

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended June 30, 2023

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-39283

**Lightning eMotors, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

815 14th Street SW  
Suite A100  
Loveland, Colorado  
(Address of Principal Executive Offices)

84-4605714  
(I.R.S. Employer  
Identification Number)

80537  
(Zip Code)

(800) 223-0740  
(Registrant's telephone number)

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

Title of Each Class	Trading symbol(s)	Name of Exchange on which registered
Common Stock, par value \$0.0001 per share	ZEV	New York Stock Exchange
Redeemable Warrants, each full warrant exercisable for one share of Common stock at an exercise price of \$230.00 per share	ZEV.WS	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>		
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>	Emerging growth company	<input checked="" type="checkbox"/>

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of August 11, 2023, there were 6,462,413 shares of the registrant's common stock outstanding.

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**PART I — FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**Lightning eMotors, Inc.  
Consolidated Balance Sheets  
(in thousands, except share data)**

	<b>June 30, 2023</b>	<b>December 31, 2022</b>
	<b>(Unaudited)</b>	
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 12,620	\$ 56,011
Accounts receivable, net of allowance of \$2,041 and \$2,028 as of June 30, 2023 and December 31, 2022, respectively	8,660	9,899
Inventories	57,147	47,066
Prepaid expenses and other current assets	6,679	9,401
<b>Total current assets</b>	<b>85,106</b>	<b>122,377</b>
Property and equipment, net	12,971	11,519
Operating lease right-of-use asset, net	7,072	7,735
Other assets	2,010	1,928
<b>Total assets</b>	<b>\$ 107,159</b>	<b>\$ 143,559</b>
<b>Liabilities and stockholders' equity</b>		
Current liabilities		
Accounts payable	\$ 10,255	\$ 7,961
Accrued expenses and other current liabilities	7,853	6,270
Warrant liability	10	60
Current portion of operating lease obligation	1,822	1,649
Current debt, net of debt discount	53,290	—
<b>Total current liabilities</b>	<b>73,230</b>	<b>15,940</b>
Long-term debt, net of debt discount	2,982	62,103
Operating lease obligation, net of current portion	6,772	7,735
Derivative liability	2	78
Earnout liability	446	2,265
Other long-term liabilities	794	880
<b>Total liabilities</b>	<b>84,226</b>	<b>89,001</b>
Commitments and contingencies (Note 13)		
Stockholders' equity		
Preferred stock, par value \$0.0001, 1,000,000 shares authorized and no shares issued and outstanding as of June 30, 2023 and December 31, 2022	—	—
Common stock, par value \$0.0001, 250,000,000 shares authorized as of June 30, 2023 and December 31, 2022; 6,144,553 and 4,492,157 shares issued and outstanding as of June 30, 2023 and December 31, 2022, respectively	1	1
Additional paid-in capital	234,209	220,951
Accumulated deficit	(211,277)	(166,394)
<b>Total stockholders' equity</b>	<b>22,933</b>	<b>54,558</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 107,159</b>	<b>\$ 143,559</b>

See accompanying notes to Consolidated Financial Statements.

**Lightning eMotors, Inc.**  
**Consolidated Statements of Operations**  
**(in thousands, except share and per share data)**  
**(Unaudited)**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenue, net of customer refunds	\$ 7,916	\$ 3,536	\$ 9,227	\$ 8,948
Cost of revenues	12,933	4,889	21,085	12,611
Gross loss	(5,017)	(1,353)	(11,858)	(3,663)
Operating expenses				
Research and development	1,381	1,810	3,468	3,752
Selling, general and administrative	13,025	12,559	27,873	24,158
Total operating expenses	14,406	14,369	31,341	27,910
Loss from operations	(19,423)	(15,722)	(43,199)	(31,573)
Other (income) expense, net				
Interest expense, net	3,492	3,849	6,621	7,710
(Gain) loss from change in fair value of warrant liabilities	(44)	(1,126)	(50)	(1,314)
(Gain) loss from change in fair value of derivative liability	(24)	(10,087)	(63)	(12,642)
(Gain) loss from change in earnout liability	(1,413)	(44,131)	(1,819)	(50,303)
(Gain) loss on extinguishment of debt	—	—	(2,965)	—
Other expense (income), net	14	35	(40)	(6)
Total other (income) expense, net	2,025	(51,460)	1,684	(56,555)
Net income (loss)	\$ (21,448)	\$ 35,738	\$ (44,883)	\$ 24,982
Net income (loss) per share, basic	\$ (3.70)	\$ 9.48	\$ (8.47)	\$ 6.64
Net income (loss) per share, diluted	\$ (3.70)	\$ 6.94	\$ (8.47)	\$ 4.70
Weighted-average shares outstanding, basic	5,800,106	3,770,406	5,299,921	3,763,443
Weighted-average shares outstanding, diluted	5,800,106	4,260,511	5,299,921	4,264,065

See accompanying notes to Consolidated Financial Statements.

