UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 13, 2020 (January 11, 2020)

MRI INTERVENTIONS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**001-34822**	**58-2394628**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(I.R.S. Employer Identification Number)**

5 Musick
Irvine, CA 92618
(Address of principal executive offices, zip code)

(949) 900-6833
(Registrant's telephone number, including area code)

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

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

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.01 par value per share	MRIC	Nasdaq Capital Market

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

Securities Purchase Agreement

On January 11, 2020, MRI Interventions, Inc. (the "Company") entered into a Securities Purchase Agreement (the "SPA") with PTC Therapeutics, Inc. ("PTC"), and Petrichor Opportunities Fund I LP ("Petrichor," and together with PTC, the "Investors") in connection with the initial issuance of an aggregate principal amount of $17,500,000 of floating rate secured convertible notes (the "First Closing Notes") of the Company, with such First Closing Notes convertible on the terms stated therein into shares of common stock, $0.01 par value per share ("Common Stock") of the Company (together, the "Financing Transaction").

The sale of securities under the SPA is subject to certain customary closing conditions, and the Company anticipates that the sales of the First Closing Notes under the SPA will close prior to February 29, 2020. The SPA also contains representations and warranties by the Company and the Investors and covenants of the Company and the Investors (including indemnification from the Company in the event of breaches of its representations and warranties), and certain other rights, obligations and restrictions, which the Company believes are customary for transactions of this type.

The SPA also provides the Investors with certain registration rights, including the right for the Investors to require the Company to register with the Securities and Exchange Commission (the "SEC") all or a portion of the Investors' Registrable Securities (as defined in the SPA), subject to certain limitations, and certain additional piggyback registration rights, subject to certain limitations. In addition, the SPA provides the Investors with the right to participate in a Subsequent Financing (as defined in the SPA) by the Company, subject to certain limitations.

Additionally, the SPA provides that the Company shall have the right, but not the obligation, to request that Petrichor purchase an additional $5,000,000 in aggregate principal amount of additional floating rate secured convertible notes of the Company (the "Second Closing Notes") at any time on or prior to January 11, 2022. Further, the Company shall have the right, but not the obligation, to request that Petrichor purchase an additional $10,000,000 in aggregate principal amount of additional floating rate secured convertible notes of the Company (the "Third Closing Notes," and collectively with the First Closing Notes and the Second Closing Notes, the "Notes") at any time on or prior to January 11, 2022; provided, that Petrichor, upon receipt of the Company's request for Petrichor to purchase such Second Closing Notes or Third Closing Notes, as the case may be, shall have the right but not the obligation to purchase such notes; provided, further, that in no event shall the Company issue or shall Petrichor purchase more than an aggregate principal amount of $15.0 million of Second Closing Notes and Third Closing Notes.

Pursuant to the SPA, the Company is required to seek approval by the holders of Common Stock on or prior to June 30, 2020 under the listing standards of Nasdaq to approve the issuance of Common Stock upon conversion of the Notes issued to the Investors pursuant to the SPA. Failure to obtain this approval would result in an increase to the interest rate of the Notes.

The foregoing description of the terms and conditions of the SPA is only a summary and is qualified in its entirety by the full text of the SPA, the form of which is filed as Exhibit 10.1, to this Current Report on Form 8-K and is incorporated by reference herein.

Notes

The Notes are secured obligations of the Company. Unless earlier converted or redeemed, the First Closing Notes will mature on the five (5)-year anniversary of the closing of the Financing Transaction, and the Second Closing Notes and Third Closing Notes will mature on the five (5)-year anniversary of the issuance of such notes. The Notes may not be pre-paid without the consent of the holder of a Note; provided that the Company must offer to pre-pay such other holder of a Note on the same terms and conditions. The Notes accrue interest at a rate equal to the sum of (i) the greater of (x) the three (3)-month London Interbank Offered Rate (LIBOR) and (y) two percent (2%), plus (ii) an initial applicable margin of (1) two percent (2%) on the outstanding balance of the First Closing Notes and (2) seven percent (7%) on the outstanding balance of the Second Closing Notes and Third Closing Notes, in each case payable quarterly on the first business day of each calendar quarter.

Prior to maturity, the holders of the Notes will have the right to convert all or any portion of their Notes, including any accrued but unpaid interest, into shares of Common Stock at a conversion price of $6.00 per share, subject to certain adjustments as set forth in the Notes (the "Conversion Price"); provided that only seventy percent (70%) of the principal amount of the Second Closing Notes and Third Closing Notes shall be convertible into shares of Common Stock.

Upon the occurrence of certain events of default as set forth in the Notes (other than events of default relating to bankruptcy, insolvency, reorganization or liquidation proceedings) or a change of control, a holder of the Notes may require the Company to redeem all or any portion of its Notes at a price equal to the sum of (x) the 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 interest, if any, to be redeemed as of the date of the event of default (the "Conversion Amount"). If certain events of default relating to bankruptcy, insolvency, reorganization or liquidation proceedings occur, all outstanding principal and accrued and unpaid interest, plus any accrued and unpaid late charges, will automatically become due and payable. Upon the occurrence of a change of control, a holder of the Notes may require the Company to redeem all or a portion of its Notes at a price equal to the greater of (i) the Conversion Amount being redeemed, and (ii) the product of (x) the Conversion Amount being redeemed multiplied by (y) the quotient of (I) the aggregate cash consideration plus 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 divided by (II) the Conversion Price then in effect.

The Notes contain certain covenants and restrictions, including, among others, that, for so long as the Notes are outstanding, the Company will not incur any indebtedness (other than permitted indebtedness under the Notes), permit liens on its properties (other that permitted liens under the Notes), make payments on junior securities, make dividends or transfer certain assets, enter into certain acquisitions or permit its unrestricted cash to be less than a minimum amount.

The foregoing description of the terms and conditions of the Notes is only a summary and is qualified in its entirety by the full text of the Notes, the forms of which are filed as Exhibits 4.1, 4.2 and 4.3, to this Current Report on Form 8-K and are incorporated by reference herein.

Item 2.02. Results of Operations and Financial Condition.

On January 13, 2020, the Company issued a press release announcing its financial performance for the fourth fiscal quarter ended December 31, 2019 and the Financing Transaction. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

The information in Item 2.02 of this Form 8-K, as well as Exhibit 99.1 attached hereto, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

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

The information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

In the Financing Transaction, the Company offered and will sell its securities to "accredited investors" (as defined by Rule 501 under the Securities Act of 1933, as amended (the "Securities Act")) in reliance upon exemptions from registration under the Securities Act afforded by Section 4(a)(2) thereunder and corresponding provisions of state securities laws. The SPA contains representations to support the Company's reasonable belief that the Investors had access to information concerning the Company's operations and financial condition, the Investors did not acquire the securities with a view to the distribution thereof in the absence of an effective registration statement or an applicable exemption from registration, and that the Investors are accredited investors. The Company relied upon the representations made by the Investors pursuant to the SPA in determining that such exemptions were available.

Item 7.01. Regulation FD Disclosure.

The information set forth in Item 2.02 above is incorporated by reference into this Item 7.01.

On January 13, 2020, the Company issued a press release announcing plans to change its corporate name to ClearPoint Neuro, Inc. A copy of the press release is furnished as Exhibit 99.2 to this Current Report on Form 8-K.

The information in Item 7.01 of this Form 8-K, as well as Exhibits 99.1 and 99.2 attached hereto, shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, nor shall it be deemed incorporated by reference in any filing under the Securities Act, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
4.1	Form of Senior Secured Convertible Note (First Closing).
4.2	Form of Senior Secured Convertible Note (Second Closing).
4.3	Form of Senior Secured Convertible Note (Third Closing).
10.1	Securities Purchase Agreement, dated January 11, 2020, by and among MRI Interventions, Inc., each investor identified on the signature pages thereto, and Petrichor Opportunities Fund I LP, as collateral agent.
99.1	Press Release, dated January 13, 2020.
99.2	Press Release, dated January 13, 2020.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements based upon the Company's current expectations. Forward-looking statements are subject to risks and uncertainties, and the Company's actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of such risks and uncertainties, which include, without limitation, risks and uncertainties associated with market conditions and the satisfaction of closing conditions related to the Financing Transaction. There can be no assurance that the Company will be able to complete the Financing Transaction on the terms described herein or in a timely manner, if at all. You should not place undue reliance on forward-looking statements, which apply only as of the date of this Current Report on Form 8-K. The Company's Annual Report on Form 10-K for the year ended December 31, 2018 filed with the SEC on April 1, 2019 contains, under the heading "Risk Factors," a comprehensive description of risks to which the Company is subject. The Company expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in its expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: January 13, 2020

MRI INTERVENTIONS, INC.

By: /s/ Harold A. Hurwitz
Harold A. Hurwitz
Chief Financial Officer

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE " ***SECURITIES ACT***"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

MRI INTERVENTIONS, INC.

SENIOR SECURED CONVERTIBLE NOTE

Issuance Date: **[●]**, 2020 Original Principal Amount: U.S. $**[●]**

FOR VALUE RECEIVED, MRI Interventions, Inc., a Delaware corporation (the "***Company***"), hereby promises to pay to **[●]** or its registered assigns (the "***Holder***") in cash the amount set out 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, acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("***Interest***") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "***Issuance Date***") until the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, this "***Note***") is one of a series of Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the First Closing Notes (collectively, the "***Notes***" and such other Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the First Closing Notes, the "***Other Notes***"). Certain capitalized terms used herein are defined in Section 32.

1 . Payments of Principal; No Prepayment. On the Maturity Date, the Company shall pay to the Holder an amount in cash equal to (i) all outstanding Principal, plus (ii) all accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest. Other than as specifically permitted 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 or Interest, if any. Notwithstanding anything herein to the contrary, with respect to any repayment, conversion or redemption hereunder, as applicable, the Company shall repay, convert or redeem, as applicable, (i) first, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, (ii) second, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by such Holder, (iii) third, all other amounts (other than Principal) outstanding under any other Notes held by such Holder, and (v) 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. This Note may not be pre-paid (x) without the consent of the Holder and (y) unless the Company shall have offered to simultaneously pre-pay all Other Notes held by each holder of Other Notes on the same terms and conditions.

2. Interest.

2.1 Interest Accrual. Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in arrears for each Calendar Quarter on the first (1st) Business Day of each Calendar Quarter after the Issuance Date (each, an "***Interest Date***"). Interest shall be payable on each Interest Date, to the record holder of this Note on the applicable Interest Date, by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. Prior to the payment of Interest on an Interest Date, Interest on this Note shall accrue at the Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount in connection with any conversion of this Note under Section 3, on each Redemption Date and/or in connection with any required payment upon any Bankruptcy Event of Default.

2.2 LIBOR Rate Not Determinable.

(a) If prior to the commencement of any Calendar Quarter, the Required Holders determine (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate for such Calendar Quarter, then the Required Holders shall give notice thereof to the Company as promptly as practicable and, until the Required Holders notify the Company that the circumstances giving rise to such notice no longer exist, the Notes shall bear interest calculated in accordance with the definition of Interest Rate but using the Prime Rate instead of the LIBOR Rate.

(b) If at any time the Required Holders determine (which determination shall be conclusive absent manifest error) that (A) the circumstances set forth in Section 2.2(a) have arisen and such circumstances are unlikely to be temporary or (B) the circumstances set forth in Section 2.2(a) have not arisen but the supervisor for the administrator of the LIBOR Rate has made a public statement identifying a specific date after which the LIBOR Rate shall no longer be used for determining interest rates for loans, then the Required Holders and the Company shall endeavor in good faith to establish an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time and, upon the Required Holders and the Company agreeing upon such alternate rate of interest, and the Required Holders and the Company shall enter into an amendment to the Notes to reflect such alternate rate of interest and such other related changes to the Notes as may be applicable. Until an alternate rate of interest shall be determined in accordance with this Section 2.2(b) (but, in the case of the circumstances described in clause (B) of the first sentence of this Section 2.2(b), only to the extent the LIBOR Rate for such Calendar Quarter is not available or published at such time on a current basis), Section 2.2(a) shall be applicable.

3 . Conversion of Notes. Subject to the provisions of Section 3.4, at any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock, on the terms and conditions set forth in this Section 3.

3.1 Conversion Right. Subject to the provisions of Section 3.4, 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 into fully paid and nonassessable shares of Common Stock in accordance with Section 3.3, at the Conversion Rate. 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 and similar taxes, costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "***Transfer Agent***")) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

3 . 2 Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "***Conversion Rate***").

3.3 Mechanics of Conversion.

(a) Optional Conversion.

1. To convert any Conversion Amount into shares of Common Stock on any date (a " ***Conversion Date***"), the Holder shall deliver (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "***Conversion Notice***") to the Company. If required by Section 3.3(c), 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 18.2).

2. On or before the second (2^{nd}) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail the transfer agent instructions and representation as to whether such shares of Common Stock may then be resold pursuant to (A) an effective and available registration statement, (B) Rule 144 unless the Holder affirmatively indicates on the applicable Conversion Notice that the shares of Common Stock issuable in connection with such Conversion Notice are not being resold either (x) prior to, (y) contemporaneously with, or (z) within thirty (30) days after, as applicable, the date of the applicable Conversion Notice by the Holder, or (C) Rule 144 without having to comply with the information requirements under Rule 144(c)(1) (each, a "***Permitted Securities Transaction***"), in the form attached hereto as Exhibit II, to the Holder and the Transfer Agent which shall instruct the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

3. On or before the third (3rd) Trading Day following the date on which the Company has received a 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, with respect to the shares of Common Stock included in the Conversion Notice that may then be resold by the Holder pursuant to a Permitted Securities Transaction, 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 the DTC Fast Automated Securities Transfer Program or with respect to the shares of Common Stock included in the Conversion Notice that may not then be resold by the Holder pursuant to a Permitted Securities Transaction, 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.

4. If this Note is physically surrendered for conversion pursuant to Section 3.3(c) 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 five (5) Business Days after receipt of this Note or such earlier date as required by the Exchange Act or other applicable law and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 18.4) representing the outstanding Principal not converted.

5. 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.

6. Notwithstanding anything to the contrary contained in this Note or the Securities Purchase Agreement, after the effective date of the Registration Statement, with five (5) Business Days after the written request of the Holder, the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee).

(b) 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, to either (x)(A) if (i) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or (ii) such applicable shares of Common Stock may not then be resold by the Holder pursuant a Permitted Securities Transaction, deliver 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 (B) if (i) the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and (ii) such applicable shares of Common Stock may then be resold by the Holder pursuant to a Permitted Securities Transaction, 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), or (y) if the Registration Statement covering the resale of the shares of Common Stock that are the subject of the Conversion Notice is not available for the resale of such Unavailable Conversion Securities and the Company fails to promptly, but in no event later than as required pursuant to the Securities Purchase Agreement, (A) so notify the Holder and (B) deliver the shares of Common Stock electronically without any restrictive legend by crediting such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (y) is hereinafter referred as a "***Notice Failure***" and together with the event described in clause (x) above, a " ***Conversion Failure***"), then, in addition to all other remedies available to the Holder, 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 any liability the Company may otherwise have hereunder in respect of such failure. Nothing shall limit the Holder's right to pursue any 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.

(c) Registration; Book-Entry. The Company 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***"). 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 Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of 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). Notwithstanding anything to the contrary set forth in this Section 3, 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 3.3(a)) 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 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.

(d) 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 3.4, 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 23.

3.4 Limitations on Conversions.

(a) 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 **[19.99]/[4.99]**[1]% (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 3.4(a). For purposes of this Section 3.4, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange 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 3.4(a), 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 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

[1] Note – The Maximum Percentage shall be 19.99% in respect of the Notes issued to PTC and 4.99% in respect of the Notes issued to Petrichor

which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "***Excess Shares***") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3.4 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 3.4(a) 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.

(b) Until the Requisite Stockholder Approval is obtained, 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, if the shares of Common Stock issuable in respect of such conversion (taken together with the issuance of all other shares of Common Stock then issuable upon conversion of all Other Notes, Second Closing Notes and Third Closing Notes) would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of this Note, the Other Notes, the Second Closing Notes and the Third Closing Notes without violating the Company's obligations under Nasdaq Listing Rule 5635(d) (the number of shares of Common Stock which may be issued without violating the Company's obligations under Nasdaq Listing Rule 5635(d) is herein referred to as the "***Cap***"). Until the Requisite Stockholder Approval is obtained, the Holder shall not be issued, upon conversion of this Note, shares of Common Stock in an amount greater than the product of (i) the Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the initial principal amount of this Note as of the Issuance Date divided by (2) the sum of (x) the aggregate principal amount of this Note and each Other Note as of the Issuance Date, plus (y) the aggregate initial principal amount of Second Closing Notes and Third Closing Notes that shall have been issued pursuant to the Securities Purchase Agreement on or prior to such date of determination, plus (z) the maximum aggregate principal amount of Second Closing Notes and Third Closing Notes that, pursuant to the terms of the Securities Purchase

Agreement, may be issued pursuant to the Securities Purchase Agreement following such date of determination (the "***Cap Allocation***"). In the event that the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of the Holder's Cap Allocation with respect to the portion of this Note so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Cap Allocation so allocated to such transferee. The provisions of this Section 3.4(b) shall terminate and cease to be effective on the date that the Requisite Stockholder Approval is obtained.

4. Rights Upon and Event of Default.

4.1 Event of Default. Unless waived in writing by the Holder, each of the following events shall constitute an "***Event of Default***" and each of the events in clauses (i), (j) and (k) below shall constitute a "***Bankruptcy Event of Default***":

(a) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, the failure of such Registration Statement to be filed with the SEC on or prior to the date that is five (5) days after the applicable Filing Date or the failure of such Registration Statement to be declared effective by the SEC on or prior to the date that is five (5) days after the applicable Effectiveness Date;

(b) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, while such Registration Statement is required to be maintained effective pursuant to the terms of the Securities Purchase Agreement, the effectiveness of such Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement (or the prospectus contained therein) is unavailable to any holder of Registrable Securities for sale of all of such holder's Registrable Securities in accordance with the terms of the Securities Purchase Agreement, and such lapse or unavailability continues for a period of five (5) consecutive days or for more than an aggregate of ten (10) days in any 365-day period;

(c) the suspension from trading or the failure of the Common Stock to be quoted or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(d) 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 (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 3.4;

(e) except to the extent the Company is in compliance with Section 10.2 below, at any time following the tenth (10^{th}) Trading Day that the Holder's Authorized Share Allocation is less than the number of shares of Common Stock that the Holder would be entitled to receive upon a conversion of the full Conversion Amount of this Note (without regard to any limitations on conversion set forth in Section 3.4 or otherwise);

(f) the Company's or any Subsidiary Guarantor's (x) failure to pay to the Holder any amount of Principal within one (1) Business Day after such amounts were as due under this Note, or (y) failure to pay to the Holder any amount of Interest, Late Charges or other amounts (other than Principal which is covered by clause (x) above) within three (3) Business Days after such amounts were as due under this Note;

(g) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder as and when required by the Securities Purchase Agreement or this Note, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(h) the occurrence of any default under, redemption of or acceleration prior to maturity of, any Indebtedness in the aggregate of $500,000 or more of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(i) 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;

(j) 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;

(k) 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;

(l) a final judgment or judgments for the payment of money aggregating in excess of $500,000 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 $500,000 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 sixty (60) days of the issuance of such judgment;

(m) any default by the Company in the due performance and observance of any of the covenants or agreements contained Section 13; provided, that such defaults under Section 13.10 shall not be deemed and Event of Default if such default is cured prior to the tenth (10th) Business Day following the date the Company becomes aware of the factual circumstances giving rise to the default;

(n) any representation, warranty or other written statement of the Company set forth in any Transaction Document or any certification provided by the Company pursuant to any Transaction Document is incorrect or misleading in any material respect when given;

(o) other than as specifically set forth in another clause of this Section 4.1, any default by the Company in the due performance and observance of any of the covenants or agreements of any Transaction Document, except, in the case of a breach of a covenant that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

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

(q) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs;

(r) any provision of any Transaction Document (including the Guaranty Agreement, the Security Agreement and any other Security Document) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto in any material respect, or the validity or enforceability thereof shall be contested by any party thereto, 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 the Guaranty Agreement, the Security Agreement and any other Security

Document), or any Subsidiary Guarantor repudiates, revokes or attempts to revoke its guaranty under the Guaranty Agreement;

(s) the Security Agreement or any other Security Document shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent for the benefit of the Holder 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;

(t) the Company shall fail to take all actions necessary to obtain, or shall fail to use its best efforts to obtain, the Requisite Stockholder Approval on or prior to the Requisite Stockholder Approval Deadline;

(u) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes; or

(v) the Company shall have failed to repay at least the Minimum Repayment Amount of the Existing Indebtedness on or prior to 5:00 p.m. on the First Closing Date.

4.2 Notice of an Event of Default: 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 three (3) Business Days of becoming aware of such Event of Default deliver written notice thereof via facsimile or 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 and ending (such ending date, the "***Event of Default Right Expiration Date***") 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, 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 4.2 shall be redeemed by the Company at a price equal to the Conversion Amount to be redeemed as of the date of the Event of Default (the "***Event of Default Redemption Price***"). Redemptions required by this Section 4.2 shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4.2 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 4.2, but subject to Section 3.4, until the Event of Default Redemption Price (together with any Late Charges thereon) is satisfied in full, the Conversion Amount submitted for redemption under this Section 4.2 (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 Section 3. In the event of the Company's redemption of any portion of this Note under this Section 4.2, 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. 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.

4.3 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 all outstanding Principal, accrued and unpaid Interest, and accrued and unpaid Late Charges on such Principal and Interest as of the date of the Bankruptcy Event of Default, 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. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

(a) Restrictions. The Company shall not enter into or be party to a Fundamental Transaction unless: either (i) the Company is the surviving Person; or (ii) the Successor Entity (if other than the Company) assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents as provided in Section 5.1(b).

(b) Assumption. To satisfy clause (ii) of Section 5.1(a), (i) the Successor Entity shall assume in writing all of the obligations of the Company under this Note and the other Transaction Documents pursuant to written agreements in form and substance reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable), 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, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes, respectively, held by such holder, having similar conversion rights as the Notes and having similar ranking and security to the Notes, and reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable) 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.

(c) Confirmation. 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) 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.

(d) Waiver. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5.1 to permit the Fundamental Transaction without the assumption of this Note.

(e) Applicability. 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.

5.2 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 facsimile or 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 the later of ten (10) Trading Days after (A) consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice, 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 Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5.2 shall be redeemed by the Company in cash at a price (the "***Change of Control Redemption Price***") equal to the greater of (i) the Conversion Amount being redeemed, and (ii) the product of (x) the Conversion Amount being redeemed multiplied by (y) the quotient of (I) the aggregate cash consideration plus 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 5.2 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 5.2 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 5.2, but subject to Section 3.4, 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 5.2 (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 the Company's redemption of any portion of this Note under this Section 5.2, 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.

6. Intentionally Omitted.

7. Adjustments to the Conversion Price.

7.1 Adjustment of Conversion Price upon Subdivision or Combination of Common Stock or Stock Dividend. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Fundamental Transaction, as to which the provisions set forth in Section 5 will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 * \frac{OS_0}{OS_1}$$

Where:

CP	=	the Conversion Price in effect immediately before the open of business on the ex-dividend date for such dividend or distribution, or immediately before the open of business on the effective date of such stock split or stock combination, as applicable
CP_1	=	the Conversion Price in effect immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable
OS_0	=	the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date or effective date, as applicable
OS_1	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination

For the avoidance of doubt, pursuant to the definition of CP_1 above, any adjustment to the Conversion Price made pursuant to this Section 7.1 will become effective immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable. If any dividend, distribution, stock split or stock combination of the type described in this Section 7.1 is declared or announced, but not so paid or made, then the Conversion Price, if previously adjusted, will be readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

7.2 Rights, Options and Warrants. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is publicly announced, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 * \frac{OS + Y}{OS + X}$$

Where:

CP_0	=	the Conversion Price in effect immediately before the open of business on the ex-dividend date for such distribution
CP_1	=	the Conversion Price in effect immediately after the open of business on such ex-dividend date
OS	=	the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants
Y	=	a number of shares of Common Stock obtained by dividing (x) the aggregate amount payable to exercise all such rights, options or warrants distributed by the Company by (y) the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced

For the avoidance of doubt, any adjustment to the Conversion Price made pursuant to this Section 7.2 will be made successively whenever any such rights, options or warrants are issued and, pursuant to the definition of CP_1 above, will become effective immediately after the open of business on the ex-dividend date for the applicable distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Price, if previously adjusted, will be readjusted effective as of such expiration date to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Price will be readjusted effective as of the date the Board of Directors of the Company determines not to distribute such rights, options or warrants, to the Conversion Price that would then be in effect had the ex-dividend date for the distribution of such rights, options or warrants not occurred. For purposes of this Section 7.2, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate

price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors of the Company.

7.3 Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

8. Intentionally Omitted.

9 . Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate or articles of incorporation, bylaws or other governing document 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.

10. Reservation of Authorized Shares.

10.1 Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note and the Other Notes equal to 120% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Issuance Date. So long as any of this Note and the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "***Required Reserve Amount***"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Securities Purchase Agreement) or at the time of the 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 this Note, or a portion thereof, or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation.

10.2 Insufficient Authorized Shares.

(a) If 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 have reserved for issuance upon conversion of the outstanding

Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "***Authorized Share Failure***"), then the Company shall promptly 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 either (x) obtain the written consent of its stockholders for the approval of an increase in the number of authorized shares of Common Stock and provide each stockholder with an information statement with respect thereto or (y) file with the SEC a proxy statement for a meeting of its stockholders at which meeting the Company will seek the approval of its stockholders for 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 commercially reasonable 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 during 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 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.

(b) If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company, in lieu of issuing Common Stock in connection with such conversion and in full satisfaction of the Company's obligations with respect to such conversion, to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of shares of Common Stock that the Company is unable to deliver pursuant to this Section 10, and (ii) the highest Closing Sale Price of the Common Stock during the period beginning on the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

11. Redemptions.

11.1 Mechanics.

(a) If the Holder has submitted an Event of Default Redemption Notice in accordance with Section 4.2, the Company 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 (each, an "***Event of Default Redemption Date***").

(b) If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5.2, 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 two (2) Business Days after the Company's receipt of such notice otherwise (each, a "***Change of Control Redemption Date***").

(c) 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.

(d) 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 18.4) representing the outstanding Principal which has not been redeemed.

(e) 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, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 18.4), to the Holder; provided, that, notwithstanding the applicable Redemption Notice being deemed null and void and such return or issuance of this Note or a new Note in accordance with the foregoing, a continual Event of Default shall thereafter be deemed to have occurred and be continuing until the subsequent repayment or conversion of this Note in full. Furthermore, 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.

11.2 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 or Section 5.2 (each, an "***Other Redemption Notice***"), the Company shall immediately, but no later than two (2) Business Days after its receipt thereof, forward to the Holder by facsimile or 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 five (5) 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 and as expressly provided in this Note.

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

13.1 Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Notes or Third Closing Notes and (b) following the repayment of the Minimum Repayment Amount of the Existing Indebtedness on the First Closing Date, shall be senior to all other Indebtedness of the Company and its Subsidiaries (other than the portion of the Existing Indebtedness remaining outstanding after such repayment of the Minimum Repayment Amount).

13.2 Incurrence of Indebtedness. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note, the Other Notes and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Notes or Third Closing Notes and (ii) other Permitted Indebtedness).

13.3 Existence of Liens. The Company shall not, and the Company shall not permit any of its Subsidiaries to, 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 or non-voluntary Liens, which in the aggregate are less than $100,000.

13.4 Redemption and 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 dividend or distribution on any of its capital stock (any of the foregoing, a "***Restricted Payment***"), other than (i) Restricted Payments made by any Subsidiary to the Company or any other Subsidiary of the Company, (ii) any dividend payments or other distributions by the Company or any Subsidiary payable solely in shares of capital stock of such Person and (iii) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of capital stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such capital stock represents a portion of the exercise price thereof.

13.5 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 material assets or rights of the Company or any Subsidiary Guarantor whether in a single transaction or a series of related transactions, , other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice, (ii) sales of inventory and product in the ordinary course of business, or (iii) sales or other transfers of assets from the Company or any Subsidiary Guarantor to the Company or any Subsidiary Guarantor.

13.6 Acquisitions. Without the prior written consent of the Required Holders, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, acquire all or substantially all of the assets or capital stock of any Person or acquire all or substantially all of the assets of any operating division of any Person (each, an "***Acquisition***") unless, in the event that such acquired Person shall become a Subsidiary of the Company in

connection with, or as a result of, such Acquisition, such acquired Person shall (x) be a Domestic Subsidiary, and (y) become a Subsidiary Guarantor on the date of such Acquisition as set forth in Section 13.11.

13.7 Change in Nature of Business. The Company shall not, and the Company shall not permit any of its Subsidiaries to, 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 First Closing Date or any business substantially related or incidental thereto. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, modify its or their corporate structure or purpose in any material respect.

13.8 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 (i) transactions entered into 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, and (ii) transactions entered into 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.

13.9 Maintenance of Existence; Compliance Laws, Etc. The Company shall, and the Company shall cause its Subsidiaries to, preserve and maintain its legal existence, comply in all material respects with all applicable laws, rules, regulations and orders, including the payment (before the same become delinquent), of all taxes, imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Company or its Subsidiary, as applicable.

13.10 Insurance. The Company shall, and the Company shall cause its Subsidiaries to, maintain:

(a) insurance on its property with financially sound and reputable insurance companies against business interruption, loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as the Company its Subsidiaries; and

(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

13.11 Subsidiary Matters.

(a) Neither the Company nor any Subsidiary Guarantor shall establish, form, create or acquire any new direct or indirect Subsidiary unless (i) such Subsidiary shall be a Domestic Subsidiary, and (ii) such Subsidiary shall, on the date of the establishment, formation, creation or acquisition thereof, (x) become a Subsidiary Guarantor by executing and delivering to the Holder a joinder to the Guaranty Agreement or such other document as the Holder shall reasonably deem appropriate for such purpose, (y) take all

such action and execute such agreements, documents and instruments requested by the Holder, including execution and delivery of a joinder to the Security Agreement and execution and delivery of such other Security Documents, that may be necessary to grant to the Holder a perfected first priority security interest and Lien in any Collateral (as defined in the Securities Purchase Agreement) owned by such new Subsidiary and (z) deliver to the Holder documents of the types referred to in clauses (xi) and (xii) of Section 5.1(a) of the Securities Purchase Agreement and, if reasonably requested by the Holder, favorable opinions of counsel to such new Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clauses (x) and (y) of this subsection), all in form, content and scope reasonably satisfactory to the Holder.

(b) Neither the Company nor any Subsidiary Guarantor will make any Investment in any Person other than a Subsidiary Guarantor.

