of First Lien Obligations has occurred, and thereafter,

(ii) to the Junior Lien Collateral Agent until a Discharge of Junior Lien Obligations has occurred, and thereafter,

(iii) to the Company or to whomever may be lawfully entitled to receive the same.

Following the Discharge of First Lien Obligations, each First Lien Collateral Agent further agrees to take all other action reasonably requested by any Junior Lien Collateral Agent at the expense of the Company in connection with the Junior Lien Collateral Agents obtaining a first-priority security interest in the First Lien Collateral.

(e) To the extent that the Junior Lien Collateral Agent is the secured party under any account control agreements or shifting control acknowledgments, listed as loss payee under any of the Grantors' insurance policies, or is the secured party under any Junior Lien Collateral Document, the First Lien Collateral Agent is also hereby deemed to be the secured party under such account control agreements or shifting control acknowledgements, loss payee under the Grantors' insurance policies, and the secured party under each Junior Lien Security Document, and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Agreement.

Section 5.05 When Discharge of Obligations Deemed to Not Have Occurred. If, at any time after the Discharge of First Lien Obligations has occurred the Company enters into any Additional First Lien Note Document evidencing any Additional First Lien Obligations which Additional First Lien Obligations are permitted by the Junior Lien Note Documents, then such Discharge of First Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the designation of such Additional First Lien Debt as a result of the occurrence of such first Discharge of First Lien Obligations), the obligations under such Additional First Lien Note Document shall automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of First Lien Collateral set forth herein, and 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. If the Additional First Lien Obligations under such Additional First Lien Note Documents are secured by assets of the Grantors constituting First Lien Collateral that do not also secure the Junior Lien Obligations, then the Junior Lien Obligations shall be secured at such time by a junior-priority Lien on such assets to the same extent provided in the Junior Lien Collateral Documents and this Agreement. This Section 5.05 shall survive termination of this Agreement.

Section 5.06 Appointment of the First Lien Collateral Agent for French Security Documents.

(a) The First Lien Representative as *mandant*:

(i) irrevocably and unconditionally appoints the First Lien Collateral Agent to act as agent (*mandataire*) pursuant to clause 1984 of the French civil code (with full power to appoint and to substitute and to delegate) on its behalf to do anything upon the terms and conditions set out in this Agreement under or in connection with any First Lien Collateral Document governed by French law (the "**First Lien French Security Document**") including, if need be, the appointment of a custodian which shall hold assets on its behalf (including, as may be the case, share certificates or share registries relating to shares in the capital of any Debtor) in custody under any First Lien French Security Document, and the First Lien Collateral Agent accepts such appointment;

(ii) confirms its approval of the First Lien French Security Documents creating or expressed to create any Collateral created or evidenced or expressed to be created or evidenced under or pursuant to the First Lien French Security Documents (the "**French Security**") benefiting it and any French Security created or to be created pursuant thereto and irrevocably authorizes (with power of delegation), empowers and directs the First Lien Collateral Agent (by itself or by such person(s) as it may nominate) to execute and deliver for and on its behalf each First Lien French Security Document, to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to the First Lien Collateral Agent or any First Lien Claimholder under or in connection with the First Lien French Security Documents, together with any other rights, powers and discretions which are incidental thereto and to give a good discharge for any moneys payable under the First Lien French Security Documents;

(iii) acknowledges that the First Lien Collateral Agent has been appointed by it to constitute, register, manage and enforce all French Security created in its favor by any First Lien French Security Documents, and agrees that the First Lien Collateral Agent may exercise the rights and perform the obligations assumed by it pursuant to its nomination in accordance with applicable law from time to time;

(iv) authorizes the First Lien Collateral Agent to take any steps necessary and collect all information necessary or, in the First Lien Collateral Agent's discretion, desirable for the preparation of any First Lien French Security Document, the perfection, the preservation and/or the enforcement of any French Security created in its favor by any First Lien French Security Documents; and

(v) and, to the extent it may have any interest therein, every other party, to the extent permitted by law, authorizes the First Lien Collateral Agent to execute on behalf of itself and each First Lien Claimholder and other party where relevant:

(A) following the occurrence of the Discharge of First Lien Obligations, releases of all French Security granted under the First Lien French Security Documents; and

(B) all necessary releases of French Security under the First Lien French Security Documents, in each case, permitted under the First Lien Note Documents.

(b) Each First Lien Representative agrees that the First Lien Collateral Agent may exercise the rights and perform the obligations assumed by it pursuant to each of those appointments, in accordance with applicable law from time to time.