**Lightning eMotors, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
(in thousands, except share data)  
(Unaudited)

	Common Stock		Additional Paid-in Capital	Stockholders' Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Par Value			
<b>Balance as of March 31, 2023</b>	<b>5,652,448</b>	<b>\$ 1</b>	<b>\$ 230,965</b>	<b>\$ (189,829)</b>	<b>\$ 41,137</b>
Exercise of stock options	2,758	—	3	—	3
Vesting of restricted stock units, net of taxes	29,756	—	(12)	—	(12)
Common stock issued for conversion of debt	461,548	—	1,894	—	1,894
Canceled due to reverse split	(1,957)	—	—	—	—
Stock-based compensation expense	—	—	1,359	—	1,359
Net loss	—	—	—	(21,448)	(21,448)
<b>Balance as of June 30, 2023</b>	<b>6,144,553</b>	<b>\$ 1</b>	<b>\$ 234,209</b>	<b>\$ (211,277)</b>	<b>\$ 22,933</b>
<b>Balance as of December 31, 2022</b>	<b>4,492,157</b>	<b>\$ 1</b>	<b>\$ 220,951</b>	<b>\$ (166,394)</b>	<b>\$ 54,558</b>
Exercise of stock options	9,502	—	10	—	10
Vesting of restricted stock units, net of taxes	35,360	—	(14)	—	(14)
Common stock issued for conversion of debt	461,548	—	1,894	—	1,894
Canceled due to reverse split	(1,957)	—	—	—	—
Stock-based compensation expense	—	—	2,801	—	2,801
Conversion of convertible notes payable	1,147,943	—	8,567	—	8,567
Net loss	—	—	—	(44,883)	(44,883)
<b>Balance as of June 30, 2023</b>	<b>6,144,553</b>	<b>\$ 1</b>	<b>\$ 234,209</b>	<b>\$ (211,277)</b>	<b>\$ 22,933</b>
<b>Balance as of March 31, 2022</b>	<b>3,757,675</b>	<b>\$ —</b>	<b>\$ 207,754</b>	<b>\$ (192,320)</b>	<b>\$ 15,434</b>
Exercise of stock options	14,028	—	117	—	117
Vesting of restricted stock units, net of taxes	8,802	—	(108)	—	(108)
Stock-based compensation expense	—	—	1,436	—	1,436
Net income	—	—	—	35,738	35,738
<b>Balance as of June 30, 2022</b>	<b>3,780,505</b>	<b>\$ —</b>	<b>\$ 209,199</b>	<b>\$ (156,582)</b>	<b>\$ 52,617</b>
<b>Balance as of December 31, 2021</b>	<b>3,753,132</b>	<b>\$ —</b>	<b>\$ 206,776</b>	<b>\$ (181,564)</b>	<b>\$ 25,212</b>
Exercise of stock options	15,250	—	123	—	123
Vesting of restricted stock units, net of taxes	12,123	—	(108)	—	(108)
Stock-based compensation expense	—	—	2,408	—	2,408
Net income	—	—	—	24,982	24,982
<b>Balance as of June 30, 2022</b>	<b>3,780,505</b>	<b>\$ —</b>	<b>\$ 209,199</b>	<b>\$ (156,582)</b>	<b>\$ 52,617</b>

See accompanying notes to Consolidated Financial Statements.