13.12 Maintenance of Authorizations, Intellectual Property, Etc. The Company shall, and the Company shall cause its Subsidiaries to, (i) maintain in full force and effect all Regulatory Authorizations, authorizations or other rights necessary and material for the operations of its business, and comply with the terms and conditions applicable to the foregoing, excluding the maintenance of any Regulatory Authorizations that are not commercially reasonably necessary or material for the conduct of the business of the Company and its Subsidiaries; (ii) operate their business and facilities in material compliance with all applicable laws, rules and regulations, including any newly introduced or revised applicable laws, rules and regulations as they may become introduced, altered or otherwise evolve over time; (iii) diligently pursue any application for registration of any existing or future Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (iv) maintain in full force and effect or pursue the prosecution of, as the case may be, and pay all costs and expenses relating to, all Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all Intellectual Property developed, used or controlled (or jointly owned, developed or controlled) by the Company or any of its Subsidiaries; and (vi) not permit the activities and business of the Company or any of its Subsidiaries to violate, infringe, misappropriate or misuse any Intellectual Property of any other Person.

13.13 Liquidity. The Company shall not permit, at any time, the Liquidity to be less than $1,000,000.

13.14 Books and Records. The Company shall, and the Company shall cause its Subsidiaries to, keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions.

14. Distribution of Assets. In addition to any adjustments pursuant to Section 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 Conversion Price as of the applicable record

date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that 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 the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

15. Amendments and Waivers.

15.1 Except as set forth in Section 15.2 below, the written consent of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes; provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of the Holder or any holder of any Other Notes relative to the comparable rights and obligations of the Holder or any holder of any Other Notes, as applicable, shall require the prior written consent of such adversely affected Holder or such adversely affected holder of Other Notes. Any change, amendment or waiver by the Company and the Required Holders in accordance with this Section 15.1 shall be binding on the Holder of this Note and all holders of the Other Notes.

15.2 Notwithstanding the provisions of Section 15.1 above, the Holder may elect to waive any provision of this Note (other than any provision of Section 13 or this Section 15) solely as to the Holder and this Note specifically in a written instrument executed by the Holder; provided that any such waiver under this Section 15.2 shall not bind or otherwise affect the terms of any Other Note or any holder thereof.

16. Collateral. This Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement and the other Security Documents).

17. Transfer. This Note may be offered, sold, assigned or transferred by the Holder upon notice to, but without the consent of, the Company, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement. 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, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement.

18. Reissuances; New Notes.

18.1 Transfer. If this Note is to be transferred in accordance with the terms of this Note, 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 18.4 and subject to Section 3.3(c)), 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 18.4) 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 3.3(c)

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.

18.2 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, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 18.4) representing the outstanding Principal.

18.3 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 18.4) 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.

18.4 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 18.1 or Section 18.3, 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.

19. 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.

20. Payment of Collection, Enforcement and Other Costs. If (a) an Event of Default has occurred and 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 or to enforce the provisions of this Note 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 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, attorneys' fees and disbursements.

21. 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 First Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

22. 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.

23. Dispute Resolution.

23.1 Submission to Dispute Resolution.

(a) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (A) if by the Company, within five (5) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder, within five (5) Business Days 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 VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2^{nd}) 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 then the Holder may, with the consent of the Company not to be unreasonably or untimely withheld, select an independent, reputable investment bank to resolve such dispute.

(b) 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 23 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which 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).

(c) The Company and the Holder shall 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 reasonable fees and reasonable 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.

24. Notices; Currency; Payments.

24.1 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 8.4 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. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to all or substantially all of the holders of shares of Common Stock 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.

24.2 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).

24.3 Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a 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 Purchasers, shall initially be as set forth on the Schedule of Investors 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 within three (3) Business Days after such amounts were due 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 fourteen percent (14.0%) per annum from the date such amount was due until the same is paid in full ("***Late Charge***").

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

26. 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.

27. 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 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 and venue of the Court of Chancery of the State of Delaware or to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude 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, to realize on any collateral or any other security for such obligations, 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 23. **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.**

28. Attorneys' Fees. In the event any legal action or other proceeding is brought by one party against the other party to enforce any provision of this Note or in which the subject matter of such

legal action or other proceeding arises under, or is with respect to, the provisions of this Note, the prevailing party in any such legal action or other proceeding is entitled to recover from the other party attorneys' fees and costs associated with defending or prosecuting such legal action or other proceeding, any appeal therefrom, and any ancillary or related proceedings.

29. 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).

30. Disclosure. Upon receipt or delivery by the Company 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, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

31. Usury. This Note is subject to the express condition that at no time shall the Company be obligated or required to pay interest hereunder at a rate or in an amount which could subject the Holder to either civil or criminal liability as a result of being in excess of the maximum interest rate or amount which the Company is permitted by applicable law to contract or agree to pay. If by the terms of this Note, the Company is at any time required or obligated to pay interest hereunder at a rate or in an amount in excess of such maximum rate or amount, the rate or amount of interest under this Note shall be deemed to be immediately reduced to such maximum rate or amount and the interest payable shall be computed at such maximum rate or be in such maximum amount and all prior interest payments in excess of such maximum rate or amount shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

32. Definitions. As used in this Note, the following terms shall have the following meanings:

32.1 "***Acquisition***" has the meaning specified in Section 13.6; provided, that an Acquisition shall not include any acquisition of assets (other than any such assets constituting (i) any capital stock, membership interests, partnership interests or other equity interests of any Person, or (ii) any warrants, convertible instruments or other securities or rights of any Person that are exercisable for, or convertible into, any of the equity interests referred to in clause (i)) completed by the Company or any Subsidiary that is a party to the Security Agreement or the Guaranty Agreement.

32.2 "***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.

32.3 "***Applicable Margin***" means 2.00%; provided, that, in the event that the Company shall have not obtained the Requisite Stockholder Approval on or prior to the Requisite Stockholder Approval Deadline, then, from and after the Requisite Stockholder Approval Deadline until the date on which the Company shall obtain the Requisite Stockholder Approval, the "Applicable Margin" shall mean 9.00%.

32.4 "***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 Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

32.5 "***Authorized Share Allocation***" has the meaning specified in Section 10.1.

32.6 "***Authorized Share Failure***" has the meaning specified in Section 10.2.

32.7 "***Bankruptcy Event of Default***" has the meaning specified in Section 4.1.

32.8 "***Business Day***" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in The State of New York are authorized or required by law or other governmental action to close.

32.9 "***Calendar Quarter***" means each of: (i) the period beginning on and including January 1 and ending on and including the next occurring March 31; (ii) the period beginning on and including April 1 and ending on and including the next occurring June 30; (iii) the period beginning on and including July 1 and ending on and including the next occurring September 30; (iv) and the period beginning on and including October 1 and ending on and including the next occurring December 31.

32.10 "***Cap***" has the meaning specified in Section 3.4(b).

32.11 "***Cap Allocation***" has the meaning specified in Section 3.4(b).

32.12 "***Change of Control***" means any Fundamental Transaction other than (i) 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 (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

32.13 "***Change of Control Date***" has the meaning specified in Section 5.2.

32.14 "***Change of Control Notice***" has the meaning specified in Section 5.2.

32.15 "***Change of Control Redemption Date***" has the meaning specified in Section 11.1.

32.16 "***Change of Control Redemption Notice***" has the meaning specified in Section 5.2.

32.17 "***Change of Control Redemption Price***" has the meaning specified in Section 5.2.

32.18 "***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 FactSet, 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 FactSet, 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 FactSet, 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 FactSet, or, if no closing bid price or last trade price, respectively, is reported for such security by FactSet, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). 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 23. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

32.19 "***Collateral Agent***" has the meaning specified in the Securities Purchase Agreement.

32.20 "***Common Stock***" means (i) shares of Common Stock, par value $0.01 per share of the Company, and (ii) any share capital into which such Common Stock shall be changed or any share capital resulting from a reclassification of such Common Stock.

32.21 "***Company***" has the meaning specified in the preamble to this Note.

32.22 "***Conversion Amount***" means the sum of (x) the portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made, (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.

32.23 "***Conversion Date***" has the meaning specified in Section 3.3(a).

32.24 "***Conversion Failure***" has the meaning specified in Section 3.3(b).

32.25 "***Conversion Notice***" has the meaning specified in Section 3.3(a).

32.26 "***Conversion Price***" means, as of any Conversion Date or other date of determination, $6.00, subject to adjustment as provided herein.

32.27 "***Conversion Rate***" has the meaning specified in Section 3.2.

32.28 "***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.

32.29 "***Distributions***" has the meaning specified in Section 14.

32.30 "***Dispute Submission Deadline***" has the meaning specified in Section 23.1(b).

32.31 "***Domestic Subsidiary***" has the meaning specified in the Securities Purchase Agreement.

32.32 "***DTC***" has the meaning specified in Section 3.3(a).

32.33 "***Effectiveness Date***" has the meaning specified in the Securities Purchase Agreement.

32.34 "***Eligible Market***" means the NYSE American, New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTCBB.

32.35 "***Event of Default***" has the meaning specified in Section 4.1.

32.36 "***Event of Default Notice***" has the meaning specified in Section 4.2.

32.37 "***Event of Default Redemption Date***" has the meaning specified in Section 11.1.

32.38 "***Event of Default Redemption Notice***" has the meaning specified in Section 4.2.

32.39 "***Event of Default Redemption Price***" has the meaning specified in Section 4.2.

32.40 "***Event of Default Right Expiration Date***" has the meaning specified in Section 4.2.

32.41 "***Excess Shares***" has the meaning specified in Section 3.4(a).

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

32.43 "***Existing Indebtedness***" has the meaning specified in the Securities Purchase Agreement.

32.44 "***Filing Date***" has the meaning specified in the Securities Purchase Agreement.

32.45 "***First Closing Date***" has the meaning specified in the Securities Purchase Agreement.

32.46 "***Fundamental Transaction***" means (A) that the Company shall, directly or indirectly, including through any of its subsidiaries, Affiliates or otherwise, in one or more related

transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange 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 Exchange 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 any of its 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 Exchange 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.

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

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

32.49 "***Guaranty Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.50 "***Holder***" has the meaning specified in the preamble to this Note.

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

32.52 "***Intellectual Property***" means all patents, trademarks, service marks, logos and other business identifiers, trade names, trade styles, trade dress, copyrights, proprietary know-how, processes, computer software and all registrations, applications and licenses therefor.

32.53 "***Interest***" has the meaning specified in the preamble to this Note.

32.54 "***Interest Date***" has the meaning specified in Section 2.1.

32.55 "***Interest Rate***" means, as of any date, an annual rate per annum equal to the sum of (i) the greater of (x) the LIBOR Rate as of such date, and (y) 2.00%, plus (ii) the Applicable Margin; provided, that, on any date when an Event of Default shall have occurred and be continuing, the "Interest Rate" shall be the "Interest Rate" determined in accordance with the foregoing plus 3.00%.

32.56 "***Investment***" means, with respect to any Person, any loan, advance or extension of credit (other than to customers in the ordinary course of business) by such Person to, or any guarantee of any obligation of or other contingent liability with respect to the capital stock, Indebtedness or other obligations of, or any contributions to the capital of, any other Person, or any ownership, purchase or other acquisition by such Person of any interest in any capital stock, limited partnership interest, general partnership interest, or other securities of any such other Person.

32.57 "***Issuance Date***" has the meaning specified in the preamble to this Note.

32.58 "***Late Charge***" has the meaning specified in Section 24.3.

32.59 "***LIBOR Rate***" means, with respect to any Calendar Quarter, the three-month London Interbank Offered Rate for deposits in U.S. Dollars at approximately 11:00 a.m. (London, England time), quoted by the Holder from the appropriate page selected by the Holder, two Business Days prior to the last Business Day of the such Calendar Quarter.

32.60 "***Lien***" has the meaning specified in Section 13.3.

32.61 "***Liquidity***" means, as of any date, an amount equal to the aggregate amount of the unrestricted cash of the Company and the Subsidiary Guarantors (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of the Subsidiary Guarantors for any reason) as of such date of determination held in bank accounts of financial banking institutions in the United States of America.

32.62 "***Maturity Date***" shall mean **[●]**, 2025[2]; 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 3.4 hereunder, the Maturity Date may be extended at the option of the Holder until such time as such provision shall not limit the conversion of this Note.

32.63 "***Maximum Percentage***" has the meaning specified in Section 3.4(a).

32.64 "***Minimum Repayment Amount***" has the meaning specified in the Securities Purchase Agreement.

32.65 "***Note***" has the meaning specified in the preamble to this Note.

32.66 "***Notice Failure***" has the meaning specified in Section 3.3(b).

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

32.68 "***Other Notes***" has the meaning specified in the preamble to this Note.

32.69 "***Other Redemption Notice***" has the meaning specified in Section 11.2.

32.70 "***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.

32.71 "***Permitted Indebtedness***" means (i) Indebtedness evidenced by this Note, the Other Notes and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Notes or Third Closing Notes, (ii) Indebtedness secured by Permitted Liens under clause (ii) or (iii) of the definition of Permitted Liens in an aggregate amount outstanding not to exceed $1,000,000, (iii) indebtedness incurred in the ordinary course of business, not to exceed $50,000 in any one transaction or $250,000 in the aggregate outstanding at any time, (iv) any (x) Existing Indebtedness or (y) unsecured Indebtedness, so long as the aggregate amount of Indebtedness at any time outstanding under this clause (iv) shall not exceed $500,000, and (v) solely until 5:00 p.m. on the First Closing Date, the Existing Indebtedness (provided, that, for the avoidance of doubt, at least the Minimum Repayment Amount of the Existing Indebtedness shall be repaid prior to 5:00 p.m. on the First Closing Date).

[1] **Note to Form**: To be the fifth anniversary of Closing.

32.72 "***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 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, (iii) 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, (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, or (C) in respect of capitalized lease obligations, provided that the Lien is confined solely to the property leased by the Company or any of its Subsidiaries pursuant to the applicable capital lease, in the case of any of clause (A), (B) or (C), with respect to Indebtedness in an aggregate amount not to exceed $1,000,000, (iv) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, and (v) solely until 5:00 p.m. on the First Closing Date, Liens arising in connection with the Existing Indebtedness (provided, that, for the avoidance of doubt, at least the Minimum Repayment Amount of the Existing Indebtedness shall be repaid prior to 5:00 p.m. on the First Closing Date).

32.73 "***Permitted Securities Transaction***" has the meaning specified in Section 3.3(a).

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

32.75 "***Principal***" has the meaning specified in the preamble to this Note.

32.76 "***Principal Market***" means the Nasdaq Capital Market.

32.77 "***Redemption Date***" means, as applicable, the Event of Default Redemption Date or the Change of Control Redemption Date.

32.78 "***Redemption Notice***" means, as applicable, an Event of Default Redemption Notice or a Change of Control Redemption Notice.

32.79 "***Redemption Price***" means, as applicable, the Event of Default Redemption Price or the Change of Control Redemption Price.

32.80 "***Register***" has the meaning specified in Section 3.3(c).

32.81 "***Registered Notes***" has the meaning specified in Section 3.3(c).

32.82 "***Registrable Securities***" has the meaning specified in the Securities Purchase Agreement.

32.83 "***Registration Statement***" has the meaning specified in the Securities Purchase Agreement.

32.84 "***Regulatory Authorizations***" means all governmental licenses, authorizations, registrations, permits, consents and approvals required under all applicable laws and regulations in order to carry on the business of the Company and its Subsidiaries as currently conducted or proposed to be conducted, including any newly introduced or revised applicable laws and regulations as they may become introduced, altered or otherwise evolve over time.

32.85 "***Reported Outstanding Share Number***" has the meaning specified in Section 3.4(a).

32.86 "***Required Dispute Documentation***" has the meaning specified in Section 23.1(b).

32.87 "***Required Holders***" has the meaning specified in the Securities Purchase Agreement.

32.88 "***Required Reserve Amount***" has the meaning specified in Section 10.1.

32.89 "***Requisite Stockholder Approval***" has the meaning specified in the Securities Purchase Agreement.

32.90 "***Requisite Stockholder Approval Deadline***" has the meaning specified in the Securities Purchase Agreement.

32.91 "***Restricted Payment***" has the meaning specified in Section 13.4.

32.92 "***Rule 144***" has the meaning specified in the Securities Purchase Agreement.

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

32.94 "***Second Closing Notes***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.95 "***Securities Purchase Agreement***" means that certain Securities Purchase Agreement, dated as of January 11, 2020, by and among the Company, the investors identified therein, and the Collateral Agent, pursuant to which the Company issued, among other securities, the Notes, as such agreement may be amend, restated or otherwise modified from time to time.

32.96 "***Security Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.97 "***Security Documents***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.98 "***Share Delivery Deadline***" has the meaning specified in Section 3.3(a).

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

32.100 "***Subsidiary***" means any Person in which the Company, directly or indirectly, (i) owns more than 50% of the outstanding capital stock or 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.

32.101 "***Subsidiary Guarantor***" means each Subsidiary of the Company that is, or that becomes, (i) a party to the Guaranty Agreement as a "Subsidiary Guarantor" thereunder, and (ii) a party to the Security Agreement as a "Grantor" thereunder.

32.102 "***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.

32.103 "***Third Closing Notes***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.104 "***Trading Day***" has the meaning specified in the Securities Purchase Agreement.

32.105 "***Transaction Documents***" means the Securities Purchase Agreement, including the schedules, annexes and exhibits attached hereto, the Notes, the Security Agreement, the other Security Documents and each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by the Securities Purchase Agreement.

32.106 "***Transfer Agent***" has the meaning specified in Section 3.1.

32.107 "***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 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet 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 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet, or, if no dollar volume-weighted average price is reported for such security by FactSet 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 sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). 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 23. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Senior Secured Convertible Note as of the Issuance Date set out above.

MRI INTERVENTIONS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

[●]

By: _____
Name:
Title:

EXHIBIT I

MRI INTERVENTIONS, INC.
CONVERSION NOTICE

Reference is made to the Senior Secured Convertible Note (the "***Note***") issued to the undersigned by MRI Interventions, 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 Common Stock, $0.01 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 Principal and such 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 (the "***Shares***"): _____

☐ Check here if the Holder does not intend to resell the Shares to be issued either (x) prior to, (y) contemporaneously with or (z) no later than thirty days after, as applicable, the date of this Conversion Notice

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty days after the date of this Conversion Notice.

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Note submitting this Conversion Notice that after giving effect to the Conversion provided for in this Conversion Notice, such Holder (together with its Attribution Parties) will not have beneficial ownership (together with the beneficial ownership of such Person's Attribution Parties) of a number of shares Common Stock which exceeds the Maximum Percentage (as defined in the Note) of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 3.4(a) of the Note.

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: _____

Account Number: _____

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

Facsimile: _____

Email Address: _____

Exhibit I

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

MRI INTERVENTIONS, INC.

_____ ___, 20__

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Stock of MRI Interventions, Inc.

Ladies and Gentlemen:

Reference is made to (A) the Securities Purchase Agreement, dated as of January 11, 2020, as amended, by and among MRI Interventions, Inc., a Delaware corporation (the "***Company***"), the investors who are parties thereto, and the Collateral Agent, pursuant to which the Company is issuing to the purchasers (collectively, the "***Holders***") senior secured convertible notes (the "***Notes***"), which are convertible into shares of the Company's Common Stock, par value $0.01 per share (the "***Common Stock***"); (B) the related Transfer Agent Instructions, dated as of **[●]** (the "***Instruction***"); (C) the conversion notice attached hereto (the "***Conversion Notice***"); and (D) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (1) a registration statement covering the resale of the shares of the Common Stock, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***1933 Act***"), (2) the Holders may transfer such shares of the Common Stock under Rule 144 promulgated under the 1933 Act ("***Rule 144***"), or (3) the Holders may transfer such shares of the Common Stock under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Stock as set forth under "Number of shares of the Common Stock to be issued" in the Conversion Notice,
- out of the Transfer Agent Reserve (as defined in the Instruction), and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at **[●]**.

Very Truly Yours,

MRI INTERVENTIONS, INC.

By: _____
Name:
Title:

Exhibit II

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE " ***SECURITIES ACT***"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

MRI INTERVENTIONS, INC.

SENIOR SECURED CONVERTIBLE NOTE

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

FOR VALUE RECEIVED, MRI Interventions, Inc., a Delaware corporation (the "***Company***"), hereby promises to pay to **[●]** or its registered assigns (the "***Holder***") in cash the amount set out 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, acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("***Interest***") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "***Issuance Date***") until the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, this "***Note***") is one of a series of Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the Second Closing Notes (collectively, the "***Notes***" and such other Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the Second Closing Notes, the "***Other Notes***"). Certain capitalized terms used herein are defined in Section 32.

1. Payments of Principal; No Prepayment. On the Maturity Date, the Company shall pay to the Holder an amount in cash equal to (i) all outstanding Principal, plus (ii) all accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest. Other than as specifically permitted 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 or Interest, if any. Notwithstanding anything herein to the contrary, with respect to any repayment, conversion or redemption hereunder, as applicable, the Company shall repay, convert or redeem, as applicable, (i) first, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, (ii) second, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by such Holder, (iii) third, all other amounts (other than Principal) outstanding under any other Notes held by such Holder, and (v) 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. This Note may not be pre-paid (x) without the consent of the Holder and (y) unless the Company shall have offered to simultaneously pre-pay all Other Notes held by each holder of Other Notes on the same terms and conditions.

2. Interest.

2.1 Interest Accrual. Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in arrears for each Calendar Quarter on the first (1st) Business Day of each Calendar Quarter after the Issuance Date (each, an "***Interest Date***"). Interest shall be payable on each Interest Date, to the record holder of this Note on the applicable Interest Date, by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. Prior to the payment of Interest on an Interest Date, Interest on this Note shall accrue at the Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount in connection with any conversion of this Note under Section 3, on each Redemption Date and/or in connection with any required payment upon any Bankruptcy Event of Default.

2.2 LIBOR Rate Not Determinable.

(a) If prior to the commencement of any Calendar Quarter, the Required Holders determine (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate for such Calendar Quarter, then the Required Holders shall give notice thereof to the Company as promptly as practicable and, until the Required Holders notify the Company that the circumstances giving rise to such notice no longer exist, the Notes shall bear interest calculated in accordance with the definition of Interest Rate but using the Prime Rate instead of the LIBOR Rate.

(b) If at any time the Required Holders determine (which determination shall be conclusive absent manifest error) that (A) the circumstances set forth in Section 2.2(a) have arisen and such circumstances are unlikely to be temporary or (B) the circumstances set forth in Section 2.2(a) have not arisen but the supervisor for the administrator of the LIBOR Rate has made a public statement identifying a specific date after which the LIBOR Rate shall no longer be used for determining interest rates for loans, then the Required Holders and the Company shall endeavor in good faith to establish an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time and, upon the Required Holders and the Company agreeing upon such alternate rate of interest, and the Required Holders and the Company shall enter into an amendment to the Notes to reflect such alternate rate of interest and such other related changes to the Notes as may be applicable. Until an alternate rate of interest shall be determined in accordance with this Section 2.2(b) (but, in the case of the circumstances described in clause (B) of the first sentence of this Section 2.2(b), only to the extent the LIBOR Rate for such Calendar Quarter is not available or published at such time on a current basis), Section 2.2(a) shall be applicable.

3. Conversion of Notes. Subject to the provisions of Section 3.4, at any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock, on the terms and conditions set forth in this Section 3.

3.1 Conversion Right. Subject to the provisions of Section 3.4, 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 into fully paid and nonassessable shares of Common Stock in accordance with Section 3.3, at the Conversion Rate. 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 and similar taxes, costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "***Transfer Agent***")) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

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

3.3 Mechanics of Conversion.

(a) Optional Conversion.

1. To convert any Conversion Amount into shares of Common Stock on any date (a " ***Conversion Date***"), the Holder shall deliver (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "***Conversion Notice***") to the Company. If required by Section 3.3(c), 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 18.2).

2. On or before the second (2^{nd}) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail the transfer agent instructions and representation as to whether such shares of Common Stock may then be resold pursuant to (A) an effective and available registration statement, (B) Rule 144 unless the Holder affirmatively indicates on the applicable Conversion Notice that the shares of Common Stock issuable in connection with such Conversion Notice are not being resold either (x) prior to, (y) contemporaneously with, or (z) within thirty (30) days after, as applicable, the date of the applicable Conversion Notice by the Holder, or (C) Rule 144 without having to comply with the information requirements under Rule 144(c)(1) (each, a "***Permitted Securities Transaction***"), in the form attached hereto as Exhibit II, to the Holder and the Transfer Agent which shall instruct the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

3. On or before the third (3rd) Trading Day following the date on which the Company has received a 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, with respect to the shares of Common Stock included in the Conversion Notice that may then be resold by the Holder pursuant to a Permitted Securities Transaction, 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 the DTC Fast Automated Securities Transfer Program or with respect to the shares of Common Stock included in the Conversion Notice that may not then be resold by the Holder pursuant to a Permitted Securities Transaction, 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.

4. If this Note is physically surrendered for conversion pursuant to Section 3.3(c) 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 five (5) Business Days after receipt of this Note or such earlier date as required by the Exchange Act or other applicable law and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 18.4) representing the outstanding Principal not converted.

5. 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.

6. Notwithstanding anything to the contrary contained in this Note or the Securities Purchase Agreement, after the effective date of the Registration Statement, with five (5) Business Days after the written request of the Holder, the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee).

(b) 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, to either (x)(A) if (i) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or (ii) such applicable shares of Common Stock may not then be resold by the Holder pursuant a Permitted Securities Transaction, deliver 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 (B) if (i) the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and (ii) such applicable shares of Common Stock may then be resold by the Holder pursuant to a Permitted Securities Transaction, 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), or (y) if the Registration Statement covering the resale of the shares of Common Stock that are the subject of the Conversion Notice is not available for the resale of such Unavailable Conversion Securities and the Company fails to promptly, but in no event later than as required pursuant to the Securities Purchase Agreement, (A) so notify the Holder and (B) deliver the shares of Common Stock electronically without any restrictive legend by crediting such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (y) is hereinafter referred as a "***Notice Failure***" and together with the event described in clause (x) above, a " ***Conversion Failure***"), then, in addition to all other remedies available to the Holder, 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 any liability the Company may otherwise have hereunder in respect of such failure. Nothing shall limit the Holder's right to pursue any 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.

(c) Registration; Book-Entry. The Company 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***"). 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 Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of 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). Notwithstanding anything to the contrary set forth in this Section 3, 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 3.3(a)) 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 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.

(d) 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 3.4, 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 23.

3.4 Limitations on Conversions.

(a) 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 3.4(a). For purposes of this Section 3.4, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange 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 3.4(a), 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 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 Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "***Excess Shares***") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3.4 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 3.4(a) 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.

(b) [Until the Requisite Stockholder Approval is obtained, 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, if the shares of Common Stock issuable in respect of such conversion (taken together with the issuance of all other shares of Common Stock then issuable upon conversion of all Other Notes, First Closing Notes and Third Closing Notes) would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of this Note, the Other Notes, the First Closing Notes and the Third Closing Notes without violating the Company's obligations under Nasdaq Listing Rule 5635(d) (the number of shares of Common Stock which may be issued without violating the Company's obligations under Nasdaq Listing Rule 5635(d) is herein referred to as the "***Cap***"). Until the Requisite Stockholder Approval is obtained, the Holder shall not be issued, upon conversion of this Note, shares of Common Stock in an amount greater than the product of (i) the Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the initial principal amount of this Note as of the Issuance Date divided by (2) the sum of (x) the aggregate principal amount of this Note and each Other Note as of the Issuance Date, plus (y) the aggregate initial principal amount of First Closing Notes and Third Closing Notes that shall have been issued pursuant to the Securities Purchase Agreement on or prior to such date of determination, plus (z) the maximum aggregate principal amount of Third Closing Notes that, pursuant to the terms of the Securities Purchase Agreement, may be issued pursuant to the Securities Purchase Agreement following such date of determination (the "***Cap Allocation***"). In the event that the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of the Holder's Cap

Allocation with respect to the portion of this Note so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Cap Allocation so allocated to such transferee. The provisions of this Section 3.4(b) shall terminate and cease to be effective on the date that the Requisite Stockholder Approval is obtained.][1]

(c) Notwithstanding anything to the contrary set forth herein, in no event shall the Holder be permitted to consummate any optional conversion of any Conversion Amount of this Note into shares of Common Stock under Section 3.3(a) if, after giving effect to such conversion, the remaining Conversion Amount under this Note shall be less than thirty (30%) percent of the original Principal amount of this Note.

4. Rights Upon and Event of Default.

4.1 Event of Default. Unless waived in writing by the Holder, each of the following events shall constitute an "***Event of Default***" and each of the events in clauses (i), (j) and (k) below shall constitute a "***Bankruptcy Event of Default***":

(a) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, the failure of such Registration Statement to be filed with the SEC on or prior to the date that is five (5) days after the applicable Filing Date or the failure of such Registration Statement to be declared effective by the SEC on or prior to the date that is five (5) days after the applicable Effectiveness Date;

(b) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, while such Registration Statement is required to be maintained effective pursuant to the terms of the Securities Purchase Agreement, the effectiveness of such Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement (or the prospectus contained therein) is unavailable to any holder of Registrable Securities for sale of all of such holder's Registrable Securities in accordance with the terms of the Securities Purchase Agreement, and such lapse or unavailability continues for a period of five (5) consecutive days or for more than an aggregate of ten (10) days in any 365-day period;

(c) the suspension from trading or the failure of the Common Stock to be quoted or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(d) 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 (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 3.4;

[1] Note – This clause (b) shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Second Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Second Closing Notes, this clause (b) will be replaced with "[Reserved]".