(c) Notwithstanding any contrary provision in this Agreement, or any other Debt Document:

(i) the First Lien Collateral Agent shall not hold the benefit of the First Lien French Security Documents on trust but as Agent for itself and the Secured Parties;

(ii) each First Lien Claimholder shall benefit directly from the Security created under those Security Documents as set out in each such First Lien French Security Document; and

(iii) The First Lien Collateral Agent will act solely for itself (as First Lien Claimholder) and as agent for the other Secured Parties in carrying out its functions as First Lien Collateral Agent under the relevant First Lien French Security Documents.

(d) In relation to First Lien French Security Documents, the relationship between the Secured Parties (other than the First Lien Collateral Agent) and the First Lien Collateral Agent is that of principal (*mandant*) and agent (*mandataire*) only. The First Lien Collateral Agent shall not have, or be deemed to have, assumed any obligations to or fiduciary relationship with, any party to this Agreement other than those for which specific provision is made by the First Lien French Security Documents and this Agreement.

(e) In furtherance of this Section 5.06, each of the First Lien Representative hereby undertakes to the First Lien Collateral Agent that, promptly upon request, such Secured Creditor will ratify and confirm all transactions entered into and other actions by the First Lien Collateral Agent (or any of its substitutes or delegates) in the proper exercise of the power granted to it hereunder.

ARTICLE VI

INSOLVENCY OR LIQUIDATION PROCEEDINGS.

Section 6.01 Finance and Sale Issues. (a) Until the Discharge of First Lien Obligations has occurred, if the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and any First Lien Representative shall desire to permit the use of "Cash Collateral" (as such term is defined in Section 363(a) of the Bankruptcy Code) constituting First Lien Collateral ("Cash Collateral") on which such First Lien Representative, such First Lien Collateral Agent or any other creditor has a Lien, or to permit the Company or any other Grantor to obtain financing, whether from the First Lien Claimholders or any other Person under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law secured by First Lien Collateral ("DIP Financing"), including any DIP Financing that includes a "roll up" or refinancing of First Lien Obligations, then each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, will not (and will not join or support any Person in doing any of the following):

(i) object to or otherwise oppose such Cash Collateral use or DIP Financing (including any proposed orders for such Cash Collateral use and/or DIP Financing which are acceptable to any First Lien Representative); and

(ii) to the extent the Liens on First Lien Collateral securing the First Lien Obligations are subordinated to or pari passu with such DIP Financing, or the First Lien Obligations secured by Liens on First Lien Collateral are refinanced by, or rolled up into, such DIP Financing, each Junior Lien Collateral Agent will subordinate its Liens in the First Lien Collateral to the Liens securing such DIP Financing (and all Obligations relating thereto), any Liens granted to any First Lien Representative or any other First Lien Claimholder as adequate protection and any carve-out for professional fees and expenses, United States Trustee fees and/or chapter 7 trustee fees agreed to by the applicable First Lien Representative, and each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, will not request adequate protection or any other relief in connection therewith (except as expressly agreed by the First Lien Representative or to the extent permitted by Section 6.03); provided that the Junior Lien Representatives and the other Junior Lien Claimholders retain the right to object to any provision in any DIP Financing that requires specific and material terms of a plan of reorganization (it being agreed that the inclusion of termination events or milestones with respect to a plan of reorganization or similar dispositive plan, or with respect to a sale pursuant to Section 363 of the Bankruptcy Code or any other Bankruptcy Law acceptable to the lenders under such DIP Financing shall not be deemed to constitute such a condition).

(b) Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, agrees that it will not seek (or join or support any Person seeking) consultation rights in connection with, and it will not object to or otherwise oppose, a motion to sell, liquidate or otherwise dispose of First Lien Collateral under Section 363 of the Bankruptcy Code if the requisite First Lien Claimholders have consented to such sale, liquidation or other disposition. Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, further agrees that it will not directly or indirectly oppose or impede entry of any order in connection with such sale, liquidation or other disposition or First Lien Collateral, including orders to retain professionals or set bid procedures in connection with such sale, liquidation or disposition, if the requisite First Lien Claimholders have consented to (i) such retention of professionals and bid procedures in connection with such sale, liquidation or disposition of such assets and (ii) the sale, liquidation or disposition of such assets (including any credit bid by the First Lien Claimholders), in which event the Junior Lien Claimholders will be deemed to have consented to the sale or disposition of First Lien Collateral pursuant to Section 363(f) of the Bankruptcy Code so long as all Claimholders' Liens will attach to the proceeds of any such sale or disposition with the same relative priorities as set forth in Section 2.01.

Section 6.02 Relief from the Automatic Stay. Until the Discharge of First Lien Obligations has occurred, each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, agrees that none of them shall oppose (or join or support any other Person in opposing) any request by any First Lien Representative or First Lien Collateral Agent for relief from the automatic stay or other stay in any Insolvency or Liquidation Proceeding in respect of the First Lien Collateral. No Junior Lien Representative or Junior Lien Collateral Agent will request any relief from the automatic stay under any Insolvency or Liquidation Proceedings unless with the prior consent of the First Lien Representative or First Lien Collateral Agent.