**Lightning eMotors, Inc.**  
**Consolidated Statements of Cash Flows**  
(in thousands)  
(Unaudited)

	Six Months Ended June 30,	
	2023	2022
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ (44,883)	\$ 24,982
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	1,213	768
Provision for doubtful accounts	1,942	498
Provision for inventory obsolescence and write-downs	2,864	777
Loss (gain) on disposal of fixed asset	—	37
Gain on extinguishment of debt	(2,965)	—
Change in fair value of warrant liability	(50)	(1,314)
Change in fair value of earnout liability	(1,819)	(50,303)
Change in fair value of derivative liability	(63)	(12,642)
Stock-based compensation	2,801	2,408
Amortization of debt discount	4,170	4,413
Non-cash impact of operating lease right-of-use asset	663	551
Issuance of common stock for debt	468	—
Changes in operating assets and liabilities:		
Accounts receivable	(4,645)	1,843
Inventories	(9,003)	(11,382)
Prepaid expenses and other assets	2,702	(2,658)
Accounts payable	2,294	1,186
Accrued expenses and other liabilities	611	1,658
Net cash used in operating activities	(43,700)	(39,178)
<b>Cash flows from investing activities</b>		
Purchase of property and equipment	(2,539)	(3,930)
Proceeds from disposal of property and equipment	—	—
Net cash used in investing activities	(2,539)	(3,930)
<b>Cash flows from financing activities</b>		
Proceeds from pre-paid advance agreement	2,944	—
Payments on finance lease obligations	(92)	(35)
Proceeds from exercise of stock options	10	123
Tax withholding payment related to net settlement of equity awards	(14)	(108)
Net cash provided by (used in) financing activities	2,848	(20)
<b>Net (decrease) increase in cash</b>	(43,391)	(43,128)
Cash - Beginning of period	56,011	168,538
<b>Cash - End of period</b>	<u>\$ 12,620</u>	<u>\$ 125,410</u>

	Six Months Ended June 30,	
	2023	2022
<b>Supplemental cash flow information</b> - Cash paid for interest	\$ 2,746	\$ 3,526
<b>Significant noncash transactions</b>		
Conversion of notes for common stock	\$ 10,461	\$ —
Property and equipment included in accounts payable and accruals	48	708
Finance lease right-of-use asset in exchange for a lease liability	(161)	786
Inventory repossessed for accounts receivable	3,942	—

See accompanying notes to Consolidated Financial Statements.

**Lightning eMotors, Inc.**  
**Notes to Consolidated Financial Statements**  
**(in thousands, except share data)**  
**(Unaudited)**

**Note 1 – Description of Business and Basis of Presentation**

Lightning eMotors, Inc. (the “Company”, “Lightning”) designs and manufactures zero-emission vehicles (“ZEV”) and charging infrastructure solutions for commercial fleets, large enterprises, original equipment manufacturers, and governments. The Company’s product offerings range from electrified cargo vans, transit and shuttle buses, school buses, specialty work trucks, ambulances, mobile and stationary chargers and electric powertrains for school buses, transit buses and motorcoaches. The Company operates predominately in the United States.

On May 6, 2021, GigCapital3, Inc. (“Gig”), consummated the merger pursuant to the Business Combination Agreement, dated December 10, 2020, by and among Project Power Merger Sub, Inc., a wholly-owned subsidiary of Gig incorporated in the State of Delaware, and Lightning Systems, Inc., a Delaware corporation (“Lightning Systems”) (the “Business Combination”). On May 6, 2021, and in connection with the closing of the Business Combination, Gig changed its name to Lightning eMotors, Inc.

The accompanying consolidated financial statements have been prepared in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”) and pursuant to the regulations of the U.S. Securities and Exchange Commission (“SEC”). The unaudited financial information reflects, in the opinion of management, all adjustments, consisting of normal recurring adjustments, considered necessary for a fair statement of the Company’s financial position, results of operations and cash flows for the periods indicated. The results reported for the interim period presented are not necessarily indicative of results that may be expected for the full year. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022.

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany accounts and transactions have been eliminated.

***Reverse Stock Split***

The Company effected a 1-for-20 reverse stock split (the “Reverse Stock Split”) of the Company’s issued and outstanding shares of common stock, par value \$0.0001 per share, effective as of 5:00 p.m. Eastern Time on April 27, 2023. As a result of the Reverse Stock Split, every twenty shares of common stock issued and outstanding were automatically reclassified into one share of common stock. The Reverse Stock Split did not reduce the number of authorized shares of common stock of 250,000,000, or change the par value of the common stock. All outstanding options, warrants, restricted stock units and similar securities entitling their holders to receive or purchase shares of common stock were adjusted as a result of the Reverse Stock Split, as required by the terms of each security. All share and per share amounts were retroactively adjusted for all periods presented to give effect to this reverse stock split, including reclassifying an amount equal to the reduction in par value of the Company’s common stock to additional paid-in capital. See Note 9 for additional information.

***Liquidity and Capital***

As of June 30, 2023, the Company had \$12,620 in cash and cash equivalents. For the six months ended June 30, 2023, the Company incurred a net loss of \$44,883 and cash used in operating activities was \$43,700. The Company had positive working capital of \$11,876 as of June 30, 2023. The current and historical operating cash flows, current cash and working capital balances, and forecasted obligations of the Company were considered in connection with management’s evaluation of the Company’s ongoing liquidity.