(e) except to the extent the Company is in compliance with Section 10.2 below, at any time following the tenth (10 th) Trading Day that the Holder's Authorized Share Allocation is less than the number of shares of Common Stock that the Holder would be entitled to receive upon a conversion of the full Conversion Amount of this Note (without regard to any limitations on conversion set forth in Section 3.4 or otherwise);

(f) the Company's or any Subsidiary Guarantor's (x) failure to pay to the Holder any amount of Principal within one (1) Business Day after such amounts were as due under this Note, or (y) failure to pay to the Holder any amount of Interest, Late Charges or other amounts (other than Principal which is covered by clause (x) above) within three (3) Business Days after such amounts were as due under this Note;

(g) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder as and when required by the Securities Purchase Agreement or this Note, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(h) the occurrence of any default under, redemption of or acceleration prior to maturity of, any Indebtedness in the aggregate of $500,000 or more of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(i) 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;

(j) 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;

(k) 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;

(l) a final judgment or judgments for the payment of money aggregating in excess of $500,000 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 $500,000 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 sixty (60) days of the issuance of such judgment;

(m) any default by the Company in the due performance and observance of any of the covenants or agreements contained Section 13; provided, that such defaults under Section 13.10 shall not be deemed and Event of Default if such default is cured prior to the tenth (10th) Business Day following the date the Company becomes aware of the factual circumstances giving rise to the default;

(n) any representation, warranty or other written statement of the Company set forth in any Transaction Document or any certification provided by the Company pursuant to any Transaction Document is incorrect or misleading in any material respect when given;

(o) other than as specifically set forth in another clause of this Section 4.1, any default by the Company in the due performance and observance of any of the covenants or agreements of any Transaction Document, except, in the case of a breach of a covenant that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

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

(q) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs;

(r) any provision of any Transaction Document (including the Guaranty Agreement, the Security Agreement and any other Security Document) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto in any material respect, or the

validity or enforceability thereof shall be contested by any party thereto, 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 the Guaranty Agreement, the Security Agreement and any other Security Document), or any Subsidiary Guarantor repudiates, revokes or attempts to revoke its guaranty under the Guaranty Agreement;

(s) the Security Agreement or any other Security Document shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent for the benefit of the Holder 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;

(t) [the Company shall fail to take all actions necessary to obtain, or shall fail to use its best efforts to obtain, the Requisite Stockholder Approval on or prior to the Requisite Stockholder Approval Deadline][2];

(u) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

4.2 Notice of an Event of Default: 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 three (3) Business Days of becoming aware of such Event of Default deliver written notice thereof via facsimile or 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 and ending (such ending date, the "***Event of Default Right Expiration Date***") 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, 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 4.2 shall be redeemed by the Company at a price equal to the Conversion Amount to be redeemed as of the date of the Event of

[2] Note – This clause (t) shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Second Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Second Closing Notes, this clause (t) will be replaced with "[Reserved]".

Default (the "***Event of Default Redemption Price***"). Redemptions required by this Section 4.2 shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4.2 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 4.2, but subject to Section 3.4, until the Event of Default Redemption Price (together with any Late Charges thereon) is satisfied in full, the Conversion Amount submitted for redemption under this Section 4.2 (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 Section 3. In the event of the Company's redemption of any portion of this Note under this Section 4.2, 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. 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.

4.3 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 all outstanding Principal, accrued and unpaid Interest, and accrued and unpaid Late Charges on such Principal and Interest as of the date of the Bankruptcy Event of Default, 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. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

(a) Restrictions. The Company shall not enter into or be party to a Fundamental Transaction unless: either (i) the Company is the surviving Person; or (ii) the Successor Entity (if other than the Company) assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents as provided in Section 5.1(b).

(b) Assumption. To satisfy clause (ii) of Section 5.1(a), (i) the Successor Entity shall assume in writing all of the obligations of the Company under this Note and the other Transaction Documents pursuant to written agreements in form and substance reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable), 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, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes, respectively, held by such holder, having similar conversion rights as the Notes and having similar ranking and security to the Notes, and reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable) 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.

(c) Confirmation. 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) 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.

(d) Waiver. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5.1 to permit the Fundamental Transaction without the assumption of this Note.

(e) Applicability. 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.

5.2 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 facsimile or 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 the later of ten (10) Trading Days after (A) consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice, 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 Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5.2 shall be redeemed by the Company in cash at a price (the "***Change of Control Redemption Price***") equal to the greater of (i) the Conversion Amount being redeemed, and (ii) the product of (x) the Conversion Amount being redeemed multiplied by (y) the quotient of (I) the aggregate cash consideration plus 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 5.2 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 5.2 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 5.2, but subject to Section 3.4, 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 5.2 (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 the Company's redemption of any portion of this Note under this Section 5.2, 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.

6. Intentionally Omitted.

7. Adjustments to the Conversion Price.

7.1 Adjustment of Conversion Price upon Subdivision or Combination of Common Stock or Stock Dividend. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Fundamental Transaction, as to which the provisions set forth in Section 5 will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 * \frac{OS_0}{OS_1}$$

Where:

CP_0	=	the Conversion Price in effect immediately before the open of business on the ex-dividend date for such dividend or distribution, or immediately before the open of business on the effective date of such stock split or stock combination, as applicable
CP_1	=	the Conversion Price in effect immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable
OS_0	=	the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date or effective date, as applicable
OS_1	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination

For the avoidance of doubt, pursuant to the definition of CP_1 above, any adjustment to the Conversion Price made pursuant to this Section 7.1 will become effective immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable. If any dividend, distribution, stock split or stock combination of the type described in this Section 7.1 is declared or announced, but not so paid or made, then the Conversion Price, if previously adjusted, will be readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

7.2 Rights, Options and Warrants. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is publicly announced, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 * \frac{OS + Y}{OS + X}$$

Where:

CP_0	=	the Conversion Price in effect immediately before the open of business on the ex-dividend date for such distribution
CP_1	=	the Conversion Price in effect immediately after the open of business on such ex-dividend date
OS	=	the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants
Y	=	a number of shares of Common Stock obtained by dividing (x) the aggregate amount payable to exercise all such rights, options or warrants distributed by the Company by (y) the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced

For the avoidance of doubt, any adjustment to the Conversion Price made pursuant to this Section 7.2 will be made successively whenever any such rights, options or warrants are issued and, pursuant to the definition of CP_1 above, will become effective immediately after the open of business on the ex-dividend date for the applicable distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Price, if previously adjusted, will be readjusted effective as of such expiration date to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of delivery of only the number of shares of Common Stock

actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Price will be readjusted effective as of the date the Board of Directors of the Company determines not to distribute such rights, options or warrants, to the Conversion Price that would then be in effect had the ex-dividend date for the distribution of such rights, options or warrants not occurred. For purposes of this Section 7.2, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors of the Company.

7.3 Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

8. Intentionally Omitted.

9. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate or articles of incorporation, bylaws or other governing document 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.

10. Reservation of Authorized Shares.

10.1 Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note and the Other Notes equal to 120% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Issuance Date. So long as any of this Note and the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "***Required Reserve Amount***"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Securities Purchase Agreement) or at the time of the

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 this Note, or a portion thereof, or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation.

10.2 Insufficient Authorized Shares.

(a) If 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 have reserved for issuance upon conversion of the outstanding Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "***Authorized Share Failure***"), then the Company shall promptly 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 either (x) obtain the written consent of its stockholders for the approval of an increase in the number of authorized shares of Common Stock and provide each stockholder with an information statement with respect thereto or (y) file with the SEC a proxy statement for a meeting of its stockholders at which meeting the Company will seek the approval of its stockholders for 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 commercially reasonable 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 during 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 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.

(b) If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company, in lieu of issuing Common Stock in connection with such conversion and in full satisfaction of the Company's obligations with respect to such conversion, to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of shares of Common Stock that the Company is unable to deliver pursuant to this Section 10, and (ii) the highest Closing Sale Price of the Common Stock during the period beginning on the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

11. Redemptions.

11.1 Mechanics.

(a) If the Holder has submitted an Event of Default Redemption Notice in accordance with Section 4.2, the Company 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 (each, an "***Event of Default Redemption Date***").

(b) If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5.2, 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 two (2) Business Days after the Company's receipt of such notice otherwise (each, a "***Change of Control Redemption Date***").

(c) 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.

(d) 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 18.4) representing the outstanding Principal which has not been redeemed.

(e) 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, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 18.4), to the Holder; provided, that, notwithstanding the applicable Redemption Notice being deemed null and void and such return or issuance of this Note or a new Note in accordance with the foregoing, a continual Event of Default shall thereafter be deemed to have occurred and be continuing until the subsequent repayment or conversion of this Note in full. Furthermore, 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.

11.2 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 or Section 5.2 (each, an "***Other Redemption Notice***"), the Company shall immediately, but no later than two (2) Business Days after its receipt thereof, forward to the Holder by facsimile or 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 five (5) 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 and as expressly provided in this Note.

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

13.1 Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes, any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Third Closing Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries.

13.2 Incurrence of Indebtedness. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note, the Other Notes, any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Third Closing Notes and (ii) other Permitted Indebtedness).

13.3 Existence of Liens. The Company shall not, and the Company shall not permit any of its Subsidiaries to, 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 or non-voluntary Liens, which in the aggregate are less than $100,000.

13.4 Redemption and 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 dividend or distribution on any of its capital stock (any of the foregoing, a "***Restricted Payment***"), other than (i) Restricted Payments made by any Subsidiary to the Company or any other Subsidiary of the Company, (ii) any dividend payments or other distributions by the Company or any Subsidiary payable solely in shares of capital stock of such Person and (iii) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of capital stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such capital stock represents a portion of the exercise price thereof.

13.5 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 material assets or rights of the Company or any Subsidiary Guarantor whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice, (ii) sales of inventory and product in the ordinary course of business, or (iii) sales or other transfers of assets from the Company or any Subsidiary Guarantor to the Company or any Subsidiary Guarantor.

13.6 Acquisitions. Without the prior written consent of the Required Holders, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, acquire all or substantially all of the assets or capital stock of any Person or acquire all or substantially all of the assets of any operating division of any Person (each, an "***Acquisition***") unless, in the event that such acquired Person shall become a Subsidiary of the Company in connection with, or as a result of, such Acquisition, such acquired Person shall (x) be a Domestic Subsidiary, and (y) become a Subsidiary Guarantor on the date of such Acquisition as set forth in Section 13.11.

13.7 Change in Nature of Business. The Company shall not, and the Company shall not permit any of its Subsidiaries to, 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 First Closing Date or any business substantially related or incidental thereto. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, modify its or their corporate structure or purpose in any material respect.

13.8 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 (i) transactions entered into 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, and (ii) transactions entered into 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.

13.9 Maintenance of Existence; Compliance Laws, Etc. The Company shall, and the Company shall cause its Subsidiaries to, preserve and maintain its legal existence, comply in all material respects with all applicable laws, rules, regulations and orders, including the payment (before the same become delinquent), of all taxes, imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Company or its Subsidiary, as applicable.

13.10 Insurance. The Company shall, and the Company shall cause its Subsidiaries to, maintain:

(a) insurance on its property with financially sound and reputable insurance companies against business interruption, loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as the Company its Subsidiaries; and

(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

13.11 Subsidiary Matters.

(a) Neither the Company nor any Subsidiary Guarantor shall establish, form, create or acquire any new direct or indirect Subsidiary unless (i) such Subsidiary shall be a Domestic Subsidiary, and (ii) such Subsidiary shall, on the date of the establishment, formation, creation or acquisition thereof, (x) become a Subsidiary Guarantor by executing and delivering to the Holder a joinder to the Guaranty Agreement or such other document as the Holder shall reasonably deem appropriate for such purpose, (y) take all such action and execute such agreements, documents and instruments requested by the Holder, including execution and delivery of a joinder to the Security Agreement and execution and delivery of such other Security Documents, that may be necessary to grant to the Holder a perfected first priority security interest and Lien in any Collateral (as defined in the Securities Purchase Agreement) owned by such new Subsidiary and (z) deliver to the Holder documents of the types referred to in clauses (xi) and (xii) of Section 5.1(a) of the Securities Purchase Agreement and, if reasonably requested by the Holder, favorable opinions of counsel to such new Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clauses (x) and (y) of this subsection), all in form, content and scope reasonably satisfactory to the Holder.

(b) Neither the Company nor any Subsidiary Guarantor will make any Investment in any Person other than a Subsidiary Guarantor.

13.12 Maintenance of Authorizations, Intellectual Property, Etc. The Company shall, and the Company shall cause its Subsidiaries to, (i) maintain in full force and effect all Regulatory Authorizations, authorizations or other rights necessary and material for the operations of its business, and comply with the terms and conditions applicable to the foregoing, excluding the maintenance of any Regulatory Authorizations that are not commercially reasonably necessary or material for the conduct of the business of the Company and its Subsidiaries; (ii) operate their business and facilities in material compliance with all applicable laws, rules and regulations, including any newly introduced or revised applicable laws, rules and regulations as they may become introduced, altered or otherwise evolve over time; (iii) diligently pursue any application for registration of any existing or future Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (iv) maintain in full force and effect or pursue the prosecution of, as the case may be, and pay all costs and expenses relating to, all Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all Intellectual Property developed, used or controlled (or jointly owned, developed or controlled) by the Company or any of its Subsidiaries; and (vi) not permit the activities and business of the Company or any of its Subsidiaries to violate, infringe, misappropriate or misuse any Intellectual Property of any other Person.

13.13 Liquidity. The Company shall not permit, at any time, the Liquidity to be less than $1,000,000.

13.14 Books and Records. The Company shall, and the Company shall cause its Subsidiaries to, keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions.

14. Distribution of Assets. In addition to any adjustments pursuant to Section 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 Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that 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 the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

15. Amendments and Waivers.

15.1 Except as set forth in Section 15.2 below, the written consent of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes; provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of the Holder or any holder of any Other Notes relative to the comparable rights and obligations of the Holder or any holder of any Other Notes, as applicable, shall require the prior written consent of such adversely affected Holder or such adversely affected holder of Other Notes. Any change, amendment or waiver by the Company and the Required Holders in accordance with this Section 15.1 shall be binding on the Holder of this Note and all holders of the Other Notes.

15.2 Notwithstanding the provisions of Section 15.1 above, the Holder may elect to waive any provision of this Note (other than any provision of Section 13 or this Section 15) solely as to the Holder and this Note specifically in a written instrument executed by the Holder; provided that any such waiver under this Section 15.2 shall not bind or otherwise affect the terms of any Other Note or any holder thereof.

16. Collateral. This Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement and the other Security Documents).

17. Transfer. This Note may be offered, sold, assigned or transferred by the Holder upon notice to, but without the consent of, the Company, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement. 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, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement.

18. Reissuances; New Notes.

18.1 Transfer. If this Note is to be transferred in accordance with the terms of this Note, 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 18.4 and subject to Section 3.3(c)), 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 18.4) 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 3.3(c) 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.

18.2 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, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 18.4) representing the outstanding Principal.

18.3 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 18.4) 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.

18.4 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 18.1 or Section 18.3, 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.

19. 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.

20. Payment of Collection, Enforcement and Other Costs. If (a) an Event of Default has occurred and 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 or to enforce the provisions of this Note 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 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, attorneys' fees and disbursements.

21. 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 First Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

22. 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.

23. Dispute Resolution.

23.1 Submission to Dispute Resolution.

(a) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (A) if by the Company, within five (5) Business Days

after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder, within five (5) Business Days 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 VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2^{nd}) 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 then the Holder may, with the consent of the Company not to be unreasonably or untimely withheld, select an independent, reputable investment bank to resolve such dispute.

(b) 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 23 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (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).

(c) The Company and the Holder shall 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 reasonable fees and reasonable 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.

24. Notices; Currency; Payments.

24.1 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 8.4 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. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights

to purchase stock, warrants, securities or other property to all or substantially all of the holders of shares of Common Stock 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.

24.2 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).

24.3 Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a 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 Purchasers, shall initially be as set forth on the Schedule of Investors 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 within three (3) Business Days after such amounts were due 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 fourteen percent (14.0%) per annum from the date such amount was due until the same is paid in full ("***Late Charge***").

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

26. 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.

27. 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 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 and venue of the Court of Chancery of the State of Delaware or to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or

proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude 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, to realize on any collateral or any other security for such obligations, 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 23. **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.**

28. Attorneys' Fees. In the event any legal action or other proceeding is brought by one party against the other party to enforce any provision of this Note or in which the subject matter of such legal action or other proceeding arises under, or is with respect to, the provisions of this Note, the prevailing party in any such legal action or other proceeding is entitled to recover from the other party attorneys' fees and costs associated with defending or prosecuting such legal action or other proceeding, any appeal therefrom, and any ancillary or related proceedings.

29. 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).

30. Disclosure. Upon receipt or delivery by the Company 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, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

31. Usury. This Note is subject to the express condition that at no time shall the Company be obligated or required to pay interest hereunder at a rate or in an amount which could subject the Holder to either civil or criminal liability as a result of being in excess of the maximum interest rate or amount which the Company is permitted by applicable law to contract or agree to pay. If by the terms of this Note, the Company is at any time required or obligated to pay interest hereunder at a rate or in an amount in excess of such maximum rate or amount, the rate or amount of interest under this Note shall be deemed to be immediately reduced to such maximum rate or amount and the interest payable shall be computed at such maximum rate or be in such maximum amount and all prior interest payments in excess of such

maximum rate or amount shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

32. Definitions. As used in this Note, the following terms shall have the following meanings:

32.1 "***Acquisition***" has the meaning specified in Section 13.6; provided, that an Acquisition shall not include any acquisition of assets (other than any such assets constituting (i) any capital stock, membership interests, partnership interests or other equity interests of any Person, or (ii) any warrants, convertible instruments or other securities or rights of any Person that are exercisable for, or convertible into, any of the equity interests referred to in clause (i)) completed by the Company or any Subsidiary that is a party to the Security Agreement or the Guaranty Agreement.

32.2 "***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.

32.3 "***Applicable Margin***" means 7.00%[; provided, that, in the event that the Company shall have not obtained the Requisite Stockholder Approval on or prior to the Second Closing Date, then, from and after the Second Closing Date until the date on which the Company shall obtain the Requisite Stockholder Approval, the "Applicable Margin" shall mean 14.00%][3]

32.4 "***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 Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

32.5 "***Authorized Share Allocation***" has the meaning specified in Section 10.1.

32.6 "***Authorized Share Failure***" has the meaning specified in Section 10.2.

32.7 "***Bankruptcy Event of Default***" has the meaning specified in Section 4.1.

32.8 "***Business Day***" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in The State of New York are authorized or required by law or other governmental action to close.

32.9 "***Calendar Quarter***" means each of: (i) the period beginning on and including January 1 and ending on and including the next occurring March 31; (ii) the period beginning on and including April 1 and ending on and including the next occurring June 30; (iii) the period beginning on

[3] Note – This proviso shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Second Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Second Closing Notes, this proviso will be deleted.

and including July 1 and ending on and including the next occurring September 30; (iv) and the period beginning on and including October 1 and ending on and including the next occurring December 31.

32.10 ["***Cap***" has the meaning specified in Section 3.4(b).] [4]

32.11 ["***Cap Allocation***" has the meaning specified in Section 3.4(b).] [5]

32.12 "***Change of Control***" means any Fundamental Transaction other than (i) 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 (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

32.13 "***Change of Control Date***" has the meaning specified in Section 5.2.

32.14 "***Change of Control Notice***" has the meaning specified in Section 5.2.

32.15 "***Change of Control Redemption Date***" has the meaning specified in Section 11.1.

32.16 "***Change of Control Redemption Notice***" has the meaning specified in Section 5.2.

32.17 "***Change of Control Redemption Price***" has the meaning specified in Section 5.2.

32.18 "***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 FactSet, 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 FactSet, 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 FactSet, 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 FactSet, or, if no closing bid price or last trade price, respectively, is reported for such security by FactSet, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the

[4] Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Second Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Second Closing Notes, this definition will be deleted.

[5] Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Second Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Second Closing Notes, this definition will be deleted.

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 23. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

32.19 "***Collateral Agent***" has the meaning specified in the Securities Purchase Agreement.

32.20 "***Common Stock***" means (i) shares of Common Stock, par value $0.01 per share of the Company, and (ii) any share capital into which such Common Stock shall be changed or any share capital resulting from a reclassification of such Common Stock.

32.21 "***Company***" has the meaning specified in the preamble to this Note.

32.22 "***Conversion Amount***" means the sum of (x) the portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made, (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.

32.23 "***Conversion Date***" has the meaning specified in Section 3.3(a).

32.24 "***Conversion Failure***" has the meaning specified in Section 3.3(b).

32.25 "***Conversion Notice***" has the meaning specified in Section 3.3(a).

32.26 "***Conversion Price***" means, as of any Conversion Date or other date of determination, $[6.00][6], subject to adjustment as provided herein.

32.27 "***Conversion Rate***" has the meaning specified in Section 3.2.

32.28 "***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.

32.29 "***Distributions***" has the meaning specified in Section 14.

32.30 "***Dispute Submission Deadline***" has the meaning specified in Section 23.1(b).

32.31 "***Domestic Subsidiary***" has the meaning specified in the Securities Purchase Agreement.

32.32 "***DTC***" has the meaning specified in Section 3.3(a).

[6] Note – In the event that, as a result of any conversion price adjustment in respect of the First Closing Notes occurring after the First Closing Date but prior to the Second Closing Date, the applicable conversion price in respect of the First Closing Notes is less than $6.00 as of the Second Closing Date, the "Conversion Price" of the Second Closing Notes shall initially be equal to such lower conversion price.

32.33 "***Effectiveness Date***" has the meaning specified in the Securities Purchase Agreement.

32.34 "***Eligible Market***" means the NYSE American, New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTCBB.

32.35 "***Event of Default***" has the meaning specified in Section 4.1.

32.36 "***Event of Default Notice***" has the meaning specified in Section 4.2.

32.37 "***Event of Default Redemption Date***" has the meaning specified in Section 11.1.

32.38 "***Event of Default Redemption Notice***" has the meaning specified in Section 4.2.

32.39 "***Event of Default Redemption Price***" has the meaning specified in Section 4.2.

32.40 "***Event of Default Right Expiration Date***" has the meaning specified in Section 4.2.

32.41 "***Excess Shares***" has the meaning specified in Section 3.4(a).

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

32.43 "***Filing Date***" has the meaning specified in the Securities Purchase Agreement.

32.44 "***First Closing Date***" has the meaning specified in the Securities Purchase Agreement.

32.45 "***First Closing Notes***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.46 "***Fundamental Transaction***" means (A) that the Company shall, directly or indirectly, including through any of its subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange 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 Exchange 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 any of its 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 Exchange 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.

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

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

32.49 "***Guaranty Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.50 "***Holder***" has the meaning specified in the preamble to this Note.

32.51 "***Indebtedness***" means, with respect to any Person, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes (including any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Third Closing Notes), bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or

bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, and (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by such Person, even though such Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness.

32.52 "***Intellectual Property***" means all patents, trademarks, service marks, logos and other business identifiers, trade names, trade styles, trade dress, copyrights, proprietary know-how, processes, computer software and all registrations, applications and licenses therefor.

32.53 "***Interest***" has the meaning specified in the preamble to this Note.

32.54 "***Interest Date***" has the meaning specified in Section 2.1.

32.55 "***Interest Rate***" means, as of any date, an annual rate per annum equal to the sum of (i) the greater of (x) the LIBOR Rate as of such date, and (y) 2.00%, plus (ii) the Applicable Margin; provided, that, on any date when an Event of Default shall have occurred and be continuing, the "Interest Rate" shall be the "Interest Rate" determined in accordance with the foregoing plus 3.00%.

32.56 "***Investment***" means, with respect to any Person, any loan, advance or extension of credit (other than to customers in the ordinary course of business) by such Person to, or any guarantee of any obligation of or other contingent liability with respect to the capital stock, Indebtedness or other obligations of, or any contributions to the capital of, any other Person, or any ownership, purchase or other acquisition by such Person of any interest in any capital stock, limited partnership interest, general partnership interest, or other securities of any such other Person.

32.57 "***Issuance Date***" has the meaning specified in the preamble to this Note.

32.58 "***Late Charge***" has the meaning specified in Section 24.3.

32.59 "***LIBOR Rate***" means, with respect to any Calendar Quarter, the three-month London Interbank Offered Rate for deposits in U.S. Dollars at approximately 11:00 a.m. (London, England time), quoted by the Holder from the appropriate page selected by the Holder, two Business Days prior to the last Business Day of the such Calendar Quarter.

32.60 "***Lien***" has the meaning specified in Section 13.3.

32.61 "***Liquidity***" means, as of any date, an amount equal to the aggregate amount of the unrestricted cash of the Company and the Subsidiary Guarantors (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of the Subsidiary Guarantors for any reason) as of such date of determination held in bank accounts of financial banking institutions in the United States of America.

32.62 "***Maturity Date***" shall mean **[●]**, 2025[7]; 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

[7] **Note to Form**: To be the fifth anniversary of the First Closing.

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 3.4 hereunder, the Maturity Date may be extended at the option of the Holder until such time as such provision shall not limit the conversion of this Note.

32.63 "***Maximum Percentage***" has the meaning specified in Section 3.4(a).

32.64 "***Note***" has the meaning specified in the preamble to this Note.

32.65 "***Notice Failure***" has the meaning specified in Section 3.3(b).

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

32.67 "***Other Notes***" has the meaning specified in the preamble to this Note.

32.68 "***Other Redemption Notice***" has the meaning specified in Section 11.2.

32.69 "***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.

32.70 "***Permitted Indebtedness***" means (i) Indebtedness evidenced by this Note, the Other Notes, any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Third Closing Notes, (ii) Indebtedness secured by Permitted Liens under clause (ii) or (iii) of the definition of Permitted Liens in an aggregate amount outstanding not to exceed $1,000,000, (iii) indebtedness incurred in the ordinary course of business, not to exceed $50,000 in any one transaction or $250,000 in the aggregate outstanding at any time, and (iv) any unsecured Indebtedness, so long as the aggregate amount of Indebtedness at any time outstanding under this clause (iv) shall not exceed $500,000.

32.71 "***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 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, (iii) 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, (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, or (C) in respect of capitalized lease obligations, provided that the Lien is confined solely to the property leased by the Company or any of its Subsidiaries pursuant to the applicable capital lease, in the case of any of clause (A), (B) or (C), with respect to Indebtedness in an aggregate amount not to exceed $1,000,000, and (iv) 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.

32.72 "***Permitted Securities Transaction***" has the meaning specified in Section 3.3(a).

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

32.74 "***Principal***" has the meaning specified in the preamble to this Note.

32.75 "***Principal Market***" means the Nasdaq Capital Market.

32.76 "***Redemption Date***" means, as applicable, the Event of Default Redemption Date or the Change of Control Redemption Date.

32.77 "***Redemption Notice***" means, as applicable, an Event of Default Redemption Notice or a Change of Control Redemption Notice.

32.78 "***Redemption Price***" means, as applicable, the Event of Default Redemption Price or the Change of Control Redemption Price.

32.79 "***Register***" has the meaning specified in Section 3.3(c).

32.80 "***Registered Notes***" has the meaning specified in Section 3.3(c).

32.81 "***Registrable Securities***" has the meaning specified in the Securities Purchase Agreement.

32.82 "***Registration Statement***" has the meaning specified in the Securities Purchase Agreement.

32.83 "***Regulatory Authorizations***" means all governmental licenses, authorizations, registrations, permits, consents and approvals required under all applicable laws and regulations in order to carry on the business of the Company and its Subsidiaries as currently conducted or proposed to be conducted, including any newly introduced or revised applicable laws and regulations as they may become introduced, altered or otherwise evolve over time.

32.84 "***Reported Outstanding Share Number***" has the meaning specified in Section 3.4(a).

32.85 "***Required Dispute Documentation***" has the meaning specified in Section 23.1(b).

32.86 "***Required Holders***" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding

32.87 "***Required Reserve Amount***" has the meaning specified in Section 10.1.

32.88 ["***Requisite Stockholder Approval***" has the meaning specified in the Securities Purchase Agreement.] [8]

32.89 ["***Requisite Stockholder Approval Deadline***" has the meaning specified in the Securities Purchase Agreement.] [9]

32.90 "***Restricted Payment***" has the meaning specified in Section 13.4.

32.91 "***Rule 144***" has the meaning specified in the Securities Purchase Agreement.

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

32.93 "***Second Closing Date***" has the meaning specified in the Securities Purchase Agreement.

32.94 "***Securities Purchase Agreement***" means that certain Securities Purchase Agreement, dated as of January 11, 2020, by and among the Company, the investors identified therein, and the Collateral Agent, pursuant to which the Company issued, among other securities, the Notes, as such agreement may be amend, restated or otherwise modified from time to time.

32.95 "***Security Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.96 "***Security Documents***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.97 "***Share Delivery Deadline***" has the meaning specified in Section 3.3(a).

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

32.99 "***Subsidiary***" means any Person in which the Company, directly or indirectly, (i) owns more than 50% of the outstanding capital stock or 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.

32.100 "***Subsidiary Guarantor***" means each Subsidiary of the Company that is, or that becomes, (i) a party to the Guaranty Agreement as a "Subsidiary Guarantor" thereunder, and (ii) a party to the Security Agreement as a "Grantor" thereunder.

32.101 "***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

[8] Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Second Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Second Closing Notes, this definition will be deleted.

[9] Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Second Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Second Closing Notes, this definition will be deleted.

elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

32.102 "***Third Closing Notes***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.103 "***Trading Day***" has the meaning specified in the Securities Purchase Agreement.

32.104 "***Transaction Documents***" means the Securities Purchase Agreement, including the schedules, annexes and exhibits attached hereto, the Notes, the Security Agreement, the other Security Documents and each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by the Securities Purchase Agreement.

32.105 "***Transfer Agent***" has the meaning specified in Section 3.1.

32.106 "***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 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet 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 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet, or, if no dollar volume-weighted average price is reported for such security by FactSet 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 sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). 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 23. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Senior Secured Convertible Note as of the Issuance Date set out above.

MRI INTERVENTIONS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

[●]

By: _____
Name:
Title:

EXHIBIT I

MRI INTERVENTIONS, INC.
CONVERSION NOTICE

Reference is made to the Senior Secured Convertible Note (the "***Note***") issued to the undersigned by MRI Interventions, 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 Common Stock, $0.01 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
Principal and such 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 (the "***Shares***"): _____

☐ Check here if the Holder does not intend to resell the Shares to be issued either (x) prior to, (y) contemporaneously with or (z) no later than thirty days after, as applicable, the date of this Conversion Notice

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty days after the date of this Conversion Notice.

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Note submitting this Conversion Notice that after giving effect to the Conversion provided for in this Conversion Notice, such Holder (together with its Attribution Parties) will not have beneficial ownership (together with the beneficial ownership of such Person's Attribution Parties) of a number of shares Common Stock which exceeds the Maximum Percentage (as defined in the Note) of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 3.4(a) of the Note.

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: _____

Account Number: _____

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

Facsimile: _____

Email Address: _____

Exhibit I

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

MRI INTERVENTIONS, INC.

_____ ___, 20__

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Stock of MRI Interventions, Inc.

Ladies and Gentlemen:

Reference is made to (A) the Securities Purchase Agreement, dated as of January 11, 2020, as amended, by and among MRI Interventions, Inc., a Delaware corporation (the "***Company***"), the investors who are parties thereto, and the Collateral Agent, pursuant to which the Company is issuing to the purchasers (collectively, the "***Holders***") senior secured convertible notes (the "***Notes***"), which are convertible into shares of the Company's Common Stock, par value $0.01 per share (the "***Common Stock***"); (B) the related Transfer Agent Instructions, dated as of **[●]** (the "***Instruction***"); (C) the conversion notice attached hereto (the "***Conversion Notice***"); and (D) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (1) a registration statement covering the resale of the shares of the Common Stock, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***1933 Act***"), (2) the Holders may transfer such shares of the Common Stock under Rule 144 promulgated under the 1933 Act ("***Rule 144***"), or (3) the Holders may transfer such shares of the Common Stock under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Stock as set forth under "Number of shares of the Common Stock to be issued" in the Conversion Notice,
- out of the Transfer Agent Reserve (as defined in the Instruction), and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at **[●]**.