Section 6.03 **Adequate Protection**. (a) Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, agrees that none of them shall contest (or join or support any other Person contesting):

(i) any request by any First Lien Representative, any First Lien Collateral Agent or other First Lien Claimholder for adequate protection under any Bankruptcy Law with respect to any First Lien Collateral; or

(ii) any objection by any First Lien Representative, any First Lien Collateral Agent or other First Lien Claimholder to any motion, relief, action or proceeding based on such First Lien Representative, First Lien Collateral Agent or First Lien Claimholder claiming a lack of adequate protection with respect to the First Lien Collateral.

(b) Notwithstanding the foregoing provisions in this Section 6.03, in any Insolvency or Liquidation Proceeding:

(i) if the First Lien Claimholders (or any subset thereof) are granted adequate protection in respect of the portion of their claims secured by First Lien Collateral in the form of additional collateral in the nature of assets constituting First Lien Collateral in connection with any Cash Collateral use or DIP Financing, then each Junior Lien Collateral Agent, for itself and on behalf of any other Junior Lien Claimholder represented by it, may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the First Lien Obligations and such Cash Collateral use or DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Junior Lien Obligations are so subordinated to the First Lien Obligations under this Agreement; and

(ii) if any Junior Lien Claimholder receives Post-Petition Interest and/or adequate protection payments in an Insolvency or Liquidation Proceeding ("Junior Lien Adequate Protection Payments") and the First Lien Claimholders do not receive payment in full in cash of all First Lien Obligations upon the effectiveness of the plan of reorganization or liquidation for any sale of all or substantially all of the Grantors' assets, or any other conclusion of, that Insolvency or Liquidation Proceeding, then each Junior Lien Claimholder shall pay over to the First Lien Representative, for the benefit of the First Lien Claimholders, an amount (the "Pay-Over Amount") equal to the lesser of (i) the Junior Lien Adequate Protection Payments received by such Junior Lien Claimholder and (ii) the amount of the short-fall (the "Short Fall") in payment in full in cash of the First Lien Obligations; provided that to the extent any portion of the Short Fall represents payments received by the First Lien Claimholders in the form of promissory notes, equity or other property equal in value to the cash paid in respect of the Pay-Over Amount, the First Lien Claimholders shall, upon receipt of the Pay-Over Amount, transfer those promissory notes, equity or other property, equal in value to the cash paid in respect of the Pay-Over Amount, to the applicable Junior Lien Claimholders pro rata in exchange for the Pay-Over Amount. Notwithstanding anything herein to the contrary, the First Lien Claimholders shall not be deemed to have consented to, and expressly retain their rights to object to, the grant of adequate protection in the form of cash payments to the Junior Lien Claimholders made pursuant to this Section 6.03(b).

Section 6.04 **No Waiver**. Subject to Section 6.07(b), nothing contained herein shall prohibit or in any way limit any First Lien Representative or any other First Lien Claimholder from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by any Junior Lien Representative or any other Junior Lien Claimholder, including the seeking by any Junior Lien Representative or any other

Junior Lien Claimholder of adequate protection or the asserting by any Junior Lien Representative or any other Junior Lien Claimholder of any of its rights and remedies under the Junior Lien Note Documents or otherwise.

Section 6.05 **Avoidance Issues**. If any First Lien Claimholder is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the Company or any other Grantor or any such entity's estate any amount paid in respect of First Lien Obligations (a "Recovery"), then such First Lien Claimholder shall be entitled to a reinstatement of its First Lien Obligations 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 First Lien Obligations 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 6.05 shall survive termination of this Agreement.

Section 6.06 **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 First Lien Obligations and on account of Junior Lien Obligations, then, to the extent the debt obligations distributed on account of the First Lien Obligations and on account of the Junior 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.

Section 6.07 **Post-Petition Interest**. (a) None of any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder shall oppose (or join or support any Person that opposes) or seek (or join or support any Person that seeks) to challenge any claim by any First Lien Representative, any First Lien Collateral Agent or any other First Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of First Lien Obligations consisting of Post-Petition Interest to the extent of the value of the Lien of the First Lien Collateral Agents on behalf of the First Lien Claimholders on the First Lien Collateral or any other First Lien Claimholder's Lien on the First Lien Collateral, without regard to the existence of the Liens of the Junior Lien Collateral Agents or the other Junior Lien Claimholders on the First Lien Collateral.