The Company has suffered recurring losses from operations. The continuation of the Company as a going concern is dependent upon the Company attaining and maintaining profitable operations and/or raising additional capital from equity offerings, debt financings or other capital markets transactions, collaborations, strategic partnerships or licensing arrangements.

The Company has secured and intends to employ various strategies to obtain the required funding for future operations such as accessing capital through the Pre-Paid Advance Agreement with YA II PN, Ltd. (“Yorkville”) or the ELOC Agreement with Lincoln Park Capital, LLC. However, the ability to access the Pre-Paid Advance or the ELOC Agreement in full is dependent on various factors, such as common stock trading volumes, market prices and obtaining stockholder



approval, which cannot be assured, and as a result cannot be included as sources of liquidity for the Company's Accounting Standards Codification ("ASC") 205-40 *Going Concern* analysis.

The Company has been working with financial advisors to assist the Company in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to the Company when, and in the amounts needed, the Company could be required to liquidate its inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. The result of the Company's ASC 205-40 analysis, due to uncertainties discussed above, there is substantial doubt about the Company's ability to continue as a going concern through the next twelve months from the date of issuance of these consolidated financial statements.

During the three and six months ended June 30, 2023, the Company received proceeds in the amount of \$2,944 and issued 461,548 shares of common stock to Yorkville. Since June 30, 2023 and through the filing date, the Company issued 315,605 shares of common stock to Yorkville. As of June 30, 2023 and through the date of this filing, the Company has not sold any shares of common stock to Lincoln Park under the ELOC Agreement other than the commitment shares (and is prohibited from accessing the ELOC Agreement while advances are outstanding to Yorkville).

These consolidated financial statements have been prepared by management in accordance with GAAP and this basis assumes that the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business.

## **Note 2 – Summary of Significant Accounting Policies**

### ***Use of estimates***

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. The Company's most significant estimates and judgments involve deferred income taxes, provision for credit losses, warranty liability, write downs and write offs of obsolete and damaged inventory and valuations of share-based compensation, warrant liability, convertible note derivative liability and earnout share liability. Management bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ from those estimates, and such differences could be material to the Company's financial statements.

### ***Segment information***

ASC 280, *Segment Reporting*, defines operating segments as components of an enterprise where discrete financial information is available that is evaluated regularly by the chief operating decision-maker ("CODM") in deciding how to allocate resources and in assessing performance. The Company operates as a single operating segment. The Company's CODM is the Chief Executive Officer, who has ultimate responsibility for the operating performance of the Company and the allocation of resources. The CODM uses Company forecasts, a financial and operations dashboard, and cash flows as the primary measures to manage the business and does not segment the business for internal reporting or decision making.

### Concentrations of credit risk

As of June 30, 2023, one customer accounted for 40% of the Company's total accounts receivable. As of December 31, 2022, two customers accounted for 40% and 25% of total accounts receivable. The net sales to the following customers comprised more than 10% of revenues for the periods presented.

	Three Months Ended June 30,				Six Months Ended June 30,			
	2023		2022		2023		2022	
	Net Sales	% of Net Revenue	Net Sales	% of Net Revenue	Net Sales	% of Net Revenues	Net Sales	% of Net Revenues
Customer A	\$ 3,393	42 %	\$ —	— %	\$ 4,181	36 %	\$ —	— %
Customer B	1,014	12 %	—	— %	—	— %	—	— %
Customer C	—	— %	599	17 %	—	— %	2,564	29 %
Customer D	—	— %	572	16 %	—	— %	—	— %
Customer E	—	— %	340	10 %	—	— %	—	— %
Customer F	—	— %	—	— %	—	— %	1,725	19 %
Total of customers with sales greater than 10%	\$ 4,407	54 %	\$ 1,511	43 %	\$ 4,181	36 %	\$ 4,289	48 %
Total of customers with sales less than 10%	3,763	46 %	2,025	57 %	7,555	64 %	4,659	52 %
Gross Revenue	\$ 8,170	100 %	\$ 3,536	100 %	\$ 11,736	100 %	\$ 8,948	100 %
Customer refunds <sup>(1)</sup>	(254)		—		(2,509)		—	
Total Revenue, net of customer refunds	\$ 7,916		\$ 3,536		\$ 9,227		\$ 8,948	

(1) Customer refunds are related to the recall for certain 2021-2022 model year FE4-129 vehicles ("ZEV4") that were manufactured with Romeo Power Systems, Inc ("Romeo") battery packs. See section "Revenue Recognition" below for more detail concerning the accounting treatment and the section "Warranties and Recall Campaigns" for more detail on the recall.