Very Truly Yours,

MRI INTERVENTIONS, INC.

By: _____
Name:
Title:

Exhibit II

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE " ***SECURITIES ACT***"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

MRI INTERVENTIONS, INC.

SENIOR SECURED CONVERTIBLE NOTE

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

FOR VALUE RECEIVED, MRI Interventions, Inc., a Delaware corporation (the "***Company***"), hereby promises to pay to **[●]** or its registered assigns (the "***Holder***") in cash the amount set out 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, acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("***Interest***") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "***Issuance Date***") until the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, this "***Note***") is one of a series of Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the Third Closing Notes (collectively, the "***Notes***" and such other Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the Third Closing Notes, the "***Other Notes***"). Certain capitalized terms used herein are defined in Section 32.

1 . Payments of Principal; No Prepayment. On the Maturity Date, the Company shall pay to the Holder an amount in cash equal to (i) all outstanding Principal, plus (ii) all accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest. Other than as specifically permitted 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 or Interest, if any. Notwithstanding anything herein to the contrary, with respect to any repayment, conversion or redemption hereunder, as applicable, the Company shall repay, convert or redeem, as applicable, (i) first, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, (ii) second, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by such Holder, (iii) third, all other amounts (other than Principal) outstanding under any other Notes held by such Holder, and (v) 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. This Note may not be pre-paid (x) without the consent of the Holder and (y) unless the Company shall have offered to simultaneously pre-pay all Other Notes held by each holder of Other Notes on the same terms and conditions.

2. Interest.

2.1 Interest Accrual. Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in arrears for each Calendar Quarter on the first (1st) Business Day of each Calendar Quarter after the Issuance Date (each, an "***Interest Date***"). Interest shall be payable on each Interest Date, to the record holder of this Note on the applicable Interest Date, by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. Prior to the payment of Interest on an Interest Date, Interest on this Note shall accrue at the Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount in connection with any conversion of this Note under Section 3, on each Redemption Date and/or in connection with any required payment upon any Bankruptcy Event of Default.

2.2 LIBOR Rate Not Determinable.

(a) If prior to the commencement of any Calendar Quarter, the Required Holders determine (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate for such Calendar Quarter, then the Required Holders shall give notice thereof to the Company as promptly as practicable and, until the Required Holders notify the Company that the circumstances giving rise to such notice no longer exist, the Notes shall bear interest calculated in accordance with the definition of Interest Rate but using the Prime Rate instead of the LIBOR Rate.

(b) If at any time the Required Holders determine (which determination shall be conclusive absent manifest error) that (A) the circumstances set forth in Section 2.2(a) have arisen and such circumstances are unlikely to be temporary or (B) the circumstances set forth in Section 2.2(a) have not arisen but the supervisor for the administrator of the LIBOR Rate has made a public statement identifying a specific date after which the LIBOR Rate shall no longer be used for determining interest rates for loans, then the Required Holders and the Company shall endeavor in good faith to establish an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time and, upon the Required Holders and the Company agreeing upon such alternate rate of interest, and the Required Holders and the Company shall enter into an amendment to the Notes to reflect such alternate rate of interest and such other related changes to the Notes as may be applicable. Until an alternate rate of interest shall be determined in accordance with this Section 2.2(b) (but, in the case of the circumstances described in clause (B) of the first sentence of this Section 2.2(b), only to the extent the LIBOR Rate for such Calendar Quarter is not available or published at such time on a current basis), Section 2.2(a) shall be applicable.

3 . Conversion of Notes. Subject to the provisions of Section 3.4, at any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock, on the terms and conditions set forth in this Section 3.

3.1 Conversion Right. Subject to the provisions of Section 3.4, 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 into fully paid and nonassessable shares of Common Stock in accordance with Section 3.3, at the Conversion Rate. 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 and similar taxes, costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "***Transfer Agent***")) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

3 . 2 Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "***Conversion Rate***").

3.3 Mechanics of Conversion.

(a) Optional Conversion.

1. To convert any Conversion Amount into shares of Common Stock on any date (a " ***Conversion Date***"), the Holder shall deliver (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "***Conversion Notice***") to the Company. If required by Section 3.3(c), 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 18.2).

2. On or before the second (2^{nd}) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail the transfer agent instructions and representation as to whether such shares of Common Stock may then be resold pursuant to (A) an effective and available registration statement, (B) Rule 144 unless the Holder affirmatively indicates on the applicable Conversion Notice that the shares of Common Stock issuable in connection with such Conversion Notice are not being resold either (x) prior to, (y) contemporaneously with, or (z) within thirty (30) days after, as applicable, the date of the applicable Conversion Notice by the Holder, or (C) Rule 144 without having to comply with the information requirements under Rule 144(c)(1) (each, a "***Permitted Securities Transaction***"), in the form attached hereto as Exhibit II, to the Holder and the Transfer Agent which shall instruct the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

3. On or before the third (3rd) Trading Day following the date on which the Company has received a 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, with respect to the shares of Common Stock included in the Conversion Notice that may then be resold by the Holder pursuant to a Permitted Securities Transaction, 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 the DTC Fast Automated Securities Transfer Program or with respect to the shares of Common Stock included in the Conversion Notice that may not then be resold by the Holder pursuant to a Permitted Securities Transaction, 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.

4. If this Note is physically surrendered for conversion pursuant to Section 3.3(c) 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 five (5) Business Days after receipt of this Note or such earlier date as required by the Exchange Act or other applicable law and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 18.4) representing the outstanding Principal not converted.

5. 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.

6. Notwithstanding anything to the contrary contained in this Note or the Securities Purchase Agreement, after the effective date of the Registration Statement, with five (5) Business Days after the written request of the Holder, the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee).

(b) 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, to either (x)(A) if (i) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or (ii) such applicable shares of Common Stock may not then be resold by the Holder pursuant a Permitted Securities Transaction, deliver 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 (B) if (i) the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and (ii) such applicable shares of Common Stock may then be resold by the Holder pursuant to a Permitted Securities Transaction, 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), or (y) if the Registration Statement covering the resale of the shares of Common Stock that are the subject of the Conversion Notice is not available for the resale of such Unavailable Conversion Securities and the Company fails to promptly, but in no event later than as required pursuant to the Securities Purchase Agreement, (A) so notify the Holder and (B) deliver the shares of Common Stock electronically without any restrictive legend by crediting such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (y) is hereinafter referred as a "***Notice Failure***" and together with the event described in clause (x) above, a " ***Conversion Failure***"), then, in addition to all other remedies available to the Holder, 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 any liability the Company may otherwise have hereunder in respect of such failure. Nothing shall limit the Holder's right to pursue any 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.

(c) Registration; Book-Entry. The Company 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***"). 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 Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of 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). Notwithstanding anything to the contrary set forth in this Section 3, 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 3.3(a)) 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 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.

(d) 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 3.4, 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 23.

3.4 Limitations on Conversions.

(a) 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 3.4(a). For purposes of this Section 3.4, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange 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 3.4(a), 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 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 Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "***Excess Shares***") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (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 as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3.4 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 3.4(a) 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.

(b) [Until the Requisite Stockholder Approval is obtained, 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, if the shares of Common Stock issuable in respect of such conversion (taken together with the issuance of all other shares of Common Stock then issuable upon conversion of all Other Notes, First Closing Notes and Second Closing Notes) would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of this Note, the Other Notes, the First Closing Notes and the Second Closing Notes without violating the Company's obligations under Nasdaq Listing Rule 5635(d) (the number of shares of Common Stock which may be issued without violating the Company's obligations under Nasdaq Listing Rule 5635(d) is herein referred to as the "***Cap***"). Until the Requisite Stockholder Approval is obtained, the Holder shall not be issued, upon conversion of this Note, shares of Common Stock in an amount greater than the product of (i) the Cap as of the Issuance Date multiplied by (ii) the quotient of (1) the initial principal amount of this Note as of the Issuance Date divided by (2) the sum of (x) the aggregate principal amount of this Note and each Other Note as of the Issuance Date, plus (y) the aggregate initial principal amount of First Closing Notes and Second Closing Notes that shall have been issued pursuant to the Securities Purchase Agreement on or prior to such date of determination (the "***Cap Allocation***"). In the event that the Holder shall sell or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of the Holder's Cap Allocation with respect to the portion of this Note so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Cap Allocation so allocated to such transferee. The provisions of this Section

3.4(b) shall terminate and cease to be effective on the date that the Requisite Stockholder Approval is obtained.] [1]

(c) Notwithstanding anything to the contrary set forth herein, in no event shall the Holder be permitted to consummate any optional conversion of any Conversion Amount of this Note into shares of Common Stock under Section 3.3(a) if, after giving effect to such conversion, the remaining Conversion Amount under this Note shall be less than thirty (30%) percent of the original Principal amount of this Note.

4. Rights Upon and Event of Default.

4.1 Event of Default. Unless waived in writing by the Holder, each of the following events shall constitute an "***Event of Default***" and each of the events in clauses (i), (j) and (k) below shall constitute a "***Bankruptcy Event of Default***":

(a) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, the failure of such Registration Statement to be filed with the SEC on or prior to the date that is five (5) days after the applicable Filing Date or the failure of such Registration Statement to be declared effective by the SEC on or prior to the date that is five (5) days after the applicable Effectiveness Date;

(b) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, while such Registration Statement is required to be maintained effective pursuant to the terms of the Securities Purchase Agreement, the effectiveness of such Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement (or the prospectus contained therein) is unavailable to any holder of Registrable Securities for sale of all of such holder's Registrable Securities in accordance with the terms of the Securities Purchase Agreement, and such lapse or unavailability continues for a period of five (5) consecutive days or for more than an aggregate of ten (10) days in any 365-day period;

(c) the suspension from trading or the failure of the Common Stock to be quoted or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(d) 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 (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 3.4;

(e) except to the extent the Company is in compliance with Section 10.2 below, at any time following the tenth (10 th) Trading Day that the Holder's Authorized Share Allocation is less than the number of shares of Common Stock that the Holder would be entitled to receive upon a conversion of the full Conversion Amount of this Note (without regard to any limitations on conversion set forth in Section 3.4 or otherwise);

[1] Note – This clause (b) shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Third Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Third Closing Notes, this clause (b) will be replaced with "[Reserved]".

(f) the Company's or any Subsidiary Guarantor's (x) failure to pay to the Holder any amount of Principal within one (1) Business Day after such amounts were as due under this Note, or (y) failure to pay to the Holder any amount of Interest, Late Charges or other amounts (other than Principal which is covered by clause (x) above) within three (3) Business Days after such amounts were as due under this Note;

(g) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder as and when required by the Securities Purchase Agreement or this Note, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(h) the occurrence of any default under, redemption of or acceleration prior to maturity of, any Indebtedness in the aggregate of $500,000 or more of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(i) 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;

(j) 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;

(k) 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;

(l) a final judgment or judgments for the payment of money aggregating in excess of $500,000 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 $500,000 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 sixty (60) days of the issuance of such judgment;

(m) any default by the Company in the due performance and observance of any of the covenants or agreements contained Section 13; provided, that such defaults under Section 13.10 shall not be deemed and Event of Default if such default is cured prior to the tenth (10th) Business Day following the date the Company becomes aware of the factual circumstances giving rise to the default;

(n) any representation, warranty or other written statement of the Company set forth in any Transaction Document or any certification provided by the Company pursuant to any Transaction Document is incorrect or misleading in any material respect when given;

(o) other than as specifically set forth in another clause of this Section 4.1, any default by the Company in the due performance and observance of any of the covenants or agreements of any Transaction Document, except, in the case of a breach of a covenant that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

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

(q) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs;

(r) any provision of any Transaction Document (including the Guaranty Agreement, the Security Agreement and any other Security Document) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto in any material respect, or the validity or enforceability thereof shall be contested by any party thereto, 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 the Guaranty Agreement, the Security Agreement and any other Security Document), or any Subsidiary Guarantor repudiates, revokes or attempts to revoke its guaranty under the Guaranty Agreement;

(s) the Security Agreement or any other Security Document shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent for the benefit of the Holder 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;

(t) [the Company shall fail to take all actions necessary to obtain, or shall fail to use its best efforts to obtain, the Requisite Stockholder Approval on or prior to the Requisite Stockholder Approval Deadline][2];

(u) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

4.2 Notice of an Event of Default: 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 three (3) Business Days of becoming aware of such Event of Default deliver written notice thereof via facsimile or 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 and ending (such ending date, the "***Event of Default Right Expiration Date***") 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, 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 4.2 shall be redeemed by the Company at a price equal to the Conversion Amount to be redeemed as of the date of the Event of Default (the "***Event of Default Redemption Price***"). Redemptions required by this Section 4.2 shall be made in accordance with the provisions of Section 11. To the extent redemptions

[2] Note – This clause (t) shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Third Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Third Closing Notes, this clause (t) will be replaced with "[Reserved]".

required by this Section 4.2 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 4.2, but subject to Section 3.4, until the Event of Default Redemption Price (together with any Late Charges thereon) is satisfied in full, the Conversion Amount submitted for redemption under this Section 4.2 (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 Section 3. In the event of the Company's redemption of any portion of this Note under this Section 4.2, 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. 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.

4.3 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 all outstanding Principal, accrued and unpaid Interest, and accrued and unpaid Late Charges on such Principal and Interest as of the date of the Bankruptcy Event of Default, 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. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

(a) Restrictions. The Company shall not enter into or be party to a Fundamental Transaction unless: either (i) the Company is the surviving Person; or (ii) the Successor Entity (if other than the Company) assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents as provided in Section 5.1(b).

(b) Assumption. To satisfy clause (ii) of Section 5.1(a), (i) the Successor Entity shall assume in writing all of the obligations of the Company under this Note and the other Transaction Documents pursuant to written agreements in form and substance reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable), 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, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes, respectively, held by such holder, having similar conversion rights as the Notes and having similar ranking and security to the Notes, and reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable) 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.

(c) Confirmation. 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) 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.

(d) Waiver. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5.1 to permit the Fundamental Transaction without the assumption of this Note.

(e) Applicability. 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.

5.2 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 facsimile or 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 the later of ten (10) Trading Days after (A) consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice, 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 Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5.2 shall be redeemed by the Company in cash at a price (the "***Change of Control Redemption Price***") equal to the greater of (i) the Conversion Amount being redeemed, and (ii) the product of (x) the Conversion Amount being redeemed multiplied by (y) the quotient of (I) the aggregate cash consideration plus 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 5.2 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 5.2 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 5.2, but subject to Section 3.4, 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 5.2 (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 the Company's redemption of any portion of this Note under this Section 5.2, 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.

6. Intentionally Omitted.

7. Adjustments to the Conversion Price.

7.1 Adjustment of Conversion Price upon Subdivision or Combination of Common Stock or Stock Dividend. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Fundamental Transaction, as to which the provisions set forth in Section 5 will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 * \frac{OS_0}{OS_1}$$

Where:

CP_0	=	the Conversion Price in effect immediately before the open of business on the ex-dividend date for such dividend or distribution, or immediately before the open of business on the effective date of such stock split or stock combination, as applicable
CP_1	=	the Conversion Price in effect immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable
OS_0	=	the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date or effective date, as applicable
OS_1	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination

For the avoidance of doubt, pursuant to the definition of CP_1 above, any adjustment to the Conversion Price made pursuant to this Section 7.1 will become effective immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable. If any dividend, distribution, stock split or stock combination of the type described in this Section 7.1 is declared or announced, but not so paid or made, then the Conversion Price, if previously adjusted, will be readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

7.2 Rights, Options and Warrants. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is publicly announced, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 * \frac{OS + Y}{OS + X}$$

Where:

CP_0	=	the Conversion Price in effect immediately before the open of business on the ex-dividend date for such distribution
CP_1	=	the Conversion Price in effect immediately after the open of business on such ex-dividend date
OS	=	the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants
Y	=	a number of shares of Common Stock obtained by dividing (x) the aggregate amount payable to exercise all such rights, options or warrants distributed by the Company by (y) the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced

For the avoidance of doubt, any adjustment to the Conversion Price made pursuant to this Section 7.2 will be made successively whenever any such rights, options or warrants are issued and, pursuant to the definition of CP_1 above, will become effective immediately after the open of business on the ex-dividend date for the applicable distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Price, if previously adjusted, will be readjusted effective as of such expiration date to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Price will be readjusted effective as of the date the Board of Directors of the Company determines not to distribute such rights, options or warrants, to the Conversion Price that would then be in effect had the ex-dividend date for the distribution of such rights, options or warrants not occurred. For purposes of this Section 7.2, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors of the Company.

7.3 Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

8. Intentionally Omitted.

9 . Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate or articles of incorporation, bylaws or other governing document 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.

10. Reservation of Authorized Shares.

10.1 Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note and the Other Notes equal to 120% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Issuance Date. So long as any of this Note and the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "***Required Reserve Amount***"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Securities Purchase Agreement) or at the time of the 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 this Note, or a portion thereof, or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation.

10.2 Insufficient Authorized Shares.

(a) If 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 have reserved for issuance upon conversion of the outstanding Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "***Authorized Share Failure***"), then the Company shall promptly 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 either (x) obtain the written consent of its stockholders for the approval of an increase in the number of authorized shares of Common Stock and provide each stockholder with an information statement with respect thereto or (y) file with the SEC a proxy statement for a meeting of its stockholders at which meeting the Company will seek the approval of its stockholders for 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 commercially reasonable 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 during 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 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.

(b) If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company, in lieu of issuing Common Stock in connection with such conversion and in full satisfaction of the Company's obligations with respect to such conversion, to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of shares of Common Stock that the Company is unable to deliver pursuant to this Section 10, and (ii) the highest Closing Sale Price of the Common Stock during the period beginning on the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

11. Redemptions.

11.1 Mechanics.

(a) If the Holder has submitted an Event of Default Redemption Notice in accordance with Section 4.2, the Company 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 (each, an "***Event of Default Redemption Date***").

(b) If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5.2, 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 two (2) Business Days after the Company's receipt of such notice otherwise (each, a "***Change of Control Redemption Date***").

(c) 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.

(d) 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 18.4) representing the outstanding Principal which has not been redeemed.

(e) 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, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 18.4), to the Holder; provided, that, notwithstanding the applicable Redemption Notice being deemed null and void and such return or issuance of this Note or a new Note in accordance with the foregoing, a continual Event of Default shall thereafter be deemed to have occurred and be continuing until the subsequent repayment or conversion of this Note in full. Furthermore, 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.

11.2 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 or Section 5.2 (each, an "***Other Redemption Notice***"), the Company shall immediately, but no later than two (2) Business Days after its receipt thereof, forward to the Holder by facsimile or 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 five (5) 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 and as expressly provided in this Note.

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

13.1 Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes or the Second Closing Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries.

13.2 Incurrence of Indebtedness. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note, the Other Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes or the Second Closing Notes and (ii) other Permitted Indebtedness).

13.3 Existence of Liens. The Company shall not, and the Company shall not permit any of its Subsidiaries to, 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 or non-voluntary Liens, which in the aggregate are less than $100,000.

13.4 Redemption and 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 dividend or distribution on any of its capital stock (any of the foregoing, a "***Restricted Payment***"), other than (i) Restricted Payments made by any Subsidiary to the Company or any other Subsidiary of the Company, (ii) any dividend payments or other distributions by the Company or any Subsidiary payable solely in shares of capital stock of such Person and (iii) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of capital stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such capital stock represents a portion of the exercise price thereof.

13.5 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 material assets or rights of the Company or any Subsidiary Guarantor whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice, (ii) sales of inventory and product in the ordinary course of business, or (iii) sales or other transfers of assets from the Company or any Subsidiary Guarantor to the Company or any Subsidiary Guarantor.

13.6 Acquisitions. Without the prior written consent of the Required Holders, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, acquire all or substantially all of the assets or capital stock of any Person or acquire all or substantially all of the assets of any operating division of any Person (each, an "***Acquisition***") unless, in the event that such acquired Person shall become a Subsidiary of the Company in connection with, or as a result of, such Acquisition, such acquired Person shall (x) be a Domestic Subsidiary, and (y) become a Subsidiary Guarantor on the date of such Acquisition as set forth in Section 13.11.

13.7 Change in Nature of Business. The Company shall not, and the Company shall not permit any of its Subsidiaries to, 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 First Closing Date or any business substantially related or incidental thereto. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, modify its or their corporate structure or purpose in any material respect.

13.8 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 (i) transactions entered into 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, and (ii) transactions entered into 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.

13.9 Maintenance of Existence; Compliance Laws, Etc. The Company shall, and the Company shall cause its Subsidiaries to, preserve and maintain its legal existence, comply in all material respects with all applicable laws, rules, regulations and orders, including the payment (before the same become delinquent), of all taxes, imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Company or its Subsidiary, as applicable.

13.10 Insurance. The Company shall, and the Company shall cause its Subsidiaries to, maintain:

(a) insurance on its property with financially sound and reputable insurance companies against business interruption, loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as the Company its Subsidiaries; and

(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

13.11 Subsidiary Matters.

(a) Neither the Company nor any Subsidiary Guarantor shall establish, form, create or acquire any new direct or indirect Subsidiary unless (i) such Subsidiary shall be a Domestic Subsidiary, and (ii) such Subsidiary shall, on the date of the establishment, formation, creation or acquisition thereof, (x) become a Subsidiary Guarantor by executing and delivering to the Holder a joinder to the Guaranty Agreement or such other document as the Holder shall reasonably deem appropriate for such purpose, (y) take all such action and execute such agreements, documents and instruments requested by the Holder, including execution and delivery of a joinder to the Security Agreement and execution and delivery of such other Security Documents, that may be necessary to grant to the Holder a perfected first priority security interest and Lien in any Collateral (as defined in the Securities Purchase Agreement) owned by such new Subsidiary and (z) deliver to the Holder documents of the types referred to in clauses (xi) and (xii) of

Section 5.1(a) of the Securities Purchase Agreement and, if reasonably requested by the Holder, favorable opinions of counsel to such new Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clauses (x) and (y) of this subsection), all in form, content and scope reasonably satisfactory to the Holder.

(b) Neither the Company nor any Subsidiary Guarantor will make any Investment in any Person other than a Subsidiary Guarantor.

13.12 Maintenance of Authorizations, Intellectual Property, Etc. The Company shall, and the Company shall cause its Subsidiaries to, (i) maintain in full force and effect all Regulatory Authorizations, authorizations or other rights necessary and material for the operations of its business, and comply with the terms and conditions applicable to the foregoing, excluding the maintenance of any Regulatory Authorizations that are not commercially reasonably necessary or material for the conduct of the business of the Company and its Subsidiaries; (ii) operate their business and facilities in material compliance with all applicable laws, rules and regulations, including any newly introduced or revised applicable laws, rules and regulations as they may become introduced, altered or otherwise evolve over time; (iii) diligently pursue any application for registration of any existing or future Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (iv) maintain in full force and effect or pursue the prosecution of, as the case may be, and pay all costs and expenses relating to, all Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all Intellectual Property developed, used or controlled (or jointly owned, developed or controlled) by the Company or any of its Subsidiaries; and (vi) not permit the activities and business of the Company or any of its Subsidiaries to violate, infringe, misappropriate or misuse any Intellectual Property of any other Person.

13.13 Liquidity. The Company shall not permit, at any time, the Liquidity to be less than $1,000,000.

13.14 Books and Records. The Company shall, and the Company shall cause its Subsidiaries to, keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions.

14. Distribution of Assets. In addition to any adjustments pursuant to Section 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 Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that 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 the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

15. Amendments and Waivers.

15.1 Except as set forth in Section 15.2 below, the written consent of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes; provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of the Holder or any holder of any Other Notes relative to the comparable rights and obligations of the Holder or any holder of any Other Notes, as applicable, shall require the prior written consent of such adversely affected Holder or such adversely affected holder of Other Notes. Any change, amendment or waiver by the Company and the Required Holders in accordance with this Section 15.1 shall be binding on the Holder of this Note and all holders of the Other Notes.

15.2 Notwithstanding the provisions of Section 15.1 above, the Holder may elect to waive any provision of this Note (other than any provision of Section 13 or this Section 15) solely as to the Holder and this Note specifically in a written instrument executed by the Holder; provided that any such waiver under this Section 15.2 shall not bind or otherwise affect the terms of any Other Note or any holder thereof.

16. Collateral. This Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement and the other Security Documents).

17. Transfer. This Note may be offered, sold, assigned or transferred by the Holder upon notice to, but without the consent of, the Company, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement. 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, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement.

18. Reissuances; New Notes.

18.1 Transfer. If this Note is to be transferred in accordance with the terms of this Note, 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 18.4 and subject to Section 3.3(c)), 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 18.4) 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 3.3(c) 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.

18.2 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, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to

the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 18.4) representing the outstanding Principal.

18.3 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 18.4) 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.

18.4 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 18.1 or Section 18.3, 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.

19. 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.

20. Payment of Collection, Enforcement and Other Costs. If (a) an Event of Default has occurred and 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 or to enforce the provisions of this Note 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 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, attorneys' fees and disbursements.

21. 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 First Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

22. 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.

23. Dispute Resolution.

23.1 Submission to Dispute Resolution.

(a) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (A) if by the Company, within five (5) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder, within five (5) Business Days 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 VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2^{nd}) 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 then the Holder may, with the consent of the Company not to be unreasonably or untimely withheld, select an independent, reputable investment bank to resolve such dispute.

(b) 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 23 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (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).

(c) The Company and the Holder shall 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 reasonable fees and reasonable 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.

24. Notices; Currency; Payments.

24.1 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 8.4 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. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to all or substantially all of the holders of shares of Common Stock 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.

24.2 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).

24.3 Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a 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 Purchasers, shall initially be as set forth on the Schedule of Investors 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 within three (3) Business Days after such amounts were due 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 fourteen percent (14.0%) per annum from the date such amount was due until the same is paid in full ("***Late Charge***").

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

26. 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.

27. 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 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 and venue of the Court of Chancery of the State of Delaware or to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude 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, to realize on any collateral or any other security for such obligations, 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 23. **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.**

28. Attorneys' Fees. In the event any legal action or other proceeding is brought by one party against the other party to enforce any provision of this Note or in which the subject matter of such legal action or other proceeding arises under, or is with respect to, the provisions of this Note, the prevailing party in any such legal action or other proceeding is entitled to recover from the other party attorneys' fees and costs associated with defending or prosecuting such legal action or other proceeding, any appeal therefrom, and any ancillary or related proceedings.

29. 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).

30. Disclosure. Upon receipt or delivery by the Company 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, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

31. Usury. This Note is subject to the express condition that at no time shall the Company be obligated or required to pay interest hereunder at a rate or in an amount which could subject the Holder to either civil or criminal liability as a result of being in excess of the maximum interest rate or amount which the Company is permitted by applicable law to contract or agree to pay. If by the terms of this Note, the Company is at any time required or obligated to pay interest hereunder at a rate or in an amount in excess of such maximum rate or amount, the rate or amount of interest under this Note shall be deemed to be immediately reduced to such maximum rate or amount and the interest payable shall be computed at such maximum rate or be in such maximum amount and all prior interest payments in excess of such maximum rate or amount shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

32. Definitions. As used in this Note, the following terms shall have the following meanings:

32.1 "***Acquisition***" has the meaning specified in Section 13.6; provided, that an Acquisition shall not include any acquisition of assets (other than any such assets constituting (i) any capital stock, membership interests, partnership interests or other equity interests of any Person, or (ii) any warrants, convertible instruments or other securities or rights of any Person that are exercisable for, or convertible into, any of the equity interests referred to in clause (i)) completed by the Company or any Subsidiary that is a party to the Security Agreement or the Guaranty Agreement.

32.2 "***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.

32.3 "***Applicable Margin***" means 7.00%[; provided, that, in the event that the Company shall have not obtained the Requisite Stockholder Approval on or prior to the Third Closing Date, then, from and after the Third Closing Date until the date on which the Company shall obtain the Requisite Stockholder Approval, the "Applicable Margin" shall mean 14.00%][3]

32.4 "***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 Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

32.5 "***Authorized Share Allocation***" has the meaning specified in Section 10.1.

32.6 "***Authorized Share Failure***" has the meaning specified in Section 10.2.

32.7 "***Bankruptcy Event of Default***" has the meaning specified in Section 4.1.

32.8 "***Business Day***" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in The State of New York are authorized or required by law or other governmental action to close.

32.9 "***Calendar Quarter***" means each of: (i) the period beginning on and including January 1 and ending on and including the next occurring March 31; (ii) the period beginning on and including April 1 and ending on and including the next occurring June 30; (iii) the period beginning on and including July 1 and ending on and including the next occurring September 30; (iv) and the period beginning on and including October 1 and ending on and including the next occurring December 31.

32.10 ["***Cap***" has the meaning specified in Section 3.4(b).] [4]

32.11 ["***Cap Allocation***" has the meaning specified in Section 3.4(b).] [5]

32.12 "***Change of Control***" means any Fundamental Transaction other than (i) 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

[3] Note – This proviso shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Third Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Third Closing Notes, this proviso will be deleted.

[4] Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Third Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Third Closing Notes, this definition will be deleted.

[5]Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Third Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Third Closing Notes, this definition will be deleted.

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 (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

32.13 "***Change of Control Date***" has the meaning specified in Section 5.2.

32.14 "***Change of Control Notice***" has the meaning specified in Section 5.2.

32.15 "***Change of Control Redemption Date***" has the meaning specified in Section 11.1.

32.16 "***Change of Control Redemption Notice***" has the meaning specified in Section 5.2.

32.17 "***Change of Control Redemption Price***" has the meaning specified in Section 5.2.

32.18 "***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 FactSet, 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 FactSet, 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 FactSet, 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 FactSet, or, if no closing bid price or last trade price, respectively, is reported for such security by FactSet, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). 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 23. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

32.19 "***Collateral Agent***" has the meaning specified in the Securities Purchase Agreement.

32.20 "***Common Stock***" means (i) shares of Common Stock, par value $0.01 per share of the Company, and (ii) any share capital into which such Common Stock shall be changed or any share capital resulting from a reclassification of such Common Stock.

32.21 "***Company***" has the meaning specified in the preamble to this Note.

32.22 "***Conversion Amount***" means the sum of (x) the portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made, (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.

32.23 "***Conversion Date***" has the meaning specified in Section 3.3(a).

32.24 "***Conversion Failure***" has the meaning specified in Section 3.3(b).

32.25 "***Conversion Notice***" has the meaning specified in Section 3.3(a).

32.26 "***Conversion Price***" means, as of any Conversion Date or other date of determination, $[6.00][6], subject to adjustment as provided herein.