(b) None of any First Lien Representative, First Lien Collateral Agent or any other First Lien Claimholder shall oppose or seek to challenge any claim by any Junior Lien Representative, Junior Lien Collateral Agent or any other Junior Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Junior Lien Obligations consisting of Post-Petition Interest to the extent of the value of the Lien of the Junior Lien Collateral Agents, on behalf of the Junior Lien Claimholders, on the First Lien Collateral (after taking into account the amount of the First Lien Obligations).

Section 6.08 **Waiver**. Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, waives any claim it may hereafter have against any First Lien Claimholder arising out of the election of any First Lien Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the First Lien Collateral in any Insolvency or Liquidation Proceeding so long as such actions are not in express contravention of the terms of this Agreement.

Section 6.09 **Separate Grants of Security and Separate Classification**. Each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien

Claimholder represented by it, and each First Lien Representative and each First Lien Collateral Agent, for itself and on behalf of each other First Lien Claimholder represented by it, acknowledges and agrees that:

(a) the grants of Liens pursuant to the First Lien Collateral Documents and the Junior Lien Collateral Documents constitute separate and distinct grants of Liens; and

(b) because of, among other things, their differing rights in the First Lien Collateral, the Junior Lien Obligations are fundamentally different from the First Lien 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 First Lien Claimholders and the Junior Lien Claimholders in respect of the First Lien 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 First Lien Collateral (with the effect being that, to the extent that the aggregate value of the First Lien Collateral is sufficient (for this purpose ignoring all claims held by the Junior Lien Claimholders), the First Lien 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 First Lien Note Documents, arising from or related to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding) before any distribution is made in respect of the claims held by the Junior Lien Claimholders with respect to the First Lien Collateral, with each Junior Lien Representative and each Junior Lien Collateral Agent, for itself and on behalf of each other Junior Lien Claimholder represented by it, hereby acknowledging and agreeing to turn over to the First Lien Collateral Agent, for itself and on behalf of each other First Lien Claimholder, First Lien Collateral or proceeds of First Lien 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 Junior Lien Claimholders).

Section 6.10 Effectiveness in Insolvency or Liquidation Proceedings. The parties hereto 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.

ARTICLE VII

RELIANCE; WAIVERS; ETC.

Section 7.01 Reliance. Other than any reliance on the terms of this Agreement, each First Lien Representative and each First Lien Collateral Agent, on behalf of itself and each other First Lien Claimholder represented by it, acknowledges that it and such First Lien Claimholders have, independently and without reliance on any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior 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 First Lien Note 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 First Lien Note Documents or this Agreement. Each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, acknowledges that it and such Junior Lien Claimholders have, independently and without reliance on any First Lien Representative, any First Lien Collateral Agent or any other First 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 Junior Lien Note 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 Junior Lien Note Documents or this Agreement.

Section 7.02 No Warranties or Liability. Each First Lien Representative and each First Lien Collateral Agent, on behalf of itself and each other First Lien Claimholder represented by it, acknowledges and agrees that no Junior Lien Representative or other Junior Lien Claimholder has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Junior Lien Note Documents, the ownership of any First Lien Collateral or the perfection or priority of any Liens thereon. Each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, acknowledges and agrees that no First Lien Representative or other First Lien Claimholder has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the First Lien Note Documents, the ownership of any First Lien Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the First Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the First Lien Note Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Junior Lien Representatives, the Junior Lien Collateral Agents and the other Junior Lien Claimholders shall have no duty to the First Lien Representatives, the First Lien Collateral Agents or any of the other First Lien Claimholders, and the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Claimholders shall have no duty to the Junior Lien Representative, the Junior Lien Collateral Agents or any of the other Junior 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 First Lien Note Documents and the Junior Lien Note Documents), regardless of any knowledge thereof which they may have or be charged with.

Section 7.03 No Waiver of Lien Priorities; No Marshaling. (a) No right of the First Lien Claimholders, the First Lien Representatives, the First Lien Collateral Agents or any of them to enforce any provision of this Agreement or any First Lien Note 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 First Lien Claimholder, First Lien Representative or First Lien Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the First Lien Note Documents or any of the Junior Lien Note Documents, regardless of any knowledge thereof which any First Lien Representative, First Lien Collateral Agent or any First Lien Claimholder, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Company and the other Grantors under the First Lien Note Documents and hereunder and subject to the provisions of Section 5.03(a)), the First Lien Claimholders, the First Lien Representatives, the First Lien Collateral Agents and any of them may, at any time and from time to time in accordance with the First Lien Note Documents and/or applicable law, without the consent of, or notice to, any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder, without incurring any liabilities to any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any Junior Lien Representative, any Junior Lien Collateral Agent or any other Junior Lien Claimholder is affected, impaired or extinguished thereby) do any one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the First