### Concentrations of supplier risk

As of June 30, 2023, one supplier accounted for 73% of the Company's total accounts payable. As of December 31, 2022, two suppliers accounted for 20% and 15% of the Company's total accounts payable. For the three months ended June 30, 2023, one supplier accounted for 46% of inventory purchases. For the three months ended June 30, 2022, two suppliers accounted for 42% and 32% of inventory purchases. For the six months ended June 30, 2023, two suppliers accounted for 33% and 11% of inventory purchases. For the six months ended June 30, 2022, two suppliers accounted for 40% and 26% of inventory purchases.

### Cash and cash equivalents

Cash and cash equivalents include cash held in banks and in money market funds. The Company's cash and cash equivalents are placed with high-credit-quality financial institutions and issuers, and at times exceed federally insured limits. To date, the Company has not experienced any credit loss relating to its cash and cash equivalents. The carrying value of the cash equivalents approximates fair value, which represents a Level 1 input.

### Accounts receivable

Accounts receivable are recorded at invoiced amounts, net of discounts, and allowances. The Company grants credit in the normal course of business to its customers. The Company periodically performs credit analyses and monitors the financial condition of its customers to reduce credit risk. The Company reduces the carrying value for estimated uncollectible accounts based on a variety of factors including the length of time receivables are past due, economic trends and conditions affecting the Company's customer base, and historical collection experience. Specific provisions are recorded for individual receivables when the Company becomes aware of a customer's inability to meet its financial obligations. The

Company writes off accounts receivable when they are deemed uncollectible. The following table details the change in the allowance for credit losses for the periods indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Balance at beginning of period	\$ 2,989	\$ 3,397	\$ 2,028	\$ 3,349
Credit loss expense <sup>(1)</sup>	981	450	1,942	498
Deductions <sup>(1)</sup>	(1,929)	—	(1,929)	—
Balance at end of period	\$ 2,041	\$ 3,847	\$ 2,041	\$ 3,847

(1) The charges to expense and deductions in the allowance for doubtful accounts during the three and six months ended June 30, 2023 were primarily associated with two customers. The customers were unable to pay, and the Company repossessed the vehicles as collateral for the accounts receivable balance. The charges to expense represent further impairment of the receivable balance down to the net realizable value of the collateral. The deductions represent the write off of the remaining accounts receivable balance after applying the net realizable value of the collateral against the outstanding balance.

***Inventories***

Inventories consist of raw materials, work in progress, and finished goods and are stated at the lower of cost or net realizable value, with cost determined on the average cost method. A valuation adjustment is made to inventory for any excess, obsolete or slow-moving items based on management’s review of on-hand inventories compared to historical and estimated future sales and usage profiles.

***Property and equipment***

Property and equipment is stated at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the estimated useful asset lives. Leasehold improvements are stated at cost and amortized on the straight-line basis over their estimated economic useful lives or the lease term, whichever is shorter. Costs of enhancements or modifications that substantially extend the capacity or useful life of an asset are capitalized and depreciated accordingly. Ordinary repairs and maintenance are expensed as incurred. Depreciation is included in the consolidated statements of operations in “Cost of revenues”, “Research and development” and “Selling, general and administrative.” When property is retired or otherwise disposed of, the cost and accumulated depreciation are removed from the consolidated balance sheets and the resulting gain or loss, if any, is reflected in “Other income, net.” The estimated useful lives of the Company’s major classes of property and equipment are as follows:

Major Class of Property and Equipment	Estimated Useful Lives
Machinery and equipment	7 years
Vehicles	5 years
Leasehold improvements	5 years
Computer equipment	3 years
Software	3 years
Furniture and fixtures	7 years

***Impairment of long-lived assets***

Long-lived assets to be held and used in the Company’s operations are evaluated for impairment when events or circumstances indicate the carrying value of a long-lived asset or asset group is less than the undiscounted cash flows from its use and eventual disposition over its remaining economic life. The Company assesses recoverability by comparing the sum of projected undiscounted cash flows from the use and eventual disposition over the remaining economic life of a long-lived asset or asset group to its carrying value, and records a loss from impairment if the carrying value is more than its undiscounted cash flows. Assets or asset groups to be abandoned or from which no future benefit is expected are written

down to zero in the period it is determined they will no longer be used and are removed entirely from service. There were no impairments of long-lived assets recognized during the three and six months ended June 30, 2023 and 2022.