32.27 "***Conversion Rate***" has the meaning specified in Section 3.2.

32.28 "***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.

32.29 "***Distributions***" has the meaning specified in Section 14.

32.30 "***Dispute Submission Deadline***" has the meaning specified in Section 23.1(b).

32.31 "***Domestic Subsidiary***" has the meaning specified in the Securities Purchase Agreement.

32.32 "***DTC***" has the meaning specified in Section 3.3(a).

32.33 "***Effectiveness Date***" has the meaning specified in the Securities Purchase Agreement.

32.34 "***Eligible Market***" means the NYSE American, New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTCBB.

32.35 "***Event of Default***" has the meaning specified in Section 4.1.

32.36 "***Event of Default Notice***" has the meaning specified in Section 4.2.

32.37 "***Event of Default Redemption Date***" has the meaning specified in Section 11.1.

32.38 "***Event of Default Redemption Notice***" has the meaning specified in Section 4.2.

32.39 "***Event of Default Redemption Price***" has the meaning specified in Section 4.2.

32.40 "***Event of Default Right Expiration Date***" has the meaning specified in Section 4.2.

[6] Note – In the event that, as a result of any conversion price adjustment in respect of the First Closing Notes occurring after the First Closing Date but prior to the Third Closing Date, the applicable conversion price in respect of the First Closing Notes is less than $6.00 as of the Third Closing Date, the "Conversion Price" of the Third Closing Notes shall initially be equal to such lower conversion price.

32.41 "***Excess Shares***" has the meaning specified in Section 3.4(a).

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

32.43 "***Filing Date***" has the meaning specified in the Securities Purchase Agreement.

32.44 "***First Closing Date***" has the meaning specified in the Securities Purchase Agreement.

32.45 "***First Closing Notes***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.46 "***Fundamental Transaction***" means (A) that the Company shall, directly or indirectly, including through any of its subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange 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 Exchange 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 any of its 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 Exchange 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.

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

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

32.49 "***Guaranty Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.50 "***Holder***" has the meaning specified in the preamble to this Note.

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

32.52 "***Intellectual Property***" means all patents, trademarks, service marks, logos and other business identifiers, trade names, trade styles, trade dress, copyrights, proprietary know-how, processes, computer software and all registrations, applications and licenses therefor.

32.53 "***Interest***" has the meaning specified in the preamble to this Note.

32.54 "***Interest Date***" has the meaning specified in Section 2.1.

32.55 "***Interest Rate***" means, as of any date, an annual rate per annum equal to the sum of (i) the greater of (x) the LIBOR Rate as of such date, and (y) 2.00%, plus (ii) the Applicable Margin; provided, that, on any date when an Event of Default shall have occurred and be continuing, the "Interest Rate" shall be the "Interest Rate" determined in accordance with the foregoing plus 3.00%.

32.56 "***Investment***" means, with respect to any Person, any loan, advance or extension of credit (other than to customers in the ordinary course of business) by such Person to, or any guarantee of any obligation of or other contingent liability with respect to the capital stock, Indebtedness or other obligations of, or any contributions to the capital of, any other Person, or any ownership, purchase or other acquisition by such Person of any interest in any capital stock, limited partnership interest, general partnership interest, or other securities of any such other Person.

32.57 "***Issuance Date***" has the meaning specified in the preamble to this Note.

32.58 "***Late Charge***" has the meaning specified in Section 24.3.

32.59 "***LIBOR Rate***" means, with respect to any Calendar Quarter, the three-month London Interbank Offered Rate for deposits in U.S. Dollars at approximately 11:00 a.m. (London, England time), quoted by the Holder from the appropriate page selected by the Holder, two Business Days prior to the last Business Day of the such Calendar Quarter.

32.60 "***Lien***" has the meaning specified in Section 13.3.

32.61 "***Liquidity***" means, as of any date, an amount equal to the aggregate amount of the unrestricted cash of the Company and the Subsidiary Guarantors (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of the Subsidiary Guarantors for any reason) as of such date of determination held in bank accounts of financial banking institutions in the United States of America.

32.62 "***Maturity Date***" shall mean **[●]**, 2025[7]; 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 3.4 hereunder, the Maturity Date may be extended at the option of the Holder until such time as such provision shall not limit the conversion of this Note.

32.63 "***Maximum Percentage***" has the meaning specified in Section 3.4(a).

32.64 "***Note***" has the meaning specified in the preamble to this Note.

32.65 "***Notice Failure***" has the meaning specified in Section 3.3(b).

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

32.67 "***Other Notes***" has the meaning specified in the preamble to this Note.

32.68 "***Other Redemption Notice***" has the meaning specified in Section 11.2.

32.69 "***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

[7] **Note to Form**: To be the fifth anniversary of the First Closing.

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.

32.70 "***Permitted Indebtedness***" means (i) Indebtedness evidenced by this Note, the Other Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes or Second Closing Notes, (ii) Indebtedness secured by Permitted Liens under clause (ii) or (iii) of the definition of Permitted Liens in an aggregate amount outstanding not to exceed $1,000,000, (iii) indebtedness incurred in the ordinary course of business, not to exceed $50,000 in any one transaction or $250,000 in the aggregate outstanding at any time, and (iv) any unsecured Indebtedness, so long as the aggregate amount of Indebtedness at any time outstanding under this clause (iv) shall not exceed $500,000.

32.71 "***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 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, (iii) 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, (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, or (C) in respect of capitalized lease obligations, provided that the Lien is confined solely to the property leased by the Company or any of its Subsidiaries pursuant to the applicable capital lease, in the case of any of clause (A), (B) or (C), with respect to Indebtedness in an aggregate amount not to exceed $1,000,000, and (iv) 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.

32.72 "***Permitted Securities Transaction***" has the meaning specified in Section 3.3(a).

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

32.74 "***Principal***" has the meaning specified in the preamble to this Note.

32.75 "***Principal Market***" means the Nasdaq Capital Market.

32.76 "***Redemption Date***" means, as applicable, the Event of Default Redemption Date or the Change of Control Redemption Date.

32.77 "***Redemption Notice***" means, as applicable, an Event of Default Redemption Notice or a Change of Control Redemption Notice.

32.78 "***Redemption Price***" means, as applicable, the Event of Default Redemption Price or the Change of Control Redemption Price.

32.79 "***Register***" has the meaning specified in Section 3.3(c).

32.80 "***Registered Notes***" has the meaning specified in Section 3.3(c).

32.81 "***Registrable Securities***" has the meaning specified in the Securities Purchase Agreement.

32.82 "***Registration Statement***" has the meaning specified in the Securities Purchase Agreement.

32.83 "***Regulatory Authorizations***" means all governmental licenses, authorizations, registrations, permits, consents and approvals required under all applicable laws and regulations in order to carry on the business of the Company and its Subsidiaries as currently conducted or proposed to be conducted, including any newly introduced or revised applicable laws and regulations as they may become introduced, altered or otherwise evolve over time.

32.84 "***Reported Outstanding Share Number***" has the meaning specified in Section 3.4(a).

32.85 "***Required Dispute Documentation***" has the meaning specified in Section 23.1(b).

32.86 "***Required Holders***" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding

32.87 "***Required Reserve Amount***" has the meaning specified in Section 10.1.

32.88 ["***Requisite Stockholder Approval***" has the meaning specified in the Securities Purchase Agreement.] [8]

32.89 ["***Requisite Stockholder Approval Deadline***" has the meaning specified in the Securities Purchase Agreement.] [9]

32.90 "***Restricted Payment***" has the meaning specified in Section 13.4.

32.91 "***Rule 144***" has the meaning specified in the Securities Purchase Agreement.

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

32.93 "***Second Closing Notes***" has the meaning specified in the Securities Purchase Agreement.

[8] Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Third Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Third Closing Notes, this definition will be deleted.

[9] Note – This definition shall be included solely to the extent that the Requisite Stockholder Approval shall have not been obtained prior to the Issuance Date of the Third Closing Notes. In the event that the Requisite Stockholder Approval shall have been obtained prior to the Issuance Date of the Third Closing Notes, this definition will be deleted.

32.94 "***Securities Purchase Agreement***" means that certain Securities Purchase Agreement, dated as of January 11, 2020, by and among the Company, the investors identified therein, and the Collateral Agent, pursuant to which the Company issued, among other securities, the Notes, as such agreement may be amend, restated or otherwise modified from time to time.

32.95 "***Security Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.96 "***Security Documents***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.97 "***Share Delivery Deadline***" has the meaning specified in Section 3.3(a).

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

32.99 "***Subsidiary***" means any Person in which the Company, directly or indirectly, (i) owns more than 50% of the outstanding capital stock or 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.

32.100 "***Subsidiary Guarantor***" means each Subsidiary of the Company that is, or that becomes, (i) a party to the Guaranty Agreement as a "Subsidiary Guarantor" thereunder, and (ii) a party to the Security Agreement as a "Grantor" thereunder.

32.101 "***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.

32.102 "***Third Closing Date***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.103 "***Third Closing Notes***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.104 "***Trading Day***" has the meaning specified in the Securities Purchase Agreement.

32.105 "***Transaction Documents***" means the Securities Purchase Agreement, including the schedules, annexes and exhibits attached hereto, the Notes, the Security Agreement, the other Security Documents and each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by the Securities Purchase Agreement.

32.106 "***Transfer Agent***" has the meaning specified in Section 3.1.

32.107 "***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 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet 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 9:30:01 a.m., New York time, and ending at

4:00:00 p.m., New York time, as reported by FactSet, or, if no dollar volume-weighted average price is reported for such security by FactSet 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 sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). 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 23. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Senior Secured Convertible Note as of the Issuance Date set out above.

MRI INTERVENTIONS, INC.

By: _____
Name:
Title:

Accepted and Agreed:

[●]

By: _____
Name:
Title:

EXHIBIT I

MRI INTERVENTIONS, INC.
CONVERSION NOTICE

Reference is made to the Senior Secured Convertible Note (the "***Note***") issued to the undersigned by MRI Interventions, 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 Common Stock, $0.01 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 Principal and such 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 (the "***Shares***"): _____

☐ Check here if the Holder does not intend to resell the Shares to be issued either (x) prior to, (y) contemporaneously with or (z) no later than thirty days after, as applicable, the date of this Conversion Notice

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty days after the date of this Conversion Notice.

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Note submitting this Conversion Notice that after giving effect to the Conversion provided for in this Conversion Notice, such Holder (together with its Attribution Parties) will not have beneficial ownership (together with the beneficial ownership of such Person's Attribution Parties) of a number of shares Common Stock which exceeds the Maximum Percentage (as defined in the Note) of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 3.4(a) of the Note.

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: _____

Account Number: _____

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

Facsimile: _____

Email Address: _____

Exhibit I

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

MRI INTERVENTIONS, INC.

_____ ___, 20__

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Stock of MRI Interventions, Inc.

Ladies and Gentlemen:

Reference is made to (A) the Securities Purchase Agreement, dated as of January 11, 2020, as amended, by and among MRI Interventions, Inc., a Delaware corporation (the "***Company***"), the investors who are parties thereto, and the Collateral Agent, pursuant to which the Company is issuing to the purchasers (collectively, the "***Holders***") senior secured convertible notes (the "***Notes***"), which are convertible into shares of the Company's Common Stock, par value $0.01 per share (the "***Common Stock***"); (B) the related Transfer Agent Instructions, dated as of **[●]** (the "***Instruction***"); (C) the conversion notice attached hereto (the "***Conversion Notice***"); and (D) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (1) a registration statement covering the resale of the shares of the Common Stock, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***1933 Act***"), (2) the Holders may transfer such shares of the Common Stock under Rule 144 promulgated under the 1933 Act ("***Rule 144***"), or (3) the Holders may transfer such shares of the Common Stock under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Stock as set forth under "Number of shares of the Common Stock to be issued" in the Conversion Notice,
- out of the Transfer Agent Reserve (as defined in the Instruction), and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at **[●]**.

Very Truly Yours,

MRI INTERVENTIONS, INC.

By: _____
Name:
Title:

Exhibit II

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this "***Agreement***"), dated as of January 11, 2020, by and among MRI Interventions, Inc., a Delaware corporation with headquarters located at 5 Musick, Irvine, California 92618 (the "***Company***"), each investor identified on the signature pages hereto (each, an "***Investor***" and collectively, the "***Investors***"), and Petrichor Opportunities Fund I LP, as collateral agent (in such capacity, the "***Collateral Agent***").

RECITALS

A. The Company and each Investor are executing and delivering this Agreement in reliance upon the exemption from registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "***Securities Act***").

B. Each First Closing Investor, severally and not jointly, wishes to purchase, and the Company wishes to issue to each First Closing Investor, upon the terms and conditions stated in this Agreement, at the First Closing, one or more floating rate secured convertible notes of the Company in the form attached hereto as Exhibit A-1 (collectively, the "***First Closing Notes***" and each, individually, a "***First Closing Note***") in the aggregate principal amount set forth across from such First Closing Investor's name under the heading "Principal Amount of First Closing Note" on the Schedule of Investors, which First Closing Notes shall be convertible on the terms stated therein into shares of common stock, $0.01 par value, of the Company (the "***Common Stock***") (the shares of Common Stock issuable pursuant to the terms of the First Closing Notes and, to the extent issued and sold hereunder at the Second Closing or Third Closing, any Second Closing Notes and Third Closing Notes issued hereunder, including, without limitation, upon conversion or otherwise, collectively, the "***Note Shares***").

C. In the event that the Company and such Second Closing Investor agrees on such future issuance, on the terms set forth herein, the Company may, at the Second Closing, issue and sell to each Second Closing Investor additional floating rate secured convertible notes of the Company in the form attached hereto as Exhibit A-2 (collectively, the "***Second Closing Notes***" and each, individually, a "***Second Closing Note***") in the aggregate principal amount set forth across from such Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors.

D. In the event that the Company and such Third Closing Investor agrees on such future issuance, on the terms set forth herein, the Company may, at the Third Closing, issue and sell to the each Third Closing Investor additional floating rate secured convertible notes of the Company in the form attached hereto as Exhibit A-3 (collectively, the "***Third Closing Notes***" and each, individually, a "***Third Closing Note***"; the First Closing Notes, together with any Second Closing Notes and Third Closing Notes issued hereunder, collectively, the "***Notes***" and each, individually, a "***Note***") in the aggregate principal amount set forth across from such Third Closing Investor's name under the heading "Principal Amount of Third Closing Note" on the Schedule of Investors.

D. The First Closing Notes, any Second Closing Notes and Third Closing Notes issued hereunder, and the Note Shares are collectively referred to herein as the "***Securities***."

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investors, intending to be legally bound hereby, agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated:

"***Affiliate***" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act.

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

"***Applicable Closing Date***" means (i) with respect to the First Closing, the First Closing Date, (ii) with respect to the Second Closing, the Second Closing Date, and (iii) with respect to the Third Closing, the Third Closing Date.

"***Applicable Second Closing Notes***" has the meaning set forth in Section 2.1(b)(iii).

"***Applicable Third Closing Notes***" has the meaning set forth in Section 2.1(c)(iii).

"***BHCA***" has the meaning set forth in Section 3.1(jj).

"***Board***" means the board of directors of the Company.

"***Board Observer Agreement***" has the meaning set forth in Section 2.2(a)(iv).

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

"***Claims***" has the meaning set forth in Section 6.1(a).

"***Closing***" means each of the First Closing, Second Closing and Third Closing, as applicable.

"***Collateral***" means all property (whether real or personal and whether tangible or intangible) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document, including Collateral as defined in the Security Agreement.

"***Collateral Agent***" has the meaning set forth in the Preamble.

"***Common Stock***" has the meaning set forth in the Recitals.

"***Common Stock Equivalents***" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

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

"***Company Counsel***" means Bass, Berry & Sims PLC.

"***Demand Notice***" has the meaning set forth in Section 7.1(a).

"***Demand Receipt Notice***" has the meaning set forth in Section 7.1(a).

"***Demand Registration Statement***" has the meaning set forth in Section 7.1(a).

"***Domestic Subsidiary***" means any Subsidiary of the Company that is incorporated, organized or formed under the laws of the United States, any State of the United States or the District of Columbia.

"***Effectiveness Date***" means, with respect to a Demand Registration Statement required to be filed hereunder, the seventy-fifth (75th) calendar day following receipt by the Company of the Demand Notice (or, in the event of a "full review" by the SEC, the one hundredth (100th) calendar day following such date) and with respect to any additional Registration Statements which may be required pursuant to Section 7.1(e), the 45th calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a "full review" by the SEC, the seventieth (70th) calendar day following the date such additional Registration Statement is required to be filed hereunder); provided, however, that in the event the Company is notified by the SEC that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above; provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"***Effectiveness Period***" has the meaning set forth in Section 7.1(a).

"***Election Notice***" has the meaning set forth in Section 7.1(a).

"***Event***" has the meaning set forth in Section 7.1(h).

"***Event Date***" has the meaning set forth in Section 7.1(h).

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

"***Exempt Issuance***" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement; provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company; provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

"***Exercising Second Closing Investor***" has the meaning set forth in Section 2.1(b)(iii).

"***Exercising Third Closing Investor***" has the meaning set forth in Section 2.1(c)(iii).

"***Existing Indebtedness***" means the amounts due under the Company's outstanding Junior Secured Promissory Notes Due 2020, as amended by that certain Omnibus Amendment dated April 5, 2011, as further amended by that certain Second Omnibus Amendment dated October 14, 2011, and as further amended by that certain Third Omnibus Amendment dated March 25, 2014, and as further amended by the Fourth Omnibus Amendment on or prior to the First Closing Date.

"***Federal Reserve***" has the meaning set forth in Section 3.1(jj).

"***Filing Date***" means, with respect to a Demand Registration Statement required hereunder the thirtieth (30th) calendar day following the receipt by the Company of the Demand Notice; provided that if such Filing Date falls on a day that is not a Trading Day, then the Filing Date shall be the next succeeding Trading Day, and, with respect to any additional Registration Statements which may be required pursuant to Section 7.1(e), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"***First Closing***" means the closing of the purchase and sale of the First Closing Notes pursuant to Section 2.1(a).

"***First Closing Access Fee***" has the meaning set forth in Section 4.9(a).

"***First Closing Date***" means the first (1st) Trading Day after the date on which this Agreement has been executed and delivered by all parties hereto, unless on such date the conditions set forth in Sections 2.2 and 5.1 (other than those to be satisfied at the First Closing) shall not have been satisfied or waived in writing, in which case the First Closing Date shall be on the first (1st) Trading Day after the date on which the last to be satisfied or waived of the conditions set forth in Sections 2.2 and 5.1 (other than those to be satisfied at the First Closing) shall have been satisfied or waived.

"***First Closing Investor***" means each Investor set forth under the heading "First Closing Investors" on the Schedule of Investors.

"***First Closing Notes***" has the meaning set forth in the Recitals.

"***Fourth Omnibus Amendment***" means, collectively, (x) that certain Fourth Omnibus Amendment to be entered into by the Company and the Required Holders (as defined in the Existing Indebtedness) on or prior to the First Closing Date, and (y) that certain Fourth Amendment to Junior Security Agreement to be entered into by the Company (with the consent of the Required Holders (as defined in the Existing Indebtedness)) and Landmark Community Bank, as collateral agent in respect of the Existing Indebtedness, on or prior to the First Closing Date.

"***GAAP***" means United States generally accepted accounting principles applied on a consistent basis during the periods involved.

"***Guaranty Agreement***" has the meaning set forth in Section 2.2(a)(ii).

"***Holder***" or "***Holders***" means the holder or holders, as the case may be, from time to time of any Registrable Securities or any other securities (including the Notes) that are convertible into, or exercisable or exchangeable for, any Registrable Securities.

"***Indebtedness***" means, with respect to any Person, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar

instruments, (D) all obligations evidenced by notes (including the Existing Indebtedness, the First Closing Notes, the Second Closing Notes and the Third Closing Notes), bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement, which are required under generally accepted accounting principles to be presented as liabilities, and (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by such Person, even though such Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness.

"***Indemnified Damages***" has the meaning set forth in Section 6.1(a).

"***Indemnified Party***" has the meaning set forth in Section 6.1(b).

"***Indemnified Person***" has the meaning set forth in Section 6.1(a).

"***Intercreditor Agreement***" has the meaning set forth in Section 2.2(b)(iii).

"***Investor***" has the meaning set forth in the Preamble.

"***Lien***" means any lien, security interest, pledge, encumbrance, right of first refusal, preemptive right or other restriction.

"***Major Investor***" means (a) at all times from and after the date hereof until the consummation of the First Closing, each of the Investors, and (b) from and after the consummation of the First Closing, each of (x) until the later of (i) the Trading Day after the Subsequent Closing Deadline and (ii) the date on which PTC and its Affiliates shall cease to hold Notes in an aggregate principal amount equal to at least 10% of the aggregate principal amount of all Notes originally issued to PTC and its Affiliates hereunder on or prior to such date, PTC, and (y) until the later of (i) the Trading Day after the Subsequent Closing Deadline and (ii) the date on which Petrichor and its Affiliates shall cease to hold Notes in an aggregate principal amount equal to at least 10% of the aggregate principal amount of all Notes originally issued to Petrichor and its Affiliates hereunder on or prior to such date, Petrichor.

"***Material Adverse Effect***" means any condition, circumstance, or situation that may result in, or reasonably be expected to result in (i) a material adverse effect on the legality, validity or enforceability of this Agreement or any of the Transaction Documents, (ii) a material adverse effect on the results of operations, assets, liabilities, business, prospects or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, (iii) a material adverse effect on the Company's authority or ability to perform its obligations hereunder or under any of the Transaction Documents in any material respect on a timely basis, or (iv) a material adverse effect on the rights or remedies of the Investors or the Collateral Agent under any Transaction Document; provided, that, any of the following, either alone or in combination, shall not be deemed a Material Adverse Effect: (x) effects caused by changes or circumstances affecting general market or other conditions in the U.S. economy or which are generally applicable to the industry in which the Company operates (provided, that such effects are not borne to a materially disproportionate degree by the Company compared to other companies operating in the same industry as the Company); (y) effects resulting from or relating to the announcement or disclosure of the sale of the Notes or other transactions contemplated by the Transaction Documents; or (z) effects caused

by any event, occurrence or condition resulting from or relating to the taking of any action required by this Agreement.

"***Material Contract***" means any contract of the Company that has been filed or was required to have been filed as an exhibit to the SEC Reports pursuant to Item 601(b)(10) of Regulation S-K.

"***Maximum Subsequent Closing Amount***" means $15,000,000.

"***Minimum Repayment Amount***" means an amount of Existing Indebtedness equal to the minimum amount of Existing Indebtedness that would be required to be repaid on the First Closing Date such that the aggregate remaining outstanding amount of such Existing Indebtedness, after giving effect to such repayment, together with all other Indebtedness of the Company and its Subsidiaries not otherwise constituting "Permitted Indebtedness" (as defined in the Notes) under clause (i), (ii) or (iii) of the definition of "Permitted Indebtedness" (as defined in the Notes) outstanding on the First Closing Date, does not exceed $600,000.

"***Money Laundering Laws***" has the meaning set forth in Section 3.1(kk).

"***Nasdaq***" means the Nasdaq Stock Market LLC.

"***Note Shares***" has the meaning set forth in the Recitals.

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

"***Observer***" has the meaning set forth in Section 4.8.

"***OFAC***" has the meaning set forth in Section 3.1(hh).

"***Participation Maximum***" has the meaning set forth in Section 7.6(a).

"***Permits***" has the meaning set forth in Section 3.1(s).

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

"***Petrichor***" means Petrichor Opportunities Fund I LP.

"***Pre-Notice***" has the meaning set forth in Section 7.6(a).

"***Press Release***" has the meaning set forth in Section 4.3.

"***Proceeding***" means an action, claim, suit, investigation or proceeding (including, without limitation, a partial proceeding, such as a deposition), whether commenced or threatened in writing.

"***Prospectus***" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the SEC pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"***PTC***" means PTC Therapeutics, Inc.

"***Registrable Amount***" shall mean a number of shares of Common Stock equal to one percent (1%) of the outstanding Common Stock.

"***Registrable Securities***" means, as of any date of determination, (a) the Note Shares, (b) any securities issued or issuable to any Investor in accordance with a Subsequent Financing or otherwise after the date hereof, or (c) any securities issued or then issuable to any Investor upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) if (x) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the Securities Act and such Registrable Securities have been disposed of by an Investor in accordance with such effective Registration Statement, (y) such Registrable Securities have been previously sold by an Investor in accordance with Rule 144, or (z) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the Investors (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company), as reasonably determined by the Company, upon the advice of counsel to the Company.

"***Registration Statement***" means any registration statement required to be filed hereunder pursuant to Article VII and any other registration statement covering any Registrable Securities, including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"***Required Approvals***" has the meaning set forth in Section 3.1(p).

"***Required Holders***" means, as of any date, all of the Major Investors as of such date; provided, that, in the event that, as of any date, there shall exist no Major Investors, then the term "Required Holders" shall mean all of the Investors.

"***Requisite Stockholder Approval***" means the stockholder approval contemplated by Nasdaq Listing Standard Rule 5635(d) with respect to the issuance of Note Shares upon conversion of all of the Notes (including the First Closing Notes, Second Closing Notes and Third Closing Notes) issuable pursuant to this Agreement in excess of the limitations imposed by such rule; provided, however, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of Nasdaq, such stockholder approval is no longer required for the Company to settle all conversions of all of the Notes (including the First Closing Notes, Second Closing Notes and Third Closing Notes) issuable pursuant to this Agreement by delivering Note Shares in respect thereof without limitation or restriction under the applicable listing standards of Nasdaq.

"***Requisite Stockholder Approval Deadline***" means June 30, 2020.

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

"***Schedule of Investors***" means the list of Investors attached hereto as Annex A.

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

"***SEC Guidance***" means (i) any publicly-available written or oral guidance of the SEC staff, or any comments, requirements or requests of the SEC staff and (ii) the Securities Act.

"***SEC Reports***" has the meaning set forth in Section 3.1(g).

"***Second Closing***" means the closing of the purchase and sale of the Second Closing Notes pursuant to Section 2.1(b).

"***Second Closing Date***" has the meaning set forth in Section 2.1(b)(ii).

"***Second Closing Election Notice***" has the meaning set forth in Section 2.1(b)(iii).

"***Second Closing Investor***" means each Investor set forth under the heading "Second Closing Investors" on the Schedule of Investors.

"***Second Closing Notes***" has the meaning set forth in the Recitals.

"***Second Closing Request***" has the meaning set forth in Section 2.1(b)(ii).

"***Securities Act***" has the meaning set forth in the Recitals.

"***Security Agreement***" has the meaning set forth in Section 2.2(a)(iii).

"***Security Documents***" means, collectively, the Security Agreement and any other security agreement, collateral access agreement, landlord waiver, account control agreement or other agreement or instrument pursuant to or in connection with which the Company or any of the Subsidiary Guarantors grants or perfects a security interest to the Collateral Agent for the benefit of the Investors.

"***Subsequent Access Fee***" has the meaning set forth in Section 4.9(b).

"***Subsequent Closing Deadline***" means January 11, 2022.

"***Subsequent Financing***" has the meaning set forth in Section 7.6(a).

"***Subsequent Financing Notice***" has the meaning set forth in Section 7.6(a).

"***Subsidiary***" means any Person (including any Person formed or acquired after the date hereof) in which the Company, directly or indirectly, (i) owns or controls more than 50% of the outstanding capital stock or any equity or similar interest of such Person, (ii) owns or controls more than 50% of any class or classes of capital stock or other equity interests having ordinary voting power to elect a majority of the board of directors (or other applicable governing body) of such Person, or (iii) controls or operates all or any part of the business, operations or administration of such Person.

"***Subsidiary Guarantor***" means each Subsidiary of the Company that is, or that becomes, (i) a party to the Guaranty Agreement as a "Subsidiary Guarantor" thereunder, and (ii) a party to the Security Agreement as a "Grantor" thereunder.

"***Termination Date***" has the meaning set forth in Section 9.1(a)(ii).

"***Third Closing***" means the closing of the purchase and sale of the Third Closing Notes pursuant to Section 2.1(c).

"***Third Closing Date***" has the meaning set forth in Section 2.1(c)(ii).

"***Third Closing Election Notice***" has the meaning set forth in Section 2.1(c)(iii).

"***Third Closing Investor***" means each Investor set forth under the heading "Third Closing Investors" on the Schedule of Investors.

"***Third Closing Notes***" has the meaning set forth in the Recitals.

"***Third Closing Request***" has the meaning set forth in Section 2.1(c)(ii).

"***Total Purchase Price***" means, with respect to any Investor, the aggregate price paid by such Investor hereunder for all Notes purchased by such Investor at one or more Closings hereunder.

"***Trading Day***" means (i) a day on which the Common Stock is traded on a Trading Market (other than the OTCBB), or (ii) if the Common Stock is not listed or quoted on a Trading Market (other than the OTCBB), a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTCBB, or (iii) if the Common Stock is not listed or quoted on any Trading Market, a day on which the Common Stock is quoted in the over-the-counter market as reported by the OTC Markets Group Inc. (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"***Trading Market***" means whichever of the NYSE American, New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTCBB on which the Common Stock is listed or quoted for trading on the date in question.

"***Transaction Documents***" means this Agreement, including the schedules, annexes and exhibits attached hereto, the Notes, the Security Documents, the Guaranty Agreement, the Board Observer Agreement, and each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by this Agreement.

"***Transfer Agent***" means Continental Stock Transfer & Trust Company, or any successor transfer agent for the Company.

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

"***Violations***" has the meaning set forth in Section 6.1(a).

ARTICLE II
PURCHASE AND SALE

2.1 Closings.

(a) First Closing. Subject to the terms and conditions set forth in this Agreement, at the Closing, the Company shall issue and sell to each First Closing Investor, and each First Closing Investor shall, severally and not jointly, purchase from the Company, First Closing Notes in the principal amount set forth across from such First Closing Investor's name under the heading "Principal Amount of First Closing Note" on the Schedule of Investors, at a purchase price equal to the principal face amount thereof. The date and time of the First Closing shall be 10:00 a.m. (New York time), on the First Closing Date. The First Closing shall take place at the offices of the Company Counsel, or at such other location as the parties determine. The First Closing may take place by delivery of the items to be delivered at the First Closing by facsimile or other electronic transmission.

(b) Second Closing.

(i) The Company shall have the right, but not the obligation, to request that the Second Closing Investors agree to purchase $5,000,000 in aggregate principal amount of Second Closing Notes at any time on or prior to the Subsequent Closing Deadline in accordance with this Section 2.1(b).