Lien Obligations or any Lien on any First Lien Collateral or guaranty of any of the First Lien Obligations or any liability of the Company or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the First Lien Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by any First Lien Representative, any First Lien Collateral Agent or any of the other First Lien Claimholders, the First Lien Obligations or any of the First Lien Note Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the First Lien Collateral or any liability of the Company or any other Grantor to any of the First Lien Claimholders, the First Lien Representatives or the First Lien Collateral Agents, or any liability incurred directly or indirectly in respect thereof;

(iii) realize upon any type of First Lien Collateral (or any other Collateral securing any of the First Lien Obligations), or to sell, dispose of or otherwise liquidate all or any portion of such First Lien Collateral (or any other Collateral securing any First Lien Obligations), in any manner (and in any order) that would maximize the return to the First Lien Claimholders, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the First Lien Claimholders from such realization, sale, disposition or liquidation;

(iv) settle or compromise any First Lien Obligation or any other liability of the Company or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the First Lien Obligations) in any manner or order; and

(v) exercise or delay in or refrain from exercising any right or remedy against the Company or any other Grantor or any other Person or any security, and elect any remedy and otherwise deal freely with the Company, any other Grantor or any First Lien Collateral and any security and any guarantor or any liability of the Company or any other Grantor to the First Lien Claimholders or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise expressly provided herein, each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, also agrees that the First Lien Claimholders, the First Lien Representatives and the First Lien Collateral Agents shall not have any liability to such Junior Lien Representative, such Junior Lien Collateral Agent or any such Junior Lien Claimholders, and such Junior Lien Representative and such Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, hereby waives any claim against any First Lien Claimholder, any First Lien Representative or any First Lien Collateral Agent arising out of any and all actions which the First Lien Claimholders, any First Lien Representative or any First Lien Collateral Agent may take or permit or omit to take with respect to:

(i) the First Lien Note Documents (other than this Agreement);

(ii) the collection of the First Lien Obligations; or

(iii) the foreclosure upon, or sale, liquidation or other disposition of, any First Lien Collateral.

Each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, agrees that the First Lien Claimholders, the First Lien Representatives and the First Lien Collateral Agents do not have any duty to them in respect of the maintenance or preservation of the First Lien Collateral, the First Lien Obligations or otherwise.

(d) Until the Discharge of First Lien Obligations, each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, 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 any First Lien Collateral or any other similar rights a junior secured creditor may have under applicable law.

Section 7.04 Obligations Unconditional. All rights, interests, agreements and obligations of the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Claimholders and the Junior Lien Representatives, the Junior Lien Collateral Agents and the other Junior Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any First Lien Note Documents or any Junior Lien Note 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 First Lien Obligations or Junior 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 First Lien Note Document or any Junior Lien Note Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any First Lien 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 First Lien Obligations or Junior Lien Obligations or any guarantee 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 any First Lien Representative, any First Lien Collateral Agent, the First Lien Obligations, any First Lien Claimholder, any Junior Lien Representative, any Junior Lien Collateral Agent, the Junior Lien Obligations or any Junior Lien Claimholder in respect of this Agreement.

ARTICLE VIII

MISCELLANEOUS.

Section 8.01 Integration/Conflicts. This Agreement, the First Lien Note Documents and the Junior Lien Note Documents represent the entire agreement of the Grantors, the First Lien Claimholders and the Junior 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 First Lien Claimholders or the Junior 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 First Lien Note Documents or the Junior Lien Note Documents, the provisions of this Agreement shall govern and control.

Section 8.02 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 and the First Lien Claimholders may continue, at any time and without notice to any Junior Lien Representative or any other Junior Lien Claimholder, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any Grantor constituting First Lien Obligations in reliance hereon. Each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, 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 any First Lien Representative and any First Lien Collateral Agent, the First Lien Claimholders represented by it and their First Lien Obligations, on the date on which the First Lien Obligations of such First Lien Claimholders are Discharged, subject to Sections 5.05 and 6.05; and

(b) with respect to any Junior Lien Representative and any Junior Lien Collateral Agent, the Junior Lien Claimholders represented by it and their Junior Lien Obligations, on the date on which the Junior Lien Obligations of such Junior Lien Claimholders are Discharged; 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.

Section 8.03 Amendments; Waivers. (a) No amendment, modification or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each Representative then party to this Agreement or its authorized agent (and acknowledged by the Company and the other Grantors if such amendment, modification or waiver directly and adversely affects the rights of the Company or the other Grantors), 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. 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 such amendment, modification or waiver directly and adversely affects the rights of the Company or the other Grantors shall be deemed to directly and adversely affect the rights of the Company and the other Grantors.

(b) Notwithstanding the foregoing, without the consent of any other Representative, Collateral Agent or Claimholder, the First Lien Representative may effect amendments and modifications to this Agreement to the extent necessary to reflect any incurrence of any Additional First Lien Obligations in compliance with this Agreement provided that, in respect of each such amendment or modification, the First Lien Representative provides the Company, each other Representative and each Collateral Agent with written notice of the terms of such amendment or modification, specifying the date on which such amendment or modification takes effect.