### Revenue recognition

#### Revenue Summary

The following table disaggregates revenue by major source:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
ZEVs	\$ 7,885	\$ 3,220	\$ 11,107	\$ 8,399
Other	285	316	629	549
Gross Revenue	\$ 8,170	\$ 3,536	\$ 11,736	\$ 8,948
Customer refunds <sup>(1)</sup>	(254)	—	(2,509)	—
Total Revenue, net of customer refunds	\$ 7,916	\$ 3,536	\$ 9,227	\$ 8,948

(1) Customer refunds are related to the recall for ZEV4 vehicles that were manufactured with Romeo battery packs.

The Company manufactures and sells ZEVs, such as delivery vans and buses. The Company manufactures ZEVs by removing the internal combustion engine and certain associated components (collectively, “decontented parts”) and installing and integrating its internally-developed, zero-emission powertrain into a vehicle chassis supplied by original equipment manufacturer (“OEM”) partners or from the customer. At times, the Company also installs and integrates its zero-emission powertrains into a used vehicle chassis supplied by the customer (“repower”).

The Company recognizes revenue at a point in time when its performance obligation has been satisfied and control of the ZEV or zero-emission powertrain is transferred to the customer, which generally aligns with shipping terms. Contract shipping terms include ExWorks (“EXW”), “FOB Shipping Point” and “FOB Destination” all as defined in the Incoterms. Under EXW (meaning the seller fulfills its obligation to deliver when it makes goods available at its premises, or another specified location, for the buyer to collect), the performance obligation is satisfied and control is transferred at the point when the customer is notified that the ZEV is available for pickup. Under “FOB Shipping Point,” control is transferred to the customer at the time the good is transferred to the shipper and under “FOB Destination,” at the time the good is delivered to a customer’s specified delivery location. At times, the Company sells ZEVs that require additional upfitting from a third party before the final sale to the customer. The Company is acting as the principal in such transactions and revenue is recognized on a gross basis.

Other revenue primarily includes the sale of stand-alone zero-emission powertrains, charging systems, engineering consulting services, telematics and analytics subscription services and decontented parts. Revenue for zero-emission powertrains, chargers and decontented parts is generally recognized based on contract shipping terms. At times, chargers may be drop shipped directly to the customer from the manufacturer, in which revenue is recognized at the time of shipment. The Company is acting as the principal in such transactions and revenue is recognized on a gross basis. Services are recognized as revenue over time as either percentage of completion (i.e. engineering service contracts) or as the service is transferred to the customer (i.e. telematics and analytics subscription services).

The Company made an accounting policy election to account for any shipping and handling costs that occur after control has transferred to the customer as fulfillment costs that are accrued to cost of revenues at the time control transfers. Shipping and handling costs billed to customers are initially recorded in deferred revenue and recognized as revenue once shipping is complete.

The Company often applies for governmental funding programs, including California’s Hybrid and Zero Emission Truck and Bus Voucher Incentive Project (“HVIP”), on behalf of its customers for ZEV sales. Generally, as a condition of the program, the amount billed to the customer must be reduced by the amount that will be funded by the government program, and the Company will receive the funds directly from the government program. However, the discount to the customer is contingent upon the Company’s receipt of the funding. Revenue is recognized on the gross amount of the ZEV at the time substantially all of the conditions of the government program required of the Company have been met and control of the ZEV has transferred to the customer based on shipping terms.

The following economic factors affect the nature, amount, timing, and uncertainty of the Company's revenue and cash flows as indicated:

- Type of customer: The Company's sales are directly to commercial fleet customers, OEMs, governments and dealers.
- Type of contract: Sales contracts are for goods or services. The majority of contracts are short term (i.e., less than or equal to one year in duration).

#### Significant Payment Terms

None of the Company's contracts have a significant financing component. Any cash that is received prior to revenue recognition is deferred as deferred revenue (a contract liability) until the good is delivered or service is rendered. Payment terms are identified when the contract has commercial substance and collectability of consideration is probable. The Company generally utilizes payment terms of a twenty percent deposit once a contract is executed with the remainder due upon receipt.