(ii) In the event that the Company desires to request that the Second Closing Investors purchase the Second Closing Notes pursuant to this Section 2.1(b), the Company shall deliver each Second Closing Investor written notice of such request (a "***Second Closing Request***") on or prior to the date that is fifteen (15) Business Days prior to the Subsequent Closing Deadline, which Second Closing Request shall (x) set forth the Company's irrevocable offer to sell the Second Closing Notes to the Second Closing Investors in accordance with this Section 2.1(b), and (y) specify the closing date for such sale of Second Closing Notes hereunder (the "***Second Closing Date***"), which Second Closing Date (A) shall not be earlier than the fifteenth (15^{th}) Business Day following the delivery of the Second Closing Election Notice to the Company, and (B) shall not be later than the Subsequent Closing Deadline.

(iii) In the event that the Company shall timely deliver a Second Closing Request to the Second Closing Investors in accordance with the foregoing, each Second Closing Investor shall have the right, but not the obligation, to purchase all, but not less than all, of Second Closing Notes in principal amount equal to the amount set forth across from such Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors (with respect to any particular Second Closing Investor, such Second Closing Notes are herein referred to as such Second Closing Investor's "***Applicable Second Closing Notes***"). In the event that any Second Closing Investor desires to purchase such Second Closing Investor's Applicable Second Closing Notes, such Second Closing Investor must deliver written notice to the Company of its election to purchase such Second Closing Investor's Applicable Second Closing Notes hereunder (a "***Second Closing Election Notice***") no later than five (5) Business Days after the Company's request and in no event later than ten (10) Business Days prior to the Subsequent Closing Deadline, which Second Closing Election Notice shall specify that such Second Closing Investor is exercising its right under this Section 2.1(b) to purchase such Second Closing Investor's Applicable Second Closing Notes (any Second Closing Investor that shall so deliver a Second Closing Election Notice to the Company in accordance with the foregoing is herein referred to as an "***Exercising Second Closing Investor***").

(iv) Upon an Exercising Second Closing Investor's delivery of a Second Closing Election Notice to the Company pursuant to clause (iii) above, the Company shall become irrevocably obligated to issue, sell and deliver to such Exercising Second Closing Investor such

Exercising Second Closing Investor's Second Closing Notes on the Second Closing Date on the terms and conditions set forth herein.

(v) For the avoidance of doubt, unless and until a Second Closing Investor delivers a Second Closing Election Notice to the Company in accordance with the foregoing, such Second Closing Investor shall have no obligation hereunder to purchase any or all of such Second Closing Investor's Second Closing Notes hereunder.

(vi) Solely in the event that one or more Exercising Second Closing Investors shall have delivered a Second Closing Election Notice to the Company in accordance with the foregoing pursuant to which each such Exercising Second Closing Investor shall have elected to purchase such Exercising Second Closing Investor's Second Closing Notes on the Second Closing Date, subject to the terms and conditions set forth in this Agreement, at the Second Closing, the Company shall issue and sell to each such Exercising Second Closing Investor, and each such Exercising Second Closing Investor shall, severally and not jointly, purchase from the Company, each such Exercising Second Closing Investor's Second Closing Notes in the principal amount set forth across from each such Exercising Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors, at a purchase price equal to the principal face amount thereof. The date and time of the Second Closing shall be 10:00 a.m. (New York time) on the Second Closing Date. The Second Closing shall take place at the offices of the Company Counsel, or at such other location as the parties determine. The Second Closing may take place by delivery of the items to be delivered at the Second Closing by facsimile or other electronic transmission.

(c) Third Closing.

(i) The Company shall have the right, but not the obligation, to request that the Third Closing Investors agree to purchase $10,000,000 in aggregate principal amount of Third Closing Notes prior to the Subsequent Closing Deadline in accordance with this Section 2.1(c).

(ii) In the event that the Company desires to request that the Third Closing Investors purchase the Third Closing Notes pursuant to this Section 2.1(c), the Company shall deliver each Third Closing Investor written notice of such request (a "***Third Closing Request***") after the Second Closing but on or prior to the date that is fifteen (15) Business Days prior to the Subsequent Closing Deadline, which Third Closing Request shall (x) set forth the Company's irrevocable offer to sell the Third Closing Notes to the Third Closing Investors in accordance with this Section 2.1(c), and (y) specify the closing date for such sale of Third Closing Notes hereunder (the "***Third Closing Date***"), which Third Closing Date (A) shall not be earlier than the fifteenth (15^{th}) Business Day following the delivery of the Third Closing Election Notice to the Company, and (B) shall not be later than the Subsequent Closing Deadline.

(iii) In the event that the Company shall timely deliver a Third Closing Request to the Third Closing Investors in accordance with the foregoing, each Third Closing Investor shall have the right, but not the obligation, to purchase all, but not less than all, of Third Closing Notes in principal amount equal to the amount set forth across from such Third Closing Investor's name under the heading "Principal Amount of Third Closing Note" on the Schedule of Investors (with respect to any particular Third Closing Investor, such Third Closing Notes are herein referred to as such Third Closing Investor's "***Applicable Third Closing Notes***"). In the event that any Third Closing Investor desires to purchase such Third Closing Investor's Applicable Third Closing Notes, such Third Closing Investor must deliver written notice to the Company of its election to purchase such Third Closing Investor's Applicable Third Closing Notes hereunder (a "***Third Closing Election Notice***") no later than five (5) Business Days after the Company's request and in no event later than five (5) Business Days prior to the Subsequent Closing Deadline, which Third Closing Election Notice shall specify that such Third Closing

Investor is exercising its right under this Section 2.1(b) to purchase such Third Closing Investor's Applicable Third Closing Notes (any Third Closing Investor that shall so deliver a Third Closing Election Notice to the Company in accordance with the foregoing is herein referred to as an "***Exercising Third Closing Investor***").

(iv) Upon an Exercising Third Closing Investor's delivery of a Third Closing Election Notice to the Company pursuant to clause (iii) above, the Company shall become irrevocably obligated to issue, sell and deliver to such Exercising Third Closing Investor such Exercising Third Closing Investor's Third Closing Notes on the Third Closing Date on the terms and conditions set forth herein.

(v) For the avoidance of doubt, unless and until a Third Closing Investor delivers a Third Closing Election Notice to the Company in accordance with the foregoing, such Third Closing Investor shall have no obligation hereunder to purchase any or all of such Third Closing Investor's Third Closing Notes hereunder.

(vi) Solely in the event that one or more Exercising Third Closing Investors shall have delivered a Third Closing Election Notice to the Company in accordance with the foregoing pursuant to which each such Exercising Third Closing Investor shall have elected to purchase such Exercising Third Closing Investor's Third Closing Notes on the Third Closing Date, subject to the terms and conditions set forth in this Agreement, at the Third Closing, the Company shall issue and sell to each such Exercising Third Closing Investor, and each such Exercising Third Closing Investor shall, severally and not jointly, purchase from the Company, each such Exercising Third Closing Investor's Third Closing Notes in the principal amount set forth across from each such Exercising Third Closing Investor's name under the heading "Principal Amount of Third Closing Note" on the Schedule of Investors, at a purchase price equal to the principal face amount thereof. The date and time of the Third Closing shall be 10:00 a.m. (New York time) on the Third Closing Date. The Third Closing shall take place at the offices of the Company Counsel, or at such other location as the parties determine. The Third Closing may take place by delivery of the items to be delivered at the Third Closing by facsimile or other electronic transmission.

2.2 First Closing Deliverables.

(a) At the First Closing, the Company shall:

(i) deliver or cause to be delivered to each First Closing Investor a duly executed Note in the principal amount set forth across from such First Closing Investor's name under the heading "Principal Amount of First Closing Note" on the Schedule of Investors;

(ii) deliver or cause to be delivered to each First Closing Investor a duly executed Guaranty Agreement in the form attached hereto as Exhibit B (the "***Guaranty Agreement***"), executed by each of the Domestic Subsidiaries, if any, of the Company;

(iii) deliver or cause to be delivered to each First Closing Investor a duly executed Security Agreement in the form attached hereto as Exhibit C (the "***Security Agreement***"), executed by the Company and each of the Domestic Subsidiaries, if any, of the Company;

(iv) deliver or cause to be delivered to Petrichor a duly executed Board Observer Agreement in the form attached hereto as Exhibit D (the "***Board Observer Agreement***"), executed by the Company;

(v) pay to Petrichor the First Closing Access Fee in accordance with Section 4.9(a); and

(vi) promptly upon receipt of the aggregate purchase price for the First Closing Notes set forth in Section 2.2(b)(i) from the First Closing Investors, pay to the holders of the Existing Indebtedness the amounts necessary to repay at least the Minimum Repayment Amount of the Existing Indebtedness owed to such holders by check or wire transfer of immediately available funds to the account or accounts designated by such holders of Existing Indebtedness.

(b) At the First Closing, the First Closing Investors (as applicable) shall deliver or cause to be delivered to the Company the following:

(i) the aggregate purchase price for the First Closing Notes purchased by such First Closing Investor hereunder, as set forth across from such First Closing Investor's name under the heading "Aggregate First Closing Purchase Price" on the Schedule of Investors, in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such First Closing Investor by the Company for such purpose;

(ii) an executed Board Observer Agreement, executed by the individual designated by Petrichor to serve as a board observer thereunder; and

(iii) a duly executed intercreditor or similar agreement in form and substance acceptable to the Investors (the " ***Intercreditor Agreement***").

2.3 Second Closing Deliverables. Solely in the event that one or more Exercising Second Closing Investors shall have delivered a Second Closing Election Notice to the Company in accordance with Section 2.1(b) pursuant to which each such Exercising Second Closing Investor shall have elected to purchase each such Exercising Second Closing Investor's Second Closing Notes on the Second Closing Date, at the Second Closing:

(a) the Company shall deliver or cause to be delivered to each Exercising Second Closing Investor a duly executed Second Closing Note in the principal amount set forth across from such Exercising Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors; and

(b) each Exercising Second Closing Investor shall deliver or cause to be delivered to the Company the aggregate purchase price for the Second Closing Notes purchased by such Exercising Second Closing Investor hereunder, as set forth across from such Exercising Second Closing Investor's name under the heading "Aggregate Second Closing Purchase Price" on the Schedule of Investors, in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such Exercising Second Closing Investor by the Company for such purpose.

2.4 Third Closing Deliverables. Solely in the event that one or more Exercising Third Closing Investors shall have delivered a Third Closing Election Notice to the Company in accordance with Section 2.1(c) pursuant to which each such Exercising Third Closing Investor shall have elected to purchase each such Exercising Third Closing Investor's Third Closing Notes on the Third Closing Date, at the Third Closing:

(a) the Company shall deliver or cause to be delivered to each Exercising Third Closing Investor a duly executed Third Closing Note in the principal amount set forth across from such Exercising Third Closing Investor's name under the heading "Principal Amount of Third Closing Note" on the Schedule of Investors; and

(b) each Exercising Third Closing Investor shall deliver or cause to be delivered to the Company the aggregate purchase price for the Third Closing Notes purchased by such Exercising Third Closing Investor hereunder, as set forth across from such Exercising Third Closing Investor's name under the heading "Aggregate Third Closing Purchase Price" on the Schedule of Investors, in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such Exercising Third Closing Investor by the Company for such purpose.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Investors, as of the date hereof and as the date of each Closing, as follows:

(a) Subsidiaries. The Company owns, directly or indirectly, all of the capital stock or comparable equity interests of each Subsidiary free and clear of any Lien (other than restrictions on transfer arising under applicable securities laws), and all issued and outstanding shares of capital stock or comparable equity interest of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights. The Company does not own an equity or other ownership interest in any Person other than the Subsidiaries.

(b) Organization and Qualification. The Company and each Subsidiary is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, as applicable, with the requisite power and legal authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation of any of the provisions of its certificate or articles of incorporation, bylaws or other organizational or charter documents, as applicable. The Company and each Subsidiary is duly qualified to do business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect and no Proceeding has been instituted seeking to revoke, limit or curtail such power or authority or qualification.

(c) Authorization; Enforcement. The Company and each of its Domestic Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder and, in the case of the Company, to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery by the Company and each of its Domestic Subsidiaries of each of the Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby, including, in the case of the Company, the issuance of the Notes and the reservation for issuance and issuance of the Note Shares, have been duly authorized by all necessary action on the part of the Company and each such Domestic Subsidiary, and (other than the filing with the SEC of one or more Registration Statements in accordance with Section 4.7, any filings as may be required by state securities agencies, and any filings required pursuant to the Security Documents) no further consent, filing, authorization or action is required from or with any United States federal or state regulatory authority or governmental body or any Trading Market by the Company or any Domestic Subsidiary. Each of the Transaction Documents to which it is a party has been (or upon delivery will be) duly executed by the Company and each of its Domestic Subsidiaries and is, or when delivered in accordance with the terms hereof, will constitute, the valid and binding obligation of the Company and each such Domestic Subsidiary enforceable against the Company and each such Domestic Subsidiary in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application

affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification provisions contained herein may be limited by applicable law.

(d) No Conflicts. Except as set forth on Schedule 3.1(d), the execution, delivery and performance by the Company and each of its Domestic Subsidiaries of the Transaction Documents to which it is a party, the consummation by the Company and each of its Domestic Subsidiaries of the transactions contemplated hereby and thereby, and, in the case of the Company, the issuance and sale of the Notes and the reservation for issuance and issuance of the Note Shares do not, and will not, (i) conflict with or violate any provision of the Company's or any Domestic Subsidiary's certificate of incorporation or bylaws, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement (including any Material Contract), credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound, or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or any Subsidiary is subject or by which any property or asset of the Company or any Subsidiary is bound or affected, except, in the case of clauses (ii) and (iii) above, to the extent that such conflict, default, termination, amendment, acceleration, cancellation right or violation would not have or reasonably be expected to result in a Material Adverse Effect. The Company is not in violation of the listing requirements of the Trading Market and has no knowledge of any facts that would reasonably lead to delisting or suspension of the Common Stock in the foreseeable future. The issuance by the Company of the Securities shall not have the effect of delisting or suspending the Common Stock from the Trading Market.

(e) Valid Issuance. The Notes are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, and, except as set forth on Schedule 3.1(e), free and clear of all Liens (other than restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of stockholders. Upon issuance or conversion in accordance with the Notes, the Note Shares, when issued, will be validly issued, fully paid and nonassessable, free and clear of all Liens (other than restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of stockholders, with the holders being entitled to all rights accorded to a holder of Common Stock.

(f) Capitalization. As of December 31, 2019, the aggregate number of shares and type of all authorized, issued and outstanding classes of capital stock, options and other securities of the Company and each of its Subsidiaries (whether or not presently convertible into or exercisable or exchangeable for shares of capital stock of the Company or such Subsidiary, as applicable) is set forth in Schedule 3.1(f) hereto. All outstanding shares of capital stock of the Company and of each Subsidiary are duly authorized, validly issued, fully paid and nonassessable and have been issued in compliance in all material respects with all applicable securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase any capital stock of the Company or such Subsidiary. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents that have not been effectively waived as of the date hereof and as of each Applicable Closing Date. The issuance and sale of the Securities (including the Note Shares) and the transactions contemplated by the Transaction Documents will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investors) and will not result in a right of any

holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. As of the First Closing, the Company shall have reserved from its duly authorized capital stock not less than the maximum number of Note Shares issuable upon conversion of the First Closing Notes based on the initial Conversion Price (as defined in the Notes) of $6.00. As of each Closing occurring after the First Closing, the Company shall have reserved from its duly authorized capital stock not less than the maximum number of Note Shares issuable upon conversion of all Notes then outstanding (including the Notes issued at such Closing) based on the then effective Conversion Price (as defined in the Notes).

(g) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof (the "***SEC Reports***"). As of their respective dates (or, if amended or superseded by a filing prior to the First Closing Date, then on the date of such filing), the SEC Reports filed by the Company complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed (or, if amended or superseded by a filing prior to the First Closing Date, then on the date of such filing) by the Company, 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. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or, if amended or superseded by a filing prior to the First Closing Date, then on the date of such filing). Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP or may be condensed or summary statements, and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments. All Material Contracts to which the Company or any Subsidiary is a party or to which the property or assets of the Company or any Subsidiary are subject are included as part of or identified in the SEC Reports.

(h) Absence of Litigation. Except as disclosed in the SEC Reports, there is no action, suit, claim, or Proceeding pending, or, to the Company's knowledge, threatened, before or by any court, public board, government agency, self-regulatory organization or body that adversely affect or challenge the legality, validity or enforceability of any of the Transaction Documents or that would, individually or in the aggregate, have or be reasonably likely to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or executive officer thereof, is or has within the past ten years been the subject of any action, suit, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. To the knowledge of the Company, within the past ten years there has not been, and there is not pending or contemplated, any investigation by the SEC involving the Company or any current director or executive officer of the Company. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(i) Compliance. Except as would not, individually or in the aggregate, have or be reasonably likely to result in a Material Adverse Effect, (i) neither the Company nor any Subsidiary is in default under or in violation of (and no event has occurred that has not been waived that, with notice or

lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received written notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement (including any Material Contract) or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) neither the Company nor any Subsidiary is in violation of any order of any court, arbitrator or governmental body to which the Company or any Subsidiary is subject or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) neither the Company nor any Subsidiary is in violation of any law, statute, rule or regulation of any governmental authority to which the Company or any Subsidiary is subject or by which any property or asset of the Company or any Subsidiary is bound or affected.

(j) Title to Assets. Neither the Company nor any Subsidiary owns real property. The Company and each Subsidiary has good and marketable title in all personal property owned by them that is material to the business of the Company and each Subsidiary, in each case free and clear of all Liens, except for Liens that do not, individually or in the aggregate, have or are reasonably likely to result in a Material Adverse Effect or which do not materially affect the value and do not materially interfere with the use of such property by the Company. Any real property and facilities held under lease by the Company or any Subsidiary is held by it under valid, subsisting and enforceable leases of which the Company and each Subsidiary is in compliance in all material respects.

(k) Intellectual Property. 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, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and rights necessary to conduct their respective businesses as now conducted. Except for matters described in the SEC Documents, or matters which would not be reasonably likely to have a Material Adverse Effect, the Company and its Subsidiaries do not have any knowledge of any violation or infringement by the Company or its Subsidiaries of trademark, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, trade secret or other similar rights of others, and, to the knowledge of the Company, there is no claim, action or Proceeding being made or brought against, or to the Company's knowledge, being threatened against, the Company or its Subsidiaries regarding trademark, trade name, patents, patent rights, invention, copyright, license, service names, service marks, service mark registrations, trade secret or other violation or infringement; and the Company and its Subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Insurance. The Company and each Subsidiary is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses and locations in which the Company and each Subsidiary is engaged. Neither the Company nor any 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.

(m) Internal Accounting Controls. The Company and each Subsidiary maintain a system of internal accounting controls sufficient to provide reasonable assurance 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 generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for

assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(n) Sarbanes-Oxley Act; Disclosure Controls. The Company is in compliance in all material respects with applicable requirements of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***") and applicable rules and regulations promulgated by the SEC thereunder, except where such noncompliance would not have, individually or in the aggregate, a Material Adverse Effect. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act).

(o) Indebtedness. Except as disclosed in the SEC Reports, neither the Company nor any Subsidiary (i) has any outstanding Indebtedness, or (ii) is in violation of any term of and is not 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.

(p) Filings, Consents and Approvals. Except as set forth on Schedule 3(p), neither the Company nor any of its Subsidiaries is required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company or any of its Subsidiaries of the Transaction Documents (including the issuance of the Securities), other than (i) filings required by applicable state securities laws, (ii) the filing of any requisite notices and/or application(s) to any Trading Market for the issuance and sale of the Note Shares and the listing of the Note Shares for trading or quotation, as the case may be, thereon in the time and manner required thereby, and (iii) those that have been made or obtained prior to the date of this Agreement (collectively, the "***Required Approvals***").

(q) Material Changes; Undisclosed Events, Liabilities or Developments. Since December 31, 2019, there has been no event, occurrence or development that has had or that would reasonably be expected to result in a Material Adverse Effect. Since December 31, 2019, except as specifically disclosed in an SEC Report filed subsequent to such date and prior to the date hereof: (i) the Company and its Subsidiaries have not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the SEC, (ii) the Company has not altered its method of accounting, (iii) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (iv) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans, and (v) there has not been any material change or amendment to, or any waiver of any material right by the Company under, any Material Contract under which the Company or any of its Subsidiaries is bound or subject. The Company does not have pending before the SEC any request for confidential treatment of information. Except for the transactions contemplated by the Transaction Documents, including the issuance of the Securities, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company on a Current Report on Form 8-K at the time this representation is made or deemed made that has not been publicly disclosed at least one Trading Day prior to the date that this representation is made.

(r) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company or any of its Subsidiaries, which would reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such

Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement with the Company, or any restrictive covenant in favor of any third party. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(s) Consents and Permits. Except as disclosed in the SEC Reports, each of the Company and its Subsidiaries has made all filings, applications and submissions required by, possesses and is operating in compliance with, all approvals, licenses, certificates, certifications, clearances, consents, grants, exemptions, marks, notifications, orders, permits and other authorizations issued by, the appropriate federal, state or foreign regulatory authorities necessary for the ownership or lease of its respective properties or to conduct its businesses as described in the SEC Reports (collectively, "***Permits***"), except for such Permits for which the failure to possess, obtain or make would not have a Material Adverse Effect; the Company and its Subsidiaries are in compliance with the terms and conditions of all such Permits, except where the failure to be in compliance would not have a Material Adverse Effect; all of the Permits are valid and in full force and effect, except where any invalidity, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; and neither the Company nor any of its Subsidiaries has received any written notice relating to the limitation, revocation, cancellation, suspension, modification or non-renewal of any such Permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

(t) Regulatory Filings. Except as disclosed in the SEC Reports, neither the Company nor any of its Subsidiaries has failed to file with the applicable regulatory authorities any required filing, declaration, listing, registration, report or submission, except for such failures that, individually or in the aggregate, would not have a Material Adverse Effect.

(u) Environmental Laws. Except as set forth in the SEC Reports, the Company and its Subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "***Environmental Laws***"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the SEC Reports; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, have a Material Adverse Effect; and, to the knowledge of the Company, there is no pending investigation or investigation threatened that could reasonably be expected to lead to such a claim.

(v) Transactions with Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and

directors), which would be required to be disclosed pursuant to Item 404 of Regulation S-K under the Securities Act.

(w) Certain Fees. Except as set forth on Schedule 3.1(w), no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Investors shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.1(w) that may be due in connection with the transactions contemplated by the Transaction Documents. The Company shall pay, and hold each Investor harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such fees or claims.

(x) Private Placement. Assuming the accuracy of the Investors' representations and warranties set forth in Section 3.2 and their compliance with their agreements contained in this Agreement, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Investors pursuant to the terms of this Agreement. The issuance and sale of the Notes hereunder does not, and, subject to the receipt of the Requisite Stockholder Approval, in the case of the Note Shares, when issued, will not, contravene the rules and regulations of the Trading Market, which, for the avoidance of doubt, as of the date hereof, is the Nasdaq Capital Market.

(y) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Notes, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(z) Registration Rights. Other than (i) as disclosed in the SEC Reports and (ii) as set forth in this Agreement, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company.

(aa) Disclosure. The Company understands and confirms that the Investors will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Investors regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Schedules to this Agreement, 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 light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Investor makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(bb) No Integrated Offering. Assuming the accuracy of the Investors' representations and warranties set forth in in Section 3.2 and their compliance with their agreements contained in this Agreement, neither the Company, nor any of its Affiliates, nor any Person acting on its or 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 be integrated with prior offerings by the Company for purposes of the Securities Act which would require the registration of any such securities under the Securities Act.

(cc) Solvency. Based on the consolidated financial condition of the Company as of the First Closing Date and any Applicable Closing Date occurring after the First Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Notes hereunder on such Applicable Closing Date: (i) the fair saleable value of the Company's assets as a going concern exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other

liabilities (including known contingent liabilities) as they mature and (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the First Closing Date or within one year from any Applicable Closing Date occurring after the First Closing Date.

(dd) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has 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 and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(ee) No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered, and may offer, the Securities for sale only to the Investors and other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(ff) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the Company's knowledge, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of Foreign Corrupt Practices Act of 1977, as amended.

(gg) Accountants. Cherry Bekaert LLP (the "***Accountant***"), whose report on the consolidated financial statements of the Company is filed with the SEC as part of the Company's most recent Annual Report on Form 10-K filed with the SEC, is and, during the periods covered by their report, was an independent registered public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the Company's knowledge, the Accountant is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act with respect to the Company.

(hh) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("***OFAC***"); and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any joint venture partner or other person or entity, towards any sales or operations in Cuba, Iran, Syria, Sudan or any other country sanctioned by OFAC or for the purpose of financing the activities of any person currently subject to any U.S. sanctions.

(ii) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Investors' request.

(jj) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates 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 or more of the outstanding shares of any class of voting securities or twenty-five percent 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) Money Laundering. The operations of the Company and its Subsidiaries are and, to the Company's knowledge, have been conducted at all times in material compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "***Money Laundering Laws***"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the Company's knowledge, threatened.

(ll) Acknowledgment Regarding Investor's Purchase of Securities. The Company acknowledges and agrees that each Investor 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 Investor is (i) an officer or director of the Company, (ii) an "affiliate" (as defined in Rule 144) of the Company 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 Exchange Act). The Company further acknowledges that no Investor is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by an Investor 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 Investor's purchase of the Securities. The Company further represents to each Investor 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.

(mm) Acknowledgement Regarding Investors' Trading Activity. It is understood and acknowledged by the Company that, except as otherwise specifically set forth in any written agreement between the Company and the applicable Investor, (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Investors have been asked by the Company to agree, nor has any Investor agreed with the Company, to refrain 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) each Investor shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Investor may rely on the Company's obligation to timely deliver shares of Common Stock upon conversion, exercise or exchange, as applicable, of the Notes 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, except as otherwise specifically set forth in any written agreement between the Company and the applicable Investor, following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the Press Release (as defined

below) one or more Investors 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 Note 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, except as otherwise specifically set forth in any written agreement between the Company and the applicable Investor, 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.

(nn) Manipulation of Price. The Company has not, 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 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 in connection with the transactions contemplated by the Transaction Documents, or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company.

(oo) Ranking of Notes. Except as set forth on Schedule 3.1(oo), no Indebtedness of the Company 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.

(pp) Security Interest in Collateral. The provisions of this Agreement and the other Transaction Documents create legal, valid and enforceable Liens on, and security interests in, all of the Company's and each of the Subsidiary Guarantor's right, title and interest in and to all the Collateral in favor of the Collateral Agent, for the benefit of the Collateral Agent and the Investors, and upon (x) the making of the filings, recordings and other similar actions specified in the Security Documents, and (y) the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Security Document), such Liens shall constitute perfected and continuing Liens on, and security interests in, the Collateral, securing the Secured Obligations (as defined in the Security Agreement), enforceable against the Company, the Subsidiary Guarantors and all third parties, and, except as set forth on Schedule 3.1(pp), having priority over all other Liens on the Collateral.

(qq) Existing Indebtedness. Prior to the First Closing Date and unless the Existing Indebtedness can be repaid within one (1) Business Day following the First Closing Date, the Company shall deliver to each Investor true and correct copies of the Fourth Omnibus Amendment, which Fourth Omnibus Amendment shall be effective to (i) cause all of the Notes issuable pursuant to this Agreement to be designated and treated as "Senior Debt" pursuant to the terms of the Existing Indebtedness and the Security Agreement (as defined in the Existing Indebtedness), and (ii) cause all of the holders of the Notes issuable pursuant to this Agreement to be designated and treated as a "Senior Lender" pursuant to the terms of the Existing Indebtedness (as defined in the Existing Indebtedness).

3.2 Representations and Warranties of the Investors. Each Investor hereby, as to itself only and for no other Investor, represents and warrants to the Company as follows:

(a) Organization; Authority. Such Investor is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite

corporate, limited liability company, partnership or other power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The purchase by such Investor of the Notes hereunder and the consummation of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership or other action on the part of such Investor. This Agreement and the Transaction Documents to which such Investor is a party or has or will execute have been duly executed and delivered by such Investor and constitute the valid and binding obligations of such Investor, enforceable against it in accordance with their terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions contained herein may be limited by applicable law.

(b) No Public Sale or Distribution. Such Investor is acquiring the Notes for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities laws, and such Investor does not have a present arrangement to effect any distribution of the Securities to or through any person or entity; provided, however, by making the representations herein, such Investor does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the Securities Act.

(c) Investor Status. Such Investor is an "accredited investor" as defined in Rule 501(a) under the Securities Act. Such Investor is not a registered broker dealer registered under Section 15(a) of the Exchange Act, or a member of the Financial Industry Regulatory Authority, Inc. or an entity engaged in the business of being a broker dealer.

(d) Experience of Such Investor; Risk of Loss. Such Investor has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Investor understands that it must bear the economic risk of its investment in the Securities, and is able to bear such risk and is able to afford a complete loss of such investment.

(e) Access to Information. Such Investor acknowledges that it has been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Investor. Such Investor has been afforded the opportunity to ask questions of the Company and receive answers from representatives of the Company concerning the Company and the terms and conditions of the offering of the Notes and the merits and risks of investing in the Notes. Neither such inquiries nor any other due diligence investigations conducted by such Investor or its advisors, if any, or its representatives shall modify, amend or affect such Investor's right to rely on the Company's representations and warranties contained herein or in any other Transaction Document.

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

(g) Reliance on Exemptions. Such Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Company is relying upon the truth and accuracy of, and such

Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Investor set forth herein and in the other Transaction Documents in order to determine the availability of such exemptions and the eligibility of such Investor to acquire the Securities.

(h) Residency. Such Investor is a resident of that jurisdiction specified below its address on the Schedule of Investors.

(i) Transfer or Resale. Such Investor understands that: (i) the Securities have not been and are not being registered under the Securities Act, any U.S. state securities laws or the laws of any foreign country or other jurisdiction, and may not be offered for sale, sold, assigned or transferred other than pursuant to Section 4.1; and (ii) except as set forth in Sections 7.1 through 7.5, neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(j) Legends. Such Investor understands that each of the certificates representing the Securities, except as set forth below, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend as set forth in Section 4.1(b), which shall only be removed as set forth in Section 4.1(d).

ARTICLE IV
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Investors covenant that the Securities will be disposed of only pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with applicable state securities laws. In connection with any transfer of Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, (iii) pursuant to Rule 144 (provided that the Investor provides the Company with reasonable assurances (in the form of a seller representation letter) that the Securities may be sold pursuant to such rule) or Rule 144A (as promulgated under the Securities Act), or (iv) in connection with a bona fide pledge as contemplated in Section 4.1(c), the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. Notwithstanding the foregoing, the Company hereby consents to and agrees to register on the books of the Company and with its Transfer Agent, without any such legal opinion, except to the extent that the transfer agent requests such legal opinion, any transfer of Securities by an Investor to an Affiliate of such Investor; provided further that such transfer does not involve a "sale" within the meaning of Section 2(a)(3) of the Securities Act; and provided, further that such Affiliate does not request any removal of any existing legends on any certificate evidencing such Securities.