Section 8.04 Information Concerning Financial Condition of the Grantors and their Subsidiaries. The First Lien Representatives, the First Lien Collateral Agents and the other First Lien Claimholders shall have no duty to advise the Junior Lien Representatives, the Junior Lien Collateral Agents or any other Junior Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. The Junior Lien Representatives, the Junior Lien Collateral Agents and the other Junior Lien Claimholders shall have no duty to advise the First Lien Representatives, the First Lien Collateral Agents or any other First Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise.

Section 8.05 Subrogation. With respect to the value of any payments or distributions in cash, property or other assets in respect of any First Lien Collateral that any of the Junior Lien Representatives, the Junior Lien Collateral Agents or the other Junior Lien Claimholders pays over to any of the First Lien Representatives, the First Lien Collateral Agents or the other First Lien Claimholders under the terms of this Agreement, such Junior Lien Claimholders, Junior Lien Representatives and Junior Lien Collateral Agents shall be subrogated to the rights of such First Lien Representatives, First Lien Collateral Agents and First Lien Claimholders; provided that each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, hereby agrees not to assert or enforce any such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of First Lien Obligations has occurred. Each of the Company and the other Grantors acknowledges and agrees that the value of any payments or distributions in cash, property or other assets in respect of any First Lien Collateral received by any Junior Lien Representative, Junior Lien Collateral Agent or other Junior Lien Claimholder that are paid over to any First Lien Representative, First Lien Collateral Agent or other First Lien Claimholder pursuant to this Agreement shall not reduce any of the Junior Lien Obligations.

Section 8.06 Application of Payments. All payments received by any First Lien Representative, First Lien Collateral Agent or other First Lien Claimholder may be applied, reversed and reapplied, in whole or in part, to such part of the First Lien Obligations provided for in the First Lien Note Documents. Each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, agrees to any extension or postponement of the time of payment of the First Lien Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any Lien which may at any time secure any part of the First Lien Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

Section 8.07 Additional First Lien Debt Facilities. To the extent, but only to the extent, permitted by the provisions of the First Lien Note Documents and the Junior Lien Note Documents and Section 5.03, the Company or any Grantor may incur (or issue and sell), secure and guarantee one or more series or classes of Indebtedness that the Company or such Grantor designates as Additional First Lien Debt. Any such series or class of Additional First Lien Debt may be secured by the First Lien Collateral or, if necessary, additional First Lien Collateral Documents for such Series of Additional First Lien Debt. The Additional First Lien Note Documents relating to such Additional First Lien Obligations shall provide that each of the applicable Claimholders with respect to such Additional First Lien Obligations will be subject to and bound by the provisions of this Agreement in its capacity as a holder of such Additional First Lien Obligations. With respect to any incurrence, issuance or sale of Indebtedness after the date hereof under the Additional First Lien Note Documents of a Series of Additional First Lien Debt whose Representative and Collateral Agent is already each a party to this Agreement, such Indebtedness shall automatically constitute Additional First Lien Debt so long as such Indebtedness is permitted to be incurred, secured and guaranteed by each First Lien Note Document (without the need for any further action by the First Lien Representative or First Lien Collateral Agent).

Section 8.08 Agency Capacities. Except as expressly provided herein, (i) CVI Investments, Inc. is acting in the capacities of First Lien Representative and First Lien Collateral Agent solely for the

First Lien Claimholders, and (ii) CVI Investments, Inc. is acting in the capacities of Junior Lien Representative and Junior Lien Collateral Agent solely for the Junior Lien Claimholder.

Section 8.09 Submission to Jurisdiction; Certain Waivers. Each of the Company, each other Grantor, and each Representative and each Collateral Agent, on behalf of itself and each other applicable Claimholder represented by it, 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 First Lien Note Document or Junior Lien Note Document shall affect any right that any Collateral Agent or Claimholder may otherwise have to bring any action or proceeding relating to this Agreement or any other First Lien Note Document or Junior Lien Note 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 or any other Collateral Document in any court referred to in Section 8.09(a) (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 by registered or certified mail, return receipt requested, to the applicable party at its address provided in accordance with Section 8.11 (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 Section 8.09(e) 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.

Section 8.10 Waiver of Jury Trial. **EACH PARTY HERETO, AND THE COMPANY AND THE OTHER GRANTORS 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.

Section 8.11 Notices. All notices to the Junior Lien Claimholders and the First Lien Claimholders permitted or required under this Agreement shall be sent to the applicable Junior Lien Representative and the applicable First Lien Representative, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by telefacsimile, 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 or electronic mail, or 3 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.