#### Contract Liabilities

Contract liabilities relate to payments received in advance of performance obligations under the contract and are realized when the associated revenue is recognized under the contracts. The Company's contract liabilities consist of customer deposits and deferred revenue, of which current amounts are included in "Accrued expenses and other current liabilities" and long-term amounts are included in "Other long-term liabilities" on the consolidated balance sheets. Changes in contract liabilities are as follows:

Balance as of December 31, 2022	\$	794
Revenues recognized		(1,653)
Increase due to billings		1,980
Balance as of June 30, 2023	\$	<u>1,121</u>

#### Returns and Refunds

Based on the Company's standard terms and conditions, consideration paid for goods and/or services that customers purchase from the Company are nonrefundable. Therefore, at the time revenue is recognized, the Company does not estimate expected refunds for goods or services, nor does the Company exclude any such amounts from revenue.

However, during the six months ended June 30, 2023 and as special consideration to those customers impacted by the Romeo battery recall, the Company extended an offer to allow a return and refund for the affected ZEV4s. The Company applied a reserve for estimated refunds based on known pending refunds and reduced sales accordingly. The Company initially recorded in March 2023, on a gross basis, a refund liability in the amount of \$5,037 and inventory in the amount of \$2,171. The total refund liability associated with ZEV4 recalls was \$1,285 as of June 30, 2023, which is included in "Accrued expenses and other current liabilities" on the consolidated balance sheets. In some instances, the refund paid to customers exceeded the original transaction price and value of goods to be received ("Accommodation"), representing consideration payable to the customer. The Company recorded the Accommodation as an asset and will derecognize the asset as a reduction to the future revenues that will be recognized from orders placed by that customer, which were associated with the Accommodation. The Company recorded an Accommodation in the amount of \$611 in March 2023 and this amount was included in "Prepaid expenses and other current assets" on the consolidated balance sheets. During the three months ended June 30, 2023, the Company derecognized the Accommodation in the amount of \$290 as a reduction to revenues. The Company expects the remainder of the Accommodation asset to be derecognized over the remainder of 2023 as orders associated with the Accommodation are completed and gross revenue is recognized.

#### Transaction Price

The transaction price of a contract is the amount of consideration to which the Company expects to be entitled in exchange for transferring promised goods to a customer. Transaction prices do not include amounts collected on behalf of third parties (e.g., sales taxes). Sales taxes collected on sales are recorded as a sales tax liability and are included in "Accrued expenses and other current liabilities."

To determine the transaction price of a contract, the Company considers its customary business practices and the terms of the contract. For the purpose of determining transaction prices, the Company assumes that the goods and/or services will be transferred to the customer as promised in accordance with existing contracts and that the contracts will not be canceled, renewed, or modified. The Company's revenue terms do not include retrospective or prospective volume discounts, rights of return, rebates, performance bonuses or other forms of variable consideration.

The Company's contracts with customers have fixed transaction prices that are denominated in U.S. dollars and payable in cash.

#### Future Performance Obligations

The Company has applied the practical expedient to exclude the value of remaining performance obligations for (i) contracts with an original term of one year or less and (ii) contracts for which the Company recognizes revenue in proportion to the amount it has the right to invoice for services performed (i.e. analytical data subscription services).

As of June 30, 2023, the Company had remaining performance obligations related to a non-cancellable (other than for a breach by the Company) minimum-quantity purchase commitment. The customer is obligated to purchase a fixed number of ZEVs through December 31, 2023. The Company estimates that the future revenues associated with this contract (based on estimated orders from the customer) will be \$3,744 in 2023 and \$5,184 in 2024. The timing of the revenue associated with these estimates will change if the ZEVs are commissioned and/or shipped subsequent to the year in which they were ordered, as revenue will not be recognized until control of the ZEV transfers to the customer based on the purchase order shipping terms.

#### Contract Balances

The following table summarizes the Company's contract balances:

	June 30, 2023	December 31, 2022	January 1, 2022
Accounts receivable, net of allowance of \$2,041, \$2,028 and \$3,349 as of June 30, 2023, December 31, 2022 and January 1, 2022, respectively	\$ 8,660	\$ 9,899	\$ 9,172
Contract Assets	321	—	—
Contract Liabilities - Current	1,121	794	147

#### Costs to Obtain or Fulfill a Contract with a Customer

The Company has elected the practical expedient to expense contract acquisition costs, which consist of sales commissions, which are reported within "Selling, general and administrative" expenses.

#### Warranties and Recall Campaigns

##### Warranties

All ZEVs that customers purchase from the Company are covered by five-year and 60-thousand-mile limited product warranties. At the time revenue is recognized, the Company estimates the cost of expected future warranty claims and accrues estimated future warranty costs based upon the history of warranty claims. The Company periodically reviews the adequacy of its product warranties and adjusts, if necessary, the warranty estimate and accrued warranty liability for actual historical experience. The warranty liability is included in "Accrued expenses and other current liabilities" and the cost of warranties is included in "Cost of revenues."

At times, the Company may sell its ZEVs with an extended product warranty, with coverage beyond the five-year and 60-thousand-mile limited standard warranty. The Company considers these extended warranties to be separate performance obligations. The consideration allocated to the extended warranty is deferred and recognized over the term of the extended warranty. The Company's deferred revenue associated with extended warranties is currently all classified as long-term within "Other long-term liabilities."

### Recall Campaigns

The Company records product recall reserves when a liability is probable and the related amounts are reasonably estimable.

On December 16, 2022, the Company initiated a voluntary recall for certain 2021-2022 model year Lightning eMotors ZEV4 vehicles due to multiple software and hardware discrepancies internal to the Romeo battery packs installed in the ZEV4 series vehicles. The affected vehicles may fail to operate in cold temperatures, fail to start, or may lose traction power while driving, increasing the risk of an accident. Romeo has been formally notified of the recall; however, Romeo has not reached a solution to honor their battery warranty. See Note 13 under the section “*Legal Proceedings*”. The Company’s current remedy is to either replace the ZEV4 manufactured with Romeo battery packs with updated ZEV4 models manufactured with Proterra battery packs or to refund full value of the purchase price to the customer. The Company will seek to recover the costs and expenses associated with the recall from the remaining assets of Romeo, or otherwise in the lawsuit against Nikola and Romeo described in Note 13.

On March 27, 2023, the Company initiated a voluntary recall for certain model year 2020 FT3-43, 2019-2022 FT3-86, 2020 FE4-86 and 2019-2021 FE4-129 vehicles equipped with eMatrix battery packs. Defective structural welds and internal radiator leaks have been found in the battery packs which may result in isolation faults and cell imbalances. The affected vehicles may lose traction power, increasing the potential for collisions or experience a thermal runaway which could result in vehicle fires. The Company is still in process of developing a remedy for the structural welds and internal radiator leaks and at this time is unable to reasonably estimate a range of the potential losses associated with the recall.

### ***Fair value, measurements, and financial instruments***

A fair value hierarchy was established that prioritizes fair value measurements based on the types of inputs used for the various valuation techniques (market approach, income approach, and cost approach). The Company’s financial assets and liabilities are measured using inputs from the three levels of the fair value hierarchy. The three levels of the hierarchy and the related inputs are as follows:

- Level 1: Quoted prices (unadjusted) for identical assets or liabilities in active markets that the Company can access at the measurement date.
- Level 2: Significant other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data.
- Level 3: Significant unobservable inputs that reflect the Company’s own assumptions about the assumptions that market participants would use in pricing an asset or liability.

An asset’s or liability’s fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs. Assets and liabilities measured at fair value are based on one or more of the following three valuation techniques:

- Market approach: Prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.
- Cost approach: Amount that would be required to replace the service capacity of an asset (replacement cost).
- Income approach: Techniques to convert future amounts to a single present value amount based upon market expectations (including present value techniques, option pricing and excess earnings models).

The Company believes its valuation methods are appropriate and consistent with other market participants, however, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date. The Company’s recurring fair value measurements categorized within Level 3 discussed below contain significant unobservable inputs. A change in those significant unobservable inputs could result in a significantly higher or lower fair value measurement at the reporting date.

The Company’s financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, warrant liabilities, long-term debt, derivative liabilities and earnout liabilities. The carrying value of cash, accounts receivable, accounts payable, and accrued liabilities approximate fair value because of the short-term nature of those instruments.

Current debt is not presented at fair value on the consolidated balance sheets, as it is recorded at carrying value, net of unamortized debt discounts. However, the 7.5% \$100,000 convertible senior note (the “Convertible Note”) has an embedded conversion option accounted for as a derivative liability, which is presented at fair value on the consolidated balance sheets. The fair value of the Convertible Note, including the conversion option, was \$51,336 and \$58,155 as of June 30, 2023 and December 31, 2022, respectively. The Company’s term note and working capital facility (“Facility”) had an outstanding term note with a principal amount of \$3,000 as of both June 30, 2023 and December 31, 2022 and a fair value of \$3,099 and \$3,125 as of June 30, 2023 and December 31, 2022, respectively.

The following tables set forth by level within the fair value hierarchy the Company’s financial assets and liabilities that were measured at fair value on a recurring basis in the consolidated balance sheets.

	Level 1	Level 2	Level 3
<b>As of June 30, 2023</b>			
Financial assets			
Cash equivalents	\$ 6,987	\$ —	\$ —
Financial