(b) The Investors agree to the imprinting, until no longer required by this Section 4.1(b), of the following legend on any certificate evidencing any of the Securities:

> THESE SECURITIES [*for Notes, insert*: AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF] HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), OR UNDER ANY

APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

(c) The Company acknowledges and agrees that an Investor may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and, if required under the terms of such arrangement, such Investor may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith; provided, that an opinion of legal counsel to the Company may be required by the Transfer Agent in connection with any such transfer. Further, no notice shall be required of such pledge. At the appropriate Investor's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of such Securities, including, (i) the opinion of legal counsel to the Company, if required by the Transfer Agent, as described above and (ii) if the Securities are subject to registration pursuant to this Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders.

(d) Certificates evidencing the Securities shall not be required to contain such legend or any other legend (i) following any sale of such Securities pursuant to an effective registration statement under the Securities Act, (ii) pursuant to Rule 144 if the holder provides the Company with a legal opinion (and the documents upon which the legal opinion is based) reasonably acceptable to the Company to the effect that the Securities can be sold under Rule 144 or (iii) if the holder provides the Company with a legal opinion (and the documents upon which the legal opinion is based) reasonably acceptable to the Company to the effect that the legend is not required under applicable requirements of the Securities Act (including controlling judicial interpretations and pronouncements issued by the staff of the SEC. The Company, at its expense, shall cause Company Counsel to issue any legal opinion to the Transfer Agent in connection with any sale or transfer pursuant to Rule 144 in compliance with this Section 4.1(d). The Company will no later than three (3) Trading Days following the delivery by an Investor to the Company or the Transfer Agent (if delivery is made to the Transfer Agent a copy shall be contemporaneously delivered to the Company) of (x) a legended certificate representing the applicable Securities and any necessary instruments of transfer and (y) evidence reasonably satisfactory to the Company and its counsel of the occurrence of any of (i) through (iii) above (including any applicable investor and broker representation letters and the delivery of any legal opinion referred to therein, as applicable), deliver or cause to be delivered to such Investor (or a transferee of such Investor, as applicable) a certificate or book-entry (including shares transferred via DWAC or similar methodology by DTC) representing such Securities that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that expand the restrictions on transfer set forth in this Section 4.1(d).

4.2 Use of Proceeds. The Company intends to use the net proceeds from the sale of the Notes to repay at least the Minimum Repayment Amount of the Existing Indebtedness, fund product commercialization, to fund internal research and development, for general corporate purposes and to pay

the fees and expenses incurred in connection with the transactions contemplated by this Agreement. The Company shall not use such proceeds (x) in violation of FCPA or OFAC regulations, (y) to make any dividend or distribution in respect of, or to repurchase or redeem, any shares of its capital stock or (z) in connection with the settlement of any litigation.

4.3 Securities Laws Disclosure; Publicity. 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 "***Press Release***"), the contents of which shall be subject to prior review and reasonable approval of the Investors, 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 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 Exchange Act and attaching all the material Transaction Documents (including, without limitation, this Agreement and the form of Notes. Without the prior written consent of an Investor, which consent shall not be unreasonably withheld, conditioned or delayed, the Company shall not publicly disclose the name of such Investor, or include the name of such Investor in any filing with the SEC or any regulatory agency or Trading Market; provided, however, that without such Investor's consent, the Company may publicly disclose the name of such Investor, or include the name of such Investor in any filing with the SEC or any regulatory agency or Trading Market (a) as required by federal securities law in connection with any registration statement contemplated by this Agreement or (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Investors with prior notice of such disclosure permitted under this clause (b).

4.4 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Investor is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Investor could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents.

4.5 Non-Public Information. Except with respect to (i) the material terms and conditions of the transactions contemplated by the Transaction Documents and (ii) information provided to the Observer or any member of the Board appointed by PTC, the Company covenants and agrees that neither it, nor any other Person acting on its behalf, will provide any Investor or its agents or counsel with any information that the Company believes constitutes material non-public information from and after the filing of the Press Release, unless prior thereto such Investor shall have entered into a written agreement with the Company regarding the confidentiality and use of such information. The Company understands and confirms that each Investor shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.6 Blue Sky. The Company, on or before each Applicable Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Notes for sale to the Investors 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). The Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or "blue sky" laws of the states of the United States following the Applicable Closing Date and shall provide copies to any Investor who so requests.

4.7 Furnishing of Information. In order to enable the Investors to sell the Securities under Rule 144 of the Securities Act, for a period of two years from each Applicable Closing Date, the Company shall use its commercially reasonable efforts to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after

the date hereof pursuant to the Exchange Act. During such two year period, if the Company is not required to file reports pursuant to such laws, it will prepare and furnish to the Investors and make publicly available in accordance with Rule 144(c) such information as is required for the Investors to sell the Note Shares under Rule 144.

4.8 Board Observer. For so long as Petrichor or any of its Affiliates holds any Securities, the Company shall allow one (1) non-voting representative designated by Petrichor (such representative, the "***Observer***") to attend, in the capacity of an observer and not a member, all meetings the Board. The Company shall give the Observer prior written notice of all meetings of the Board on the terms and conditions set forth in the Board Observer Agreement.

4.9 Access Fees.

(a) On the First Closing Date, the Company shall pay to Petrichor, for its own account, an access fee (the " ***First Closing Access Fee***") in an aggregate amount equal to $300,000, in U.S. dollars and in immediately available funds, which First Closing Access Fee shall be payable to Petrichor by wire transfer to the account designated in writing to the Company by Petrichor for such purpose.

(b) On the first anniversary of the First Closing Date occurring prior to the Subsequent Closing Deadline, the Company shall pay to Petrichor, for its own account, an access fee (each a "***Subsequent Access Fee***") in an aggregate amount, in U.S. dollars and in immediately available funds, equal to the product of (x) two (2.00%) percent, *times* (y) the difference of (i) the Maximum Subsequent Closing Amount, minus (ii) the aggregate principal amount of all Second Closing Notes and Third Closing Notes actually issued and sold by the Company to the Investors pursuant to Sections 2.1(b) and 2.1(c) by wire transfer to the account designated in writing to the Company by Petrichor for such purpose; provided, however, that in no event shall the Subsequent Access Fee exceed $300,000.

4.10 Drawing of Second Closing Notes and Third Closing Notes. Notwithstanding anything to the contrary set forth herein or in any of the Notes, from the date hereof until the earlier of (i) the date on which the aggregate principal amount of all Second Closing Notes and Third Closing Notes actually issued and sold by the Company to the Investors pursuant to Sections 2.1(b) and 2.1(c) shall equal the Maximum Subsequent Closing Amount, and (ii) the Trading Day after the Subsequent Closing Deadline, neither the Company nor any of its Subsidiaries shall incur Indebtedness other than Indebtedness in respect of the Notes issued hereunder.

4.11 Nasdaq Consent; Requisite Stockholder Approval. The Company shall take all actions necessary to obtain, and shall use its best efforts to obtain, the Requisite Stockholder Approval on or prior to the Requisite Stockholder Approval Deadline. Each Investor agrees with the Company (but not with each other) that it shall vote or cause to be voted any shares of Common Stock over which it has voting power as of the record date of the Company's 2020 annual meeting of stockholders in favor of the Requisite Stockholder Approval.

4.12 Waiver of Preemptive Rights. For the avoidance of doubt, PTC hereby waives any and all preemptive, participation or other rights PTC may have under Section 4.13 of that certain Securities Purchase Agreement, dated as of May 9, 2019, between PTC and the Company, with respect to any Second Closing Notes or Third Closing Notes from time to time issued and sold pursuant to this Agreement.

ARTICLE V
CONDITIONS TO CLOSINGS

5.1 Conditions Precedent to the First Closing.

(a) Conditions Precedent to the Obligations of the First Closing Investors (b) . The obligation of each First Closing Investor to purchase the First Closing Notes at the First Closing is subject to the satisfaction, unless waived in writing by such First Closing Investor, at or before the First Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the First Closing Date with the same effect as though made on and as of the First Closing Date (except for those representations and warranties that address matters only as of a specific date).

(ii) Performance. The Company and each Subsidiary Guarantor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the First Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the First Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Stock; Listing. Trading in the Common Stock shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the First 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 any Trading 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 which, in each case, makes it impracticable to purchase the First Closing Notes at the First Closing. The Company shall have filed with Nasdaq a "Notification Form: Listing of Additional Shares" and supporting documentation, if required, related to the all of the Securities and Nasdaq shall have not raised any objection with respect thereto that has not been withdrawn.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the First Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) Transaction Documents. The Company and each Subsidiary Guarantor shall have executed each of the Transaction Documents to which it is a party and delivered the same to the First Closing Investors.

(vii) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(viii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(ix) Legal Opinion. Company Counsel shall have delivered to the First Closing Investors a legal opinion of Company Counsel, addressed to the First Closing Investors, in form and substance mutually agreed upon by the parties hereto.

(x) Officer's Certificate. The Company shall have delivered to the First Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.1(a)(i), 5.1(a)(ii), 5.1(a)(viii) and 5.1(a)(xvi).

(xi) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the First Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the First Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the First Closing Date, (iii) the bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the First Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the First Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xii) Collateral Items.

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

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

Subsidiary Guarantors, in form and substance satisfactory to the First Closing Investors (the " ***Perfection Certificate***").

(C) Each document (including any UCC financing statement) required by the Security Documents or reasonably requested by the First Closing Investors to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Investors, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall be in proper form for filing, registration or recordation.

(xiii) Interim Compliance. From the date hereof through the First Closing Date, neither the Company nor any of its Subsidiaries shall have engaged in any transaction or action or permitted to exist any condition or circumstance (including, without limitation, the incurrence or suffering to exist of any Indebtedness or Liens) that would have constituted a breach or violation of any of the covenants set forth in Section 13 of the First Closing Notes (determined as though such covenants been effective commencing on the date hereof through the Frist Closing Date), and the Company shall have delivered to the First Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the condition set forth in this clause (xiii).

(xiv) Minimum Repayment Amount. The Company shall have delivered to the First Closing Investors a certificate executed by a duly authorized officer of the Company certifying that (i) immediately following the consummation of the First Closing, the Company shall apply a portion of the net proceeds from the sale of the First Closing Notes to repay at least the Minimum Repayment Amount of the Existing Indebtedness on the First Closing Date and (ii) after giving effect to the repayment of Existing Indebtedness on the First Closing Date, the Company will be in compliance with the covenant set forth in Section 13.1 of the First Closing Notes.

(xv) Ability to Repay the Minimum Repayment Amount. The Company shall have provided evidence to the First Closing Investors of the Company's ability to apply a portion of the net proceeds from the sale of the First Closing Notes to repay at least the Minimum Repayment Amount of the Existing Indebtedness on the First Closing Date and the First Closing Investors shall be satisfied, in their sole discretion, with such evidence.

(xvi) Fourth Omnibus Amendment. The Company shall have delivered to each Investor true and correct copies of the Fourth Omnibus Amendment, and such Fourth Omnibus Amendment shall be in form and substance acceptable to each such Investor. Since the date of this Agreement, the Company shall have not effected any amendment or modification to the Existing Indebtedness other than the Fourth Omnibus Amendment. As of the date of the First Closing, (i) all of the Notes issuable pursuant to this Agreement are designated and treated as "Senior Debt" pursuant to the terms of the Existing Indebtedness and the Security Agreement (as defined in the Existing Indebtedness), and (ii) all of the holders of the Notes issuable pursuant to this Agreement are designated and treated as a "Senior Lender" pursuant to the terms of the Existing Indebtedness (as defined in the Existing Indebtedness).

(xvii) First Closing Access Fee. The Company shall have paid and delivered the First Closing Access Fee to Petrichor in accordance with Section 4.9(a).

(xviii) Other Agreements. Solely with respect to any Investor other than PTC, all agreements and instruments entered into between the Company or any of its affiliates, on one hand, and PTC or any of its affiliates, on the other hand, following the date hereof shall be in form and substance reasonably acceptable to such Investor.

(xix) General. The Company and the Subsidiary Guarantors shall have delivered to such First Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the First Closing Notes at the First Closing is subject to the satisfaction or waiver by the Company, at or before the First Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Investors contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the First Closing Date with the same effect as though made on and as of the First Closing Date (except for those representations and warranties that address matters only as of a specific date).

(ii) Performance. The Investors shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the First Closing.

(iii) Deliverables. The Investors shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company. The Investors shall have delivered to the Company those items required by Section 2.2(b).

5.2 Conditions Precedent to the Second Closing.

(a) Conditions Precedent to the Obligations of the Second Closing Investors. The obligation of each Exercising Second Closing Investor to purchase such Exercising Second Closing Investor's Second Closing Notes at the Second Closing is subject to the satisfaction, unless waived in writing by such Exercising Second Closing Investor, at or before the Second Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Second Closing Date with the same effect as though made on and as of the Second Closing Date (except for those representations and warranties that address matters only as of a specific date).

(ii) Performance. The Company and each Subsidiary Guarantor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Second Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Second Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Stock; Listing. Trading in the Common Stock shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the Second 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 any Trading 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 which, in each case, makes it impracticable to purchase the Second Closing Notes at the Second Closing.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the Second Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(vii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(viii) Legal Opinion. Company Counsel shall have delivered to the Exercising Second Closing Investors a legal opinion of Company Counsel, addressed to the Exercising Second Closing Investors, in form and substance reasonable satisfactory to the Exercising Second Closing Investors.

(ix) Officer's Certificate. The Company shall have delivered to the Exercising Second Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.2(a)(i), 5.2(a)(ii), 5.2(a)(vii) and 5.2(a)(xii).

(x) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the Exercising Second Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the Second Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Second Closing Date, (iii) the bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Second Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the Second Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xi) Second Closing Election Notice. Such Exercising Second Closing Investor shall have delivered a Second Closing Election Notice to the Company in accordance with Section 2.1(b) pursuant to which such Exercising Second Closing Investor shall have elected to purchase such Exercising Second Closing Investor's Second Closing Notes on the Second Closing Date.

(xii) Fourth Omnibus Amendment. The Company shall have not effected any amendment or modification to the Existing Indebtedness following the Fourth Omnibus Amendment. As of the date of the Second Closing, (i) all of the Notes issuable pursuant to this Agreement are designated and treated as "Senior Debt" pursuant to the terms of the Existing Indebtedness and the Security Agreement (as defined in the Existing Indebtedness), and (ii) all of the holders of the Notes issuable pursuant to this Agreement are designated and treated as a "Senior Lender" pursuant to the terms of the Existing Indebtedness (as defined in the Existing Indebtedness).

(xiii) General. The Company and the Subsidiary Guarantors shall have delivered to such Exercising Second Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Exercising Second Closing Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company(c) . The obligation of the Company to sell the Second Closing Notes to an Exercising Second Closing Investor at the Second Closing is subject to the satisfaction or waiver by the Company, at or before the Second Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of such Exercising Second Closing Investor contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Second Closing Date with the same effect as though made on and as of the Second Closing Date (except for those representations and warranties that address matters only as of a specific date).

(ii) Performance. Such Exercising Second Closing Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the Second Closing.

(iii) Deliverables. Such Exercising Second Closing Investor shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company. Such Exercising Second Closing Investor shall have delivered to the Company those items required by Section 2.3(b).

5.3 Conditions Precedent to the Third Closing.

(a) Conditions Precedent to the Obligations of the Third Closing Investors. The obligation of each Exercising Third Closing Investor to purchase such Exercising Third Closing Investor's Third Closing Notes at the Third Closing is subject to the satisfaction, unless waived in writing by such Exercising Third Closing Investor, at or before the Third Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Third Closing Date with the same effect as though made on and as of the Third Closing Date (except for those representations and warranties that address matters only as of a specific date).

(ii) Performance. The Company and each Subsidiary shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Third Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Third Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Stock; Listing. Trading in the Common Stock shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the Third 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 any Trading 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 which, in each case, makes it impracticable to purchase the Third Closing Notes at the Third Closing.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the Third Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(vii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(viii) Legal Opinion. Company Counsel shall have delivered to the Exercising Third Closing Investors a legal opinion of Company Counsel, addressed to the Exercising Third Closing Investors, in form and substance reasonable satisfactory to the Exercising Third Closing Investors.

(ix) Officer's Certificate. The Company shall have delivered to the Exercising Third Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.3(a)(i), 5.3(a)(ii), 5.3(a)(vii) and 5.3(a)(xii).

(x) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the Exercising Third Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the Third Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Third Closing Date, (iii) the

bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Third Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the Third Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xi) Third Closing Election Notice. Such Exercising Third Closing Investor shall have delivered a Third Closing Election Notice to the Company in accordance with Section 2.1(c) pursuant to which such Exercising Third Closing Investor shall have elected to purchase such Exercising Third Closing Investor's Third Closing Notes on the Third Closing Date.

(xii) Fourth Omnibus Amendment. The Company shall have not effected any amendment or modification to the Existing Indebtedness following the Fourth Omnibus Amendment. As of the date of the Third Closing, (i) all of the Notes issuable pursuant to this Agreement are designated and treated as "Senior Debt" pursuant to the terms of the Existing Indebtedness and the Security Agreement (as defined in the Existing Indebtedness), and (ii) all of the holders of the Notes issuable pursuant to this Agreement are designated and treated as a "Senior Lender" pursuant to the terms of the Existing Indebtedness (as defined in the Existing Indebtedness).

(xiii) General. The Company and the Subsidiary Guarantors shall have delivered to such Exercising Third Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Exercising Third Closing Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the Third Closing Notes to an Exercising Third Closing Investor at the Third Closing is subject to the satisfaction or waiver by the Company, at or before the Third Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of such Exercising Third Closing Investor contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Third Closing Date with the same effect as though made on and as of the Third Closing Date (except for those representations and warranties that address matters only as of a specific date).

(ii) Performance. Such Exercising Third Closing Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the Third Closing.

(iii) Deliverables. Such Exercising Third Closing Investor shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company. Such Exercising Third Closing Investor shall have delivered to the Company those items required by Section 2.3(c).

ARTICLE VI
INDEMNIFICATION

6.1 Indemnification.

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Collateral Agent and each Investor and each of their respective directors, officers, shareholders, members, partners, employees, agents, and representatives and each Person, if any, who controls such Investor within the meaning of the Securities Act or the Exchange Act and each of the directors, officers, shareholders, members, partners, employees, agents, advisors, representatives of such controlling Persons (each, an "***Indemnified Person***"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several (collectively, "***Claims***"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened in writing ("***Indemnified Damages***"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any breach of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents, (ii) any untrue statement or alleged untrue statement of a material fact in any Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered, or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) any untrue statement or alleged untrue statement of a material fact contained in any final prospectus relating to any Registration Statement (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iv) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to any Registration Statement (the matters in the foregoing clauses (i) through (iv) being, collectively, "***Violations***"), or (v) any Proceeding instituted against such Indemnified Person in any capacity by any stockholder of the Company who is not an Affiliate of such Indemnified Person, with respect to any of the transactions contemplated by the Transaction Documents. Subject to Section 6.1(c), the Company shall reimburse the Indemnified Persons for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6.1(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person expressly for use in connection with the preparation of, or inclusion in, any Registration Statement or any such amendment thereof or supplement thereto and (ii) shall not be available to a particular Investor to the extent such Claim is based on a failure of such Investor to deliver or to cause to be delivered the prospectus made available by the Company (to the extent applicable), including, without limitation, a corrected prospectus, if such prospectus or corrected prospectus was made available by the Company; and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors.

(b) In connection with any Registration Statement, each Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6.1(a), the Company, each of its directors, officers, shareholders, members, partners, employees, agents, and representatives and each Person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (each, an "***Indemnified Party***"), against any Claim or

Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with the preparation of, or inclusion in, (x) a Registration Statement or any such amendment thereof or supplement thereto or (y) any final prospectus relating to any Registration Statement (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC); and, subject to Section 6.1(c) and the below provisos in this Section 6.1(b), such Investor will reimburse an Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such Claim; provided, however, the indemnity agreement contained in this Section 6.1(b) and the agreement with respect to contribution contained in Section 6.2 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed, provided, further, that such Investor shall be liable under this Section 6.1(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of any of the Registrable Securities by any of the Investors.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party (as the case may be) under this Section 6.1 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party (as the case may be) shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6.1, deliver to the applicable indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party (as the case may be); provided, however, an Indemnified Person or Indemnified Party (as the case may be) shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Indemnified Person or Indemnified Party (as the case may be) in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Indemnified Person or Indemnified Party (as the case may be) and the indemnifying party, and such Indemnified Person or such Indemnified Party (as the case may be) shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Person or such Indemnified Party and the indemnifying party (in which case, if such Indemnified Person or such Indemnified Party (as the case may be) notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided, further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnified Person or Indemnified Party (as the case may be). The Indemnified Party or Indemnified Person (as the case may be) shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person (as the case may be) reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement

of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person (as the case may be), 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 Indemnified Party or Indemnified Person (as the case may be) of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person (as the case may be) 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 indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party (as the case may be) under this Section 6.1, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities to which the indemnifying party may be subject pursuant to the law.

6.2 Contribution. To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6.1 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6.1; (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to a Registration Statement. Notwithstanding the provisions of this Section 6.2, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6.1(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

ARTICLE VII
REGISTRATION RIGHTS; PARTICIPATION RIGHTS

7.1 Demand Registration Statement.

(a) If, at any time after the earlier of the date that (A) is the twenty-four (24)-month anniversary of the Closing Date and (B) (i) with respect to PTC, the Board does not contain an individual designated by PTC, or (ii) with respect to Petrichor, Petrichor is not entitled to appoint an Observer pursuant to the terms of the Board Observer Agreement, such Board Observer Agreement has been terminated by the Company or Petrichor, or Petrichor shall otherwise cease to appoint an Observer

(provided, however, that Petrichor shall not be entitled to demand registration rights under this Section 7.1 until the date which is nine (9) months following the First Closing Date in the event that the Board Observer Agreement is terminated by Petrichor, or Petrichor otherwise ceases to appoint an Observer), there is not an effective Registration Statement covering the resale of all of the Registrable Securities, any Investor may provide a notice (the "***Demand Notice***") to the Company requesting that the Company file a Registration Statement with respect to all or a portion of the Registrable Securities held by such Investor as specified in such notice (a "***Demand Registration Statement***"). Within five (5) Trading Days of the Company's receipt of a Demand Notice from any Investor, the Company shall deliver written notice to each of the other Holders of its receipt of such Demand Notice (a "***Demand Receipt Notice***"), which Demand Receipt Notice shall inform each such Holder of its rights to include its Registrable Securities in the applicable Demand Registration Statement. Any Holder shall have the right to include all or any portion of such Investor's Registrable Securities in such Demand Registration Statement by delivering the Company written notice of such election (an "***Election Notice***") within ten (10) Trading Days following such Holder's receipt of the applicable Demand Receipt Notice. Following the Company's receipt of a Demand Notice from an Investor, the Company shall use its best efforts to expeditiously effect the registration of all of the Registrable Securities of such Investor and each of the other Holders requested to be included therein in the Demand Notice and all Election Notices for an offering to be made on a delayed or continuous basis pursuant to Rule 415 by the Filing Date. The Registration Statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be, at the election of the Investor that shall have delivered the applicable Demand Notice, on Form S-1 or another appropriate form for such purpose) and shall contain a plan of distribution description and selling stockholder information description as mutually agreed by the Company and the Holders that shall have elected to include their Registrable Securities in such registration; provided, however, that no Holder shall be required to be named as an "underwriter" without such Holder's express prior written consent. If the Company is a "well known seasoned issuer" (as defined in Rule 405) as of the date the Registration Statement is filed with the SEC, such Registration Statement shall be an "automatic shelf registration statement" (as defined under Rule 405 under the Securities Act). Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the "***Effectiveness Period***"). The Company shall request effectiveness of a Registration Statement as of 5:00 p.m. Eastern Time on a Trading Day. The Company shall notify the Holders via facsimile or by e-mail of the effectiveness of a Demand Registration Statement by 9:00 a.m. (New York time) on the Trading Day immediately following the effective date of such Registration Statement. The Company shall, by 9:30 a.m. (New York time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the SEC as required by Rule 424. Failure to so notify the Holders within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 7.1(h). Each Investor shall be entitled to deliver Demand Notices hereunder with respect to an unlimited number of Demand Registration Statements until such time as such Investor beneficially owns less than a Registrable Amount.

(b) Notwithstanding the registration obligations set forth in Section 7.1(a), if the staff of the SEC informs the Company that all of the Registrable Securities requested to be included in a Demand Registration Statement cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company shall promptly inform each of the

Holders thereof and use its commercially reasonable efforts to file amendments to the Registration Statement as required by the staff of the SEC, covering the maximum number of Registrable Securities permitted to be registered by the SEC, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 7.2; provided, however, that prior to filing such amendment, the Company shall use diligent efforts to advocate with the staff of the SEC for the registration of all of the Registrable Securities in accordance with SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) The Company shall not include in any Demand Registration Statement any securities which are not Registrable Securities without the prior written consent of each of the Investors.

(d) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 7.1(h), if the staff of the SEC or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the staff of the SEC for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows: (i) first, the Company shall reduce or eliminate any securities to be included other than Registrable Securities; and (ii) second, the Company shall reduce the Registrable Securities by removing such portion of the Registrable Securities and/or agreeing to such restrictions and limitations on the registration and resale of the Registrable Securities, in each case as the SEC may require to assure the Company's compliance with the requirements of Rule 415 (it being acknowledged that, in the event that the SEC requires a general cutback in the number of Registrable Securities included thereunder, such cutback shall be implemented among the Holders on a pro rata basis based upon the number of Registrable Securities each such Holder requested to include therein). In the event of a cutback hereunder, the Company shall give the applicable Holders at least five (5) Trading Days prior written notice along with the calculations as to such Holders' allotment. In the event the Company amends the Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the SEC, as promptly as allowed by the staff of the SEC or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Registration Statement, as amended.

(e) The Company may not cause any other registration of securities for sale for its own account (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 promulgated by the SEC pursuant to the Securities Act is applicable) to become effective within one hundred twenty (120) days following the effective date of any Registration Statement required pursuant to this Section 7.1.

(f) If Form S-3 is not available for the registration of the resale of all Registrable Securities hereunder, the Company shall (i) register the resale of all Registrable Securities on another appropriate form and (ii) undertake to register all Registrable Securities on Form S-3 as soon as such form is available; provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering all Registrable Securities has been declared effective by the SEC.

(g) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or an Affiliate of any Holder as any "underwriter" without the prior written consent of such Holder.

(h) If: (i) a Registration Statement subject to Section 7.1(a) is not filed on or prior to the applicable Filing Date (if the Company files the Registration Statement without affording the Holders

the opportunity to review and comment on the same as required by Section 7.3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the SEC a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the SEC pursuant to the Securities Act, within five (5) Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the SEC in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the SEC that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the SEC by the Effectiveness Date of the Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any twelve (12)-month period (any such failure or breach being referred to as an "***Event***", and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (v) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as "***Event Date***"), then, in addition to any other rights the Holders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of two percent (2.0%) multiplied by the aggregate initial principal amount of all Notes purchased by such Holder hereunder. If the Company fails to pay any partial liquidated damages pursuant to this Section 7.1(h) in full within seven (7) days after the date payable, the Company will pay interest thereon at a rate of eighteen percent (18%) per year (or such lesser maximum amount that is permitted to be paid by applicable law) to the applicable Holders, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily *pro rata* basis for any portion of a month prior to the cure of an Event. Notwithstanding anything to the contrary contained herein, any partial liquidated damages under this Section 7.1(h) shall cease to accrue on the six (6)-month anniversary or such later date as of which all Registrable Securities may be transferred without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144; and provided, further, that partial liquidated damages under this Section 7.1(h) shall only be calculated based on the amount of Registrable Securities not otherwise included in an effective Registration Statement as of any applicable Event Date and any applicable monthly anniversary thereafter. The Company hereby acknowledges and agrees that the provisions of the immediately preceding sentence shall not limit any liquidated damages provisions contained elsewhere in this Agreement or in any other Transaction Document.

7.2 Piggy-Back Registrations. If, at any time there is not an effective Registration Statement covering all of the Registrable Securities and the Company determines to prepare and file with the SEC a registration statement relating to the sale of securities of the Company or proposes or is required to effect an underwritten or registered offering of equity securities, in each case for its own account or the account of others, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to each Holder a written notice of such

determination and, if within fifteen (15) days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement or in such offering, as the case may be, all of the Registrable Securities of such Holder that such Holder requests to be registered or included in such offering; provided, however, that the Company shall not be required to register or include in such offering any Registrable Securities pursuant to this Section 7.2 that are the subject of a then effective Registration Statement that is available for resales or other dispositions by such Holder.

7.3 Registration Procedures. In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and any similar or successor reports), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which any Holder shall reasonably object in good faith; provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and any similar or successor reports). Each Holder agrees to furnish to the Company a completed questionnaire in a form mutually agreed by the Company and the Holder on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4th) Trading Day following the date on which such Holder receives draft materials in accordance with this Section 7.3(a).

(b) (i) Prepare and file with the SEC such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the SEC such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the staff of the SEC with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the staff of the SEC relating to a Registration Statement; provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries, and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such

Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the SEC notifies the Company whether there will be a "review" of such Registration Statement and whenever the SEC comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it 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, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(d) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(e) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the SEC; provided, that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(f) Furnish to the selling Holders such number of copies of a prospectus, including a preliminary Prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 7.3(c).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or "blue sky" laws of such jurisdictions within

the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement; provided, that, the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) In connection with a Demand Registration Statement, enter into customary agreements and use commercially reasonable efforts to take such other actions as are reasonably requested by the Investor that shall have delivered the applicable Demand Notice in respect thereof in order to expedite or facilitate the disposition of such Registrable Securities in such Demand Registration Statement, including preparing for and participating in a road show and all such other customary selling efforts as the underwriters, if any, reasonably request in order to expedite or facilitate such disposition.

(j) In connection with a Demand Registration Statement, (i) make available for inspection by the Holders' representatives, any underwriter participating in any disposition of such Registrable Securities, and any attorney for the Holders or such underwriter and any accountant or other agent retained by the Holders or such underwriter, all financial and other records, pertinent corporate documents and properties of the Company and its Subsidiaries as will be reasonably necessary to enable them to conduct customary due diligence with respect to the Company and its Subsidiaries and the related Registration Statement and prospectus, and cause the representatives of the Company and its Subsidiaries to be made available to the Holders and their representatives for such diligence and supply all information reasonably requested by them; provided, however, that (x) records and information obtained hereunder will be used by such Person only to conduct such due diligence and (y) records or information that the Company determines, in good faith, to be confidential will not be disclosed by such Person unless (A) the disclosure of such records or information is necessary to avoid or correct a material misstatement or omission in a Registration Statement or related Prospectus, (B) the release of such records or information is ordered pursuant to a subpoena or other order from a court or governmental authority of competent jurisdiction or (C) necessary for defense in a legal action and (ii) as soon as practicable shall amend or supplement the Registration Statement and the related Prospectus as necessary and provide the Holders' representatives and its counsel with the opportunity to participate in the preparation of such Registration Statement and the related Prospectus.