Section 8.12 Further Assurances. Each First Lien Representative and each First Lien Collateral Agent, on behalf of itself and each other First Lien Claimholder represented by it, each Junior Lien Representative and each Junior Lien Collateral Agent, on behalf of itself and each other Junior Lien Claimholder represented by it, 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 any First Lien Representative and First Lien Collateral Agent or any Junior Lien Representative and Junior Lien Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

Section 8.13 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 FIRST LIEN COLLATERAL).**

Section 8.14 Binding on Successors and Assigns. This Agreement shall be binding upon the First Lien Representatives, the First Lien Collateral Agents, the other First Lien Claimholders, the Junior Lien Representatives, the Junior Lien Collateral Agents, the other Junior Lien Claimholders, the Company and the other Grantors, and their respective successors and assigns from time to time. If any of the First Lien Representatives, the First Lien Collateral Agents, the Junior Lien Representatives or the Junior Lien Collateral Agents resigns or is replaced pursuant to the First Lien Note Documents or the Junior Lien Note Documents, 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.

Section 8.15 Section Headings. The section headings and the 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.

Section 8.16 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, 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.

Section 8.17 Authorization. By its signature, each Person executing this Agreement, on behalf of such 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.

Section 8.18 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 First Lien Claimholders and the Junior Lien Claimholders and their respective successors and assigns from time to time. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Claimholders on the one hand and the Junior Lien Representatives, the Junior Lien Collateral Agents and the other Junior Lien Claimholders on the other hand. None of the Company, any other Grantor or any other creditor shall have any rights hereunder and neither the Company nor any Grantor nor any other creditor 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 First Lien Obligations and the Junior Lien Obligations as and when the same shall become due and payable in accordance with their terms.

Section 8.19 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.

Section 8.20 Additional Grantors. Each of the Company and the other Grantors agrees that it shall ensure that each of its subsidiaries that is or is to become a party to any First Lien Note Document or Junior Lien Note 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 First Lien Note Document or such Junior Lien Note Document.

Section 8.21 Permitted Indebtedness and Permitted Liens. Each of the Company, the other Grantors, the Junior Representative (on behalf of the Junior Lien Claimholder) and the Junior Collateral Agent confirm that, notwithstanding any terms of the Junior Lien Note Documents to the contrary, (a) the First Lien Obligations shall be deemed to constitute Permitted Indebtedness (as defined in the Junior Lien Securities Purchase Agreement), and (b) each First Lien Collateral Document shall be deemed to constitute a Permitted Lien (as defined in the Junior Lien Securities Purchase Agreement). The Company, the other Grantors, the Junior Representative (on behalf of the Junior Lien Claimholder) and the Junior Collateral Agent each agree to take any steps (including amending the Junior Lien Note Documents) requested by the First Lien Representative or the First Lien Collateral Agent (as applicable) to give effect to this Section 8.21. The Junior Representative (on behalf of the Junior Lien Claimholder) and the Junior Collateral Agent consent to the entry into any First Lien Collateral Documents.

[*Remainder of this page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have executed this Senior Intercreditor Agreement as of the date first written above.

CVI INVESTMENTS, INC.
By: Heights Capital Management, Inc.,
its authorized agent

as First Lien Representative and
as First Lien Collateral Agent

By: _____
Name: Martin Kobinger
Title: President

c/o Heights Capital Management, 101 California Street,
Suite 3250, San Francisco, CA 94111

Attention:
E-mail: heightsnotice@sig.com

CVI INVESTMENTS, INC.
By: Heights Capital Management, Inc.,
its authorized agent

as Junior Lien Representative and
Junior Lien Collateral Agent

By: _____
Name: Martin Kobinger
Title: President

c/o Heights Capital Management, 101 California Street,
Suite 3250, San Francisco, CA 94111

Attention:
E-mail: heightsnotice@sig.com

Acknowledged and Agreed to by:

FISKER INC.
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

Notice Address:
14 Centerpointe Drive
La Palma, CA 90623.

Attention: Geeta Gupta-Fisker
Email: gfisker@fiskerinc.com

GRANTORS:

FISKER GROUP INC.
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

BLUE CURRENT HOLDING LLC
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: President

TERRA ENERGY LLC
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Chief Financial Officer and Chief Operating Officer

PLATINUM IPR LLC
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Authorized Officer

FISKER TN LLC
By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: President

FISKER GMBH (Germany)

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Director

FISKER (GB) Limited

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Director

FISKER France SAS

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Director

FISKER Denmark ApS

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Director

FISKER Norway AS

By: Geeta Gupta-Fisker
Geeta Gupta-Fisker (May 9, 2024 09:27 PDT)
Name: Dr. Geeta Gupta-Fisker
Title: Director

Exhibit A
to
Senior Intercreditor Agreement

[FORM OF] GRANTOR JOINDER AGREEMENT NO. [●] dated as of [●], 20[●] (this "Grantor Joinder Agreement") to the SENIOR INTERCREDITOR AGREEMENT, dated as of May 10, 2024, (as amended, restated, amended and restated, supplemented and otherwise modified from time to time, the "Senior Intercreditor Agreement"), among CVI Investments, Inc., as First Lien Representative and First Lien Collateral Agent, CVI Investments, Inc., as Junior Lien Representative, and acknowledged and agreed to by Fisker Inc., a Delaware corporation (the "Company") and certain Affiliates 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 Senior Intercreditor Agreement.

The undersigned, [●], a [●], (the "New Grantor") wishes to acknowledge and agree to the Senior Intercreditor Agreement and become a party thereto to the limited extent contemplated by Section 8.18 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 Representatives, the Collateral Agents and the Claimholders:

Section 1. Accession to the Senior Intercreditor Agreement. The New Grantor (a) acknowledges and agrees to, and becomes a party to the Senior Intercreditor Agreement as a Grantor to the limited extent contemplated by Section 8.18 thereof, (b) agrees to all the terms and provisions of the Senior Intercreditor Agreement and (c) shall have all the rights and obligations of a Grantor under the Senior Intercreditor Agreement. This Grantor Joinder Agreement supplements the Senior Intercreditor Agreement and is being executed and delivered by the New Grantor pursuant to Section 8.20 of the Senior Intercreditor Agreement.

Section 2. Representations, Warranties and Acknowledgement of the New Grantor. The New Grantor represents and warrants to each Representative, 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 electronic mail 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. Full Force and Effect. Except as expressly supplemented hereby, the Senior Intercreditor Agreement shall remain in full force and effect.

Section 5. 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 6. 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 Senior Intercreditor Agreement subject to any limitations set forth in the Senior Intercreditor Agreement with respect to the Grantors.

Section 7. Governing Law. **THIS GRANTOR JOINDER AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS GRANTOR JOINDER 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 FIRST LIEN COLLATERAL).**

Section 8. Severability. 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.

Section 9. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 8.11 of the Senior 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 8.11 of the Senior Intercreditor Agreement.

Section 10. Miscellaneous. The provisions of Section 8 of the Senior Intercreditor Agreement will apply with like effect to this Grantor Joinder Agreement.

IN WITNESS WHEREOF, the New Grantor has duly executed this Grantor Joinder Agreement to the Senior Intercreditor Agreement as of the day and year first above written.

[_____]

By _____
Name:
Title:

Address for notices:

Attention of:

EXHIBIT V

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Arden Lesoravage
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 03:53 PM 05/10/2024
U.C.C. Initial Filing No: 2024 3150768

Service Request No: 20242036062

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Terra Energy Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc., as Collateral Agent

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, 101 California Street, Suite 3250	San Francisco	CA	94111	USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File with: DE - SOS (4492727-0022)

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Arden Lesoravage
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 03:48 PM 05/10/2024
U.C.C. Initial Filing No: 2024 3150628

Service Request No: 20242035815

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Fisker Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc., as Collateral Agent

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, 101 California Street, Suite 3250	San Francisco	CA	94111	USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File with: DE - SOS (4492727-0022)

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Arden Lesoravage
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 03:46 PM 05/10/2024
U.C.C. Initial Filing No: 2024 3150586

Service Request No: 20242035737

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Fisker Group Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc., as Collateral Agent

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, 101 California Street, Suite 3250	San Francisco	CA	94111	USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File with: DE - SOS (4492727-0022)

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Arden Lesoravage
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 03:43 PM 05/10/2024
U.C.C. Initial Filing No: 2024 3150495

Service Request No: 20242035620

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Blue Current Holding LLC

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc., as Collateral Agent

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, 101 California Street, Suite 3250	San Francisco	CA	94111	USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File with: DE - SOS (4492727-0022)

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional)

B. E-MAIL CONTACT AT SUBMITTER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Arden Lesoravage
White & Case LLP
1221 Avenue of the Americas
New York, NY 10020

SEE BELOW FOR SECURED PARTY CONTACT INFORMATION

Delaware Department of State
U.C.C. Filing Section
Filed: 03:50 PM 05/10/2024
U.C.C. Initial Filing No: 2024 3150685

Service Request No: 20242035895

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: Platinum IPR LLC

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1888 Rosecrans Avenue	Manhattan Beach	CA	90266	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: CVI Investments, Inc., as Collateral Agent

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Heights Capital Management, 101 California Street, Suite 3250	San Francisco	CA	94111	USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File with: DE - SOS (4492727-0022)

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 07/01/23)