(k) In connection with a Demand Registration Statement, use its commercially reasonable efforts to obtain and deliver to any underwriter and the Holders a comfort letter from the independent registered public accounting firm for the Company (and additional comfort letters from the independent registered public accounting firm for any company acquired by the Company whose financial statements are included or incorporated by reference in the Registration Statement) in customary form and covering such matters as are customarily covered by comfort letters or as such underwriter and the Investor may reasonably request, including (x) that the financial statements included or incorporated by reference in the Registration Statement or the prospectus, or any amendment or supplement thereof, comply as to form in all material respects with the applicable accounting requirements of the Securities Act and (y) as to certain other financial information for the period ending no more than five (5) Business Days prior to the date of such letter.

(l) In connection with a Demand Registration Statement, use its commercially reasonable efforts to obtain and deliver to any underwriter and the Holders a 10b-5 statement and legal opinion from the Company's counsel in customary form and covering such matters as are customarily covered by 10b-5 statements and legal opinions as such underwriter and the Holders may reasonably request.

(m) In connection with a Demand Registration Statement, enter into a written agreement with any underwriter selected by the Holders in such form and containing such provisions as are customary in the securities business for such an arrangement between such underwriter and companies of the Company's size and investment stature and, to the extent practicable, on terms consistent with underwriting agreements entered into by the Company (it being understood that, unless required otherwise by the Securities Act or any other law, the Company will not require any Holder to make any representation, warranty or agreement in such agreement other than with respect to such Holder, the ownership of such Holder's securities being registered and such Holder's intended method of disposition).

(n) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by this Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(o) Upon the occurrence of any event contemplated by Section 7.3(c), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 7.3(c) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 7.3(o) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 7.1(h), for a period not to exceed sixty (60) calendar days (which need not be consecutive days) in any twelve (12)-month period.

(p) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the Securities Act and the Exchange Act, including, without limitation, Rule 172, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(q) Use its commercially reasonable efforts to cause all such Registrable Securities covered by a Registration Statement to be listed on a Trading Market on which similar securities issued by the Company are then listed.

(r) Provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(s) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and,

if required by the SEC, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three (3) Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

7.4 Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the SEC, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or "blue sky" laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with "blue sky" qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder (including any underwriting discounts or commissions and fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities) or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

7.5 Miscellaneous.

(a) No Piggy-back by other Persons. Neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements.

(b) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 7.3(c)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 7.1(h).

7.6 Participation in Future Financing.

(a) At any time prior to the later of (i) the date that is the twenty-four (24)-month anniversary of the Closing Date, and (ii) the date as of which an Investor beneficially owns less than 500,000 shares of Common Stock (as adjusted for any stock split, stock dividend, combination or other

recapitalization or reclassification effected after the date hereof), upon any issuance by the Company or any of its Subsidiaries of Common Stock, Common Stock Equivalents for cash consideration, Indebtedness or a combination of such instruments (a "***Subsequent Financing***"), such Investor shall have the right to participate in the Subsequent Financing, on the same terms, conditions and price provided for in the Subsequent Financing, in an amount of the Subsequent Financing equal to up to the Participation Maximum. The "***Participation Maximum***" shall mean the greater of (x) such portion of the Subsequent Financing that is equal to the number of shares of Common Stock deemed to be beneficially owned by such Investor immediately prior to the closing of the Subsequent Financing (based upon documentation or written representation reasonably satisfactory to the Company), divided by the total number of shares of Common Stock outstanding (including any shares of Common Stock issuable upon conversion or exercise of outstanding Common Stock Equivalents deemed to be beneficially owned by the Investor and included in the numerator) immediately prior to the closing of the Subsequent Financing or (y) 10.5% of the Subsequent Financing, in the case of PTC, and 5.0% of the Subsequent Financing, in the case of the other Investors. At least five (5) Trading Days prior to the closing of the Subsequent Financing, the Company shall deliver to the Investor a written notice of its intention to effect a Subsequent Financing ("***Pre-Notice***"), which Pre-Notice shall ask the Investor if it wants to review the details of such financing (such additional notice, a "***Subsequent Financing Notice***"). Upon the request of an Investor, and only upon a request by such Investor, for a Subsequent Financing Notice, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to such Investor. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(b) In the event an Investor desires to participate in such Subsequent Financing, such Investor must provide written notice to the Company by not later than 5:30 p.m. (New York time) on the third (3rd) Trading Day after the Company has delivered the Pre-Notice that the Investor is willing to participate in the Subsequent Financing, the amount of the Investor's participation, and representing and warranting that the Investor has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from such Investor as of such third (3rd) Trading Day, such Investor shall be deemed to have notified the Company that it does not elect to participate.

(c) If by 5:30 p.m. (New York time) on the third (3rd) Trading Day after the Company has delivered the Pre-Notice, notifications by the Investor of its willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the total amount of the Subsequent Financing, then the Company may effect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice; provided, that for the avoidance of doubt, the Investor shall not be entitled, without the consent of the Company, to participate in a Subsequent Financing in an amount more than the Participation Maximum.

(d) The Company must provide the Investor with a second Subsequent Financing Notice, and the Investor will again have the right of participation set forth above in this Section 7.6, if the Subsequent Financing subject to the initial Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within thirty (30) Trading Days after the date of the initial Subsequent Financing Notice.

(e) The Company and the Investors agree that if an Investor elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision whereby such Investor shall be required to agree to any restrictions on trading as to any of the Notes Shares issuable hereunder 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, this Agreement, without the prior written consent of such Investor.

(f) Notwithstanding anything to the contrary in this Section 7.6 and unless otherwise agreed to by the Investors, the Company shall either confirm in writing to such Investors that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that the Investors will not be in possession of any material, non-public information, by the tenth (10th) Business Day following delivery of the Subsequent Financing Notice. If by such tenth (10th) Business Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by an Investor, such transaction shall be deemed to have been abandoned and such Investor shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(g) Notwithstanding the foregoing, this Section 7.6 shall not apply in respect of an Exempt Issuance.

ARTICLE VIII
COLLATERAL AGENT

8.1 Appointment. Each of the Investors hereby irrevocably appoints the Collateral Agent as its agent and authorizes the Collateral Agent to take such actions on its behalf, including execution of the other Transaction Documents, and to exercise such powers as are delegated to the Collateral Agent by the terms of the Transaction Documents, together with such actions and powers as are reasonably incidental thereto.

8.1 Duties. The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Transaction Documents. Without limiting the generality of the foregoing, (a) the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default (as defined in the Notes) has occurred and is continuing, (b) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Transaction Documents that the Collateral Agent is required to exercise in writing as directed by the Required Holders (as defined in the Notes), and (c) except as expressly set forth in the Transaction Documents, the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Subsidiaries that is communicated to or obtained by the entity serving as Collateral Agent or any of its Affiliates in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Holders or in the absence of its own gross negligence or willful misconduct. The Collateral Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Collateral Agent by the Company or an Investor, and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Transaction Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Transaction Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Transaction Document, (iv) the validity, enforceability, effectiveness or genuineness of any Transaction Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in any Transaction Document. The entity serving as the Collateral Agent may generally engage in any kind of business with the Company or any Subsidiary of the Company or other Affiliate thereof as if it were not the Collateral Agent hereunder. The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing

believed by it to be genuine and to have been signed or sent by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.3 Sub-Agents. The Collateral Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of this Article VIII shall apply to any such sub-agent and to the Affiliates of the Collateral Agent and any such sub-agent, and shall apply to their activities as Collateral Agent.

8.5 Successor Collateral Agent. Subject to the appointment and acceptance of a successor Collateral Agent as provided in this paragraph, the Collateral Agent may resign at any time by notifying the Investors and the Company. Upon any such resignation, the Required Holders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Holders and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Investors, appoint a successor Collateral Agent which shall be a commercial bank or an Affiliate of any such commercial bank. Upon the acceptance of its appointment as Collateral Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. After the Collateral Agent's resignation hereunder, the provisions of this Article VIII shall continue in effect for the benefit of such retiring Collateral Agent, its sub agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Collateral Agent.

8.7 on-Reliance. Each Investor acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Investor and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Investor also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Investor and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Transaction Document or related agreement or any document furnished hereunder or thereunder.

ARTICLE IX
MISCELLANEOUS

9.1 Termination.

(a) Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time prior to the Closing:

(i) by the mutual written consent of the Company and the Required Holders; and

(ii) by the Company or any Investor, upon written notice to the other parties hereto, if the transactions contemplated hereby have not been consummated on or prior to February 29, 2020 or such later date, if any, as the Company and the Required Holders agree upon in writing (the "***Termination Date***"); provided, however, that the right to terminate this Agreement pursuant to this

Section 9.1(a)(ii) is not available to any party whose breach of any provision of this Agreement results in or causes the failure of the transactions contemplated hereby to be consummated by such date;

(b) In the event of a termination of this Agreement in accordance with Section 9.1(a), this Agreement shall become void and there shall be no liability on the part of any party hereto except that the provisions of this Article IX shall survive such termination and nothing herein shall relieve any party from liability for any willful breach of any provision of this Agreement.

9.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, the Company shall pay or otherwise reimburse the Collateral Agent and the Investors for all reasonable and documented fees and expenses incurred by or on behalf of the Collateral Agent and the Investors in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Transaction Documents and the matters contemplated herein and therein, including, without limitation, the reasonable and documented fees and expenses of counsel to the Collateral Agent and the Investors; provided, that the aggregate maximum amount of fees and expenses that the Company shall be required to reimburse the Investors in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Transaction Documents entered into in connection with the First Closing shall not exceed $150,000 unless otherwise mutually agreed upon between the Company and the Investors; provided, that the Investors shall notify the Company in writing at such time that such fees and expenses exceed $75,000.

9.3 Entire Agreement; Further Assurances. The Transaction Documents, together with the Exhibits, Annexes and Schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company and the Investors will execute and deliver to the Investors such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

9.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and provided by email and by deposit with a nationally recognized courier service and shall be deemed given and effective on the earliest of (a) the Trading Date such notice or communication is delivered by such nationally recognized courier service to the party to whom such notice is required to be given, if such notice or communication is delivered at the address specified in this Section 9.4 prior to 6:30 p.m. (New York time) on a Trading Day, or (b) the next Trading Day after the date of delivery, if such notice or communication is delivered by such nationally recognized courier service to the party to whom such notice is required to be given at the address specified in this Section 9.4 on a day that is not a Trading Day or later than 6:30 p.m. (New York time) on any Trading Day. The addresses and email addresses for such notices and communications are those set forth on the signature pages hereof, or such other address as may be designated in writing hereafter, in the same manner, by any such Person.

9.5 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company, the Collateral Agent and the Required Holders; provided, that, notwithstanding the foregoing, (i) the provisions of Sections 2.1(b), 2.3 and 5.2(b) may only be waived or amended in a written instrument signed by the Company and each of the Second Closing Investors, (ii) the provisions of Sections 2.1(c), 2.4 and 5.2(c) may only be waived or amended in a written instrument signed by the Company and each of the Third Closing Investors, (iii) the provisions of Sections 4.8 and 4.9 may only be waived or amended in a written instrument signed by the Company and Petrichor, and (iv) the provisions of Section 4.10 may only be waived or amended in a written instrument signed by the Company, each Second Closing Investor and each Third Closing Investor. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be

deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

9.6 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. 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.

9.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investors; provided, however this Agreement shall be assigned to any corporation or association into which the Company may be merged or converted or with which it may be consolidated, or any corporation, association or other similar entity resulting from any merger, conversion or consolidation to which the Company shall be a party without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties to this Agreement except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding. Any Investor may assign its rights under this Agreement to any Person to whom such Investor assigns or transfers any Securities; provided (i) such transferor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company after such assignment, (ii) the Company is furnished with written notice of the name and address of such transferee or assignee, (iii) following such transfer or assignment, the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws, (iv) such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions hereof that apply to the "Investors" and (v) such transfer shall have been made in accordance with the applicable requirements of this Agreement and with all laws applicable thereto.

9.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

9.9 Governing Law; Venue; Waiver of Jury Trial . This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The Company and Investors hereby irrevocably submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware for the adjudication of any dispute brought by the Company or any Investor hereunder, in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waive, and agree not to assert in any suit, action or proceeding brought by the Company or any Investor, any claim that it is not personally subject to the jurisdiction of any such court, or that 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 via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this 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. The Company and Investors hereby waive all rights to a trial by jury.

9.10 Survival. Unless this Agreement is terminated under Section 9.1(a), the representations and warranties, agreements and covenants contained herein shall survive indefinitely and shall not be

merged in the consummation of the transactions contemplated by this Agreement or any of the Transaction Documents.

9.11 Execution. This Agreement may be executed in counterparts, all of which when taken together shall be considered one and the same agreement. In the event that any signature is delivered by facsimile transmission or email attachment, such signature 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 facsimile or email-attached signature page were an original thereof.

9.12 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

9.13 Independent Nature of Investors' Obligations and Rights . The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Documents. The decision of each Investor to purchase Securities pursuant to this Agreement has been made by such Investor independently of any other Investor and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company which may have been made or given by any other Investor or by any agent or employee of any other Investor, and no Investor or any of its agents or employees shall have any liability to any other Investor (or any other person) relating to or arising from any such information, materials, statements or opinions. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no other Investor will be acting as agent of such Investor in connection with monitoring its investment hereunder. Each Investor shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any Proceeding for such purpose.

9.14 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Collateral Agent, the Investors and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

9.15 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, then the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities, but without any requirement to post a bond (unless required by the Transfer Agent, in which case the cost of such bond shall be paid by the Company).

9.16 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

COMPANY:

MRI INTERVENTIONS, INC.

By */s/ Joseph M. Burnett*
Name: Joseph M. Burnett
Title: Chief Executive Officer

Address for Notice:

MRI Interventions, Inc.
5 Musick
Irvine, California 92618
Attn: Hal Hurwitz
Email: hhurwitz@mriinterventions.com

With a copy to, which shall not constitute notice:

Bass, Berry & Sims PLC
The Tower at Peabody Place
100 Peabody Place, Suite 1300
Memphis, Tennessee 38103-3672
Attn: Richard Mattern
Email: rmattern@bassberry.com

COLLATERAL AGENT:

PETRICHOR OPPORTUNITIES FUND I LP
BY PETRICHOR OPPORTUNITIES FUND I GP LLC

By */s/ Tadd Wessel*
Name: Tadd Wessel
Title: Managing Member

Address for Notice:

Petrichor Opportunities Fund I LP
885 Third Avenue, Suite 2403
New York, NY 10022
Attn: Michael Beecham
Email: mbeecham@petrichorcap.com

With a copy to, which shall not constitute notice:

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Todd E. Bowen
Email: bowent@gtlaw.com

Investor Signature Page

IN WITNESS WHEREOF, by its execution and delivery of this signature page, the undersigned Investor hereby joins in and agrees to be bound by the terms and conditions of that certain Securities Purchase Agreement, dated as of January 11, 2020 (the "***Purchase Agreement***"), by and among MRI Interventions, Inc., a Delaware corporation, the Investors (as defined therein), and the Collateral Agent (as defined therein), as to the principal amount of the Notes set forth across from such Investor's name on the Schedule of Investors, and authorizes this signature page to be attached to the Purchase Agreement or counterparts thereof.

NAME OF INVESTOR:

PTC THERAPEUTICS, INC.

By: */s/ Emily Hill*
Name: Emily Hill
Title: Chief Financial Officer

Address: 100 Corporate Court
South Plainfield, NJ 07080
Telephone No.: 908-912-9327
Facsimile No.: _____
Email Address: ehill@ptcbio.com

Address for notices:
c/o: Mark Boulding, EVP & CLO
Address: 100 Corporate Court
South Plainfield, NJ 07080
Telephone No.: 908-912-9103
Email Address: mboulding@ptcbio.com; legal@ptcbio.com

With a copy to:
Brian A Johnson
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Brian@Johnson@wilmerhale.com

Delivery Instructions (if different than above):
c/o: _____
Address: _____
_____
Telephone No.: _____
Facsimile No. : _____
Other Special Instructions: _____

Investor Signature Page

IN WITNESS WHEREOF, by its execution and delivery of this signature page, the undersigned Investor hereby joins in and agrees to be bound by the terms and conditions of that certain Securities Purchase Agreement, dated as of January 11, 2020 (the "***Purchase Agreement***"), by and among MRI Interventions, Inc., a Delaware corporation, the Investors (as defined therein), and the Collateral Agent (as defined therein), as to the principal amount of the Notes set forth across from such Investor's name on the Schedule of Investors, and authorizes this signature page to be attached to the Purchase Agreement or counterparts thereof.

NAME OF INVESTOR:

PETRICHOR OPPORTUNITIES FUND I LP
BY PETRICHOR OPPORTUNITIES FUND I GP LLC

By: */s/ Tadd Wessel*
Name: Tadd Wessel
Title: Managing Member

Address for Notice:

Petrichor Opportunities Fund I LP
885 Third Avenue, Suite 2403
New York, NY 10022
Attn: Michael Beecham
Email: mbeecham@petrichorcap.com

With a copy to, which shall not constitute notice:

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Todd E. Bowen
Email: bowent@gtlaw.com

Delivery Instructions (if different than above):
c/o: _____
Address: _____
_____
Telephone No.: _____
Facsimile No. : _____
Other Special Instructions: _____

ANNEX A

SCHEDULE OF INVESTORS

I. FIRST CLOSING INVESTORS

Name and Address of Investor	Principal Amount of First Closing Note	Aggregate First Closing Purchase Price
PTC Therapeutics, Inc. 100 Corporate Court South Plainfield, NJ 07080	$10,000,000	$10,000,000
Petrichor Opportunities Fund I LP 885 Third Avenue Suite 2403 New York, NY 10022	$7,500,000	$7,500,000
TOTAL:	**$17,500,000**	**$17,500,000**

II. SECOND CLOSING INVESTORS

Name and Address of Investor	Principal Amount of Second Closing Note	Aggregate Second Closing Purchase Price
Petrichor Opportunities Fund I LP 885 Third Avenue Suite 2403 New York, NY 10022	$5,000,000	$5,000,000
TOTAL:	**$5,000,000**	**$5,000,000**

III. THIRD CLOSING INVESTORS

Name and Address of Investor	Principal Amount of Third Closing Note	Aggregate Third Closing Purchase Price
Petrichor Opportunities Fund I LP 885 Third Avenue Suite 2403 New York, NY 10022	$10,000,000	$10,000,000
TOTAL:	**$10,000,000**	**$10,000,000**

Exhibit 99.1

For Immediate Release

MRI Interventions, Inc. Obtains a $17.5 Million Strategic Investment from PTC Therapeutics, Inc. and Petrichor Healthcare Capital Management

Transaction follows 43% growth in fourth quarter revenue

IRVINE, CA, January 13, 2020 – MRI Interventions, Inc. (Nasdaq: MRIC) (the "Company"), a leading platform neurosurgery company, today announced preliminary and unaudited results for the quarter ended December 31, 2019. Additionally, the Company announced a $17.5 million strategic investment from PTC Therapeutics, Inc. ("PTC") and Petrichor Healthcare Capital Management ("Petrichor").

Revenue for the quarter ended December 31, 2019 is expected to be approximately $3.2 million, a new quarterly revenue record and an increase of 43% from $2.3 million in the prior year fourth quarter. For the fiscal year ended December 31, 2019, revenue is expected to be approximately $11.2 million, compared with $7.4 million in 2018, an increase of 53%. These increases resulted in part from the completion of 801 cases utilizing the Company's ClearPoint System or its clinical team's services in 2019, as compared with 670 cases having been completed in 2018. Cash used in operations for the quarter ended December 31, 2019 is expected to improve to approximately $465,000, compared with $600,000 used in the 2018 fourth quarter, and for the fiscal year ended December 31, 2019, is expected to improve to approximately $2.9 million, compared with $4.6 million in 2018.

Under the terms of the investment and subject to certain customary closing conditions, PTC will fund a $10.0 million note and Petrichor will fund a $7.5 million note. The Company anticipates that the transaction will close on or before February 29, 2020. The Company intends to use the net proceeds from the sale of the notes to repay in full its existing secured indebtedness, and to fund product commercialization, internal research and development, and general corporate requirements.

In addition, the securities purchase agreement provides the Company with the right, but not the obligation, to issue to Petrichor up to an aggregate principal amount of $15.0 million of secured convertible notes within the initial 24 months following the signing of such securities purchase agreement.

Joe Burnett, the Company's President and CEO commented, "In addition to yet another record quarter for revenue, we are thrilled to expand our relationship with PTC, and to build a relationship with Petrichor, two prestigious and collaborative partners. We believe that gaining access to $17.5 million in working capital and being able to draw on an additional $15 million, if needed, will allow us to continue prioritizing topline revenue growth in the years ahead. We anticipate that this capital will allow us to take full advantage of the opportunities outlined in our four-pillar growth strategy, especially through partnerships in our biologics and drug delivery business."

"We are pleased to strengthen our partnership as the ClearPoint system continues to prove its differentiation in the CNS space," said Marcio Souza, Chief Operating Officer, PTC Therapeutics, Inc. and MRI Interventions Board Member. "As a leader in CNS targeted gene therapies, PTC believes the importance of proper delivery and system integration are clear strategic differentials for the present and future."

“We view the unique differentiation of the ClearPoint neurosurgery platform and its ability to enable the next generation of CNS gene and cell therapies as key growth drivers for the Company”, said Tadd Wessel, Founder and Managing Partner of Petrichor. “CNS gene and cell therapies are poised for tremendous growth and we are excited to partner and provide strategic insights to the Company as they become a leader in this field.”

“I believe the terms of this financing agreement are a direct result of the financial performance from our team in 2019, as well as the clear confidence that both PTC and Petrichor have in our ability to execute on the opportunity ahead of us,” continued Mr. Burnett. “We believe that our achievement of greater than 50% revenue growth in 2019 shows our team can focus on the business immediately in front of us, and our execution of multiple strategic partnerships in the gene therapy and biologics space show our team’s ability to look to the horizon and plan for the future as well. It is in concert with today’s investment that we also announced our intention to change our company name from ‘MRI Interventions’ to ‘ClearPoint Neuro’ as we now have the capitalization, the vision, and the team in place to support us in the new decade ahead.”

Mr. Burnett will be available for meetings concurrent with the timing of the JP Morgan Healthcare Conference January 13-14, 2020. To request a meeting, please contact Matt Kreps, investor relations for MRIC, at mkreps@darrowir.com.

The offer and sale of the notes and the shares of common stock issuable upon conversion of the notes, if any, have not been registered under the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction, and the notes and such shares may not be offered or sold absent registration with the U.S. Securities and Exchange Commission (the “SEC”) or an applicable exemption from registration requirements, or in a transaction not subject to, such registration requirements.

This press release is neither an offer to sell nor a solicitation of an offer to buy the notes or the shares of common stock issuable upon conversion of the notes, if any, nor shall there be any sale of these securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or jurisdiction.

Further information on the investment is set forth in the Current Report on Form 8-K filed by the Company with the SEC on January 13, 2020.

About the Company

The Company’s mission is to improve and restore quality of life to patients and their families by enabling therapies for the most complex neurological disorders with pinpoint accuracy. Applications of the Company’s current product portfolio include deep-brain stimulation, laser ablation, biopsy, neuro-aspiration, and delivery of drugs, biologics and gene therapy to the brain. The ClearPoint Neuro Navigation System has FDA clearance, is CE-marked, and is installed in 60 active clinical sites in the United States. The Company’s SmartFlow® cannula is being used in partnership or evaluation with more than 20 individual biologics and drug delivery companies in various stages from preclinical research to late stage regulatory trials. To date, more than 3,500 cases have been performed and supported by the Company’s field-based Clinical Specialist team which offers support and services for our partners. For more information, please visit www.mriinterventions.com.

About PTC Therapeutics, Inc.

PTC is a science-driven, global biopharmaceutical company focused on the discovery, development and commercialization of clinically-differentiated medicines that provide benefits to patients with rare disorders. PTC's ability to globally commercialize products is the foundation that drives investment in a robust pipeline of transformative medicines and our mission to provide access to best-in-class treatments for patients who have an unmet medical need.

About Petrichor Healthcare Capital Management

Petrichor Healthcare Capital Management partners with world-class healthcare managers and businesses to provide customized investment structures and support. The Petrichor team of investment professionals comes from highly-regarded financial institutions including OrbiMed Advisors and Fortress Investment Group. Collectively, the team has completed over 75 investments representing more than $5 billion in invested capital and has held over 25 board seats. Petrichor maintains a deep in-house understanding of healthcare products and services, including scientific, technical, and commercial expertise. This healthcare expertise, together with a breadth of experience investing across sectors, geographies, and capital structures, provides a strong competitive advantage.

For more information on Petrichor, please see www.petrichorcap.com or contact the firm at info@petrichorcap.com.

Note on Forward-Looking Statements

This press release contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 regarding the planned offering. Additionally, all statements relating to any closing(s) of, and the amount or use of any proceeds from, the transactions described in this press release are considered to be forward-looking statements. Other forward-looking statements may be identified by the words “guidance”, “plan,” “anticipate,” “believe,” “estimate,” “expect,” “intend,” “may,” “target,” “potential,” “will,” “would,” “could,” “should,” “continue,” and similar expressions. Forward-looking statements are subject to risks and uncertainties, and the Company’s actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of such risks and uncertainties, which include, without limitation, risks and uncertainties associated with market conditions and the satisfaction of closing conditions related to the transactions described in this press release. There can be no assurance that the parties will be able to complete the transactions described in this press release on the terms described herein or in a timely manner, if at all. More detailed information on these and additional factors that could affect the Company’s actual results are described in the “Risk Factors” section of the Company’s Annual Report on Form 10-K for the year ended December 31, 2018, and the Company’s Quarterly Reports on Form 10-Q for the periods ended March 31, 2019, June 30, 2019 and September 30, 2019, all of which have been filed with the SEC. You are urged to carefully consider all such factors. Copies of these and other documents are available from the Company. The forward-looking statements contained herein represent the Company’s views only as of the date of this press release the Company does not undertake or plan to update or revise any such forward-looking statements to reflect actual results or changes in plans, prospects, assumptions, estimates or projections, or other circumstances occurring after the date of this press release except as required by law.

For More Information

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Exhibit 99.2

For Immediate Release

MRI Interventions, Inc. To Change Corporate Name to ClearPoint Neuro, Inc.

Company to Trade Under New Name and Ticker Symbol on February 14, 2020

IRVINE, CA, January 13, 2020 – MRI Interventions, Inc. (Nasdaq: MRIC) (the "Company"), a leading platform neurosurgery company, today announced plans to change its corporate name to ClearPoint Neuro, Inc. As part of the name change, the Company will release a new logo and launch a new website at www.clearpointneuro.com, and its common stock will commence trading under the symbol "CLPT" upon completion of the name change, which is expected to occur on February 14, 2020. The new name was chosen to better reflect the Company's expanded strategic focus as the medical device extension of its biologics and drug delivery partners.

Joe Burnett, the Company's President and CEO commented, "Over the past two years we have worked tirelessly as a team to evolve our portfolio of products and services from a neuro navigation system to a neuro therapy enabling platform. The name ClearPoint reflects our success in those efforts and leverages our proven ClearPoint® System already present in more than 60 active clinical sites in the United States. Additionally, ClearPoint Neuro underlines our commitment and focus to treat the most complex neurological disorders. As our portfolio and the procedures our clinical team support expand beyond the MRI suite, the name MRI Interventions is limiting and simply does not capture the vision or value that we will offer moving forward."

Nasdaq Bell-Ringing Ceremony and Analyst Day

MRI Interventions / ClearPoint Neuro is scheduled to ring the Closing Bell of the Nasdaq Stock Market on February 14, 2020. Earlier that day, the Company will host its first ever Analyst Day at the Nasdaq Market Center at noon Eastern Time, which will include product and clinical roadmap presentations, the opportunity to meet with executives and surgeons experienced in using the ClearPoint System, and hands-on demonstrations from the Company's product development and clinical specialist team members. Investors and analysts interested in attending may do so by contacting Matt Kreps, Darrow Associates Investor Relations, at +1 (214) 597-8200 or mkreps@darrowir.com.

"We are thrilled to have the opportunity to partner with the Nasdaq on this important milestone and educational event," continued Mr. Burnett. "This is an exciting time for the Company, and we believe the meetings and presentations will be valuable for investors and analysts to see not only our portfolio, but also the excitement and dedication of our team members to improve and restore quality of life for patients and their families."

About MRI Interventions / ClearPoint Neuro

The Company’s mission is to improve and restore quality of life to patients and their families by enabling therapies for the most complex neurological disorders with pinpoint accuracy. Applications of the Company’s current product portfolio include deep-brain stimulation, laser ablation, biopsy, neuro-aspiration, and delivery of drugs, biologics and gene therapy to the brain. The ClearPoint Neuro Navigation System has FDA clearance, is CE-marked and is installed in 60 active clinical sites in the United States. The Company’s SmartFlow® cannula is being used in partnership or evaluation with more than 20 individual biologics and drug delivery companies in various stages from preclinical research to late stage regulatory trials. To date, more than 3,500 cases have been performed and supported by the Company’s field-based clinical support team which offers support and services for our partners. For more information, please visit www.mriinterventions.com.

Forward-Looking Statements

Statements herein concerning the Company’s plans, growth and strategies may include forward-looking statements within the context of the federal securities laws. Statements regarding the Company's future events, developments and future performance, as well as management's expectations, beliefs, plans, estimates or projections relating to the future, are forward-looking statements within the meaning of these laws. Uncertainties and risks may cause the Company's actual results to differ materially from those expressed in or implied by forward-looking statements. Particular uncertainties and risks include those relating to: future revenues from sales of the Company’s ClearPoint Neuro Navigation System products; the Company’s ability to market, commercialize and achieve broader market acceptance for the Company’s ClearPoint Neuro Navigation System products; and estimates regarding the sufficiency of the Company’s cash resources. More detailed information on these and additional factors that could affect the Company’s actual results are described in the “Risk Factors” section of the Company’s Annual Report on Form 10-K for the year ended December 31, 2018, and its Quarterly Report on Form 10-Q for the three months ended September 30, 2019, both of which have been filed with the Securities and Exchange Commission, as well as the Company’s Annual Report on Form 10-K for the year ended December 31, 2019, which the Company intends to file with the Securities and Exchange Commission on or before March 30, 2020.

For More Information

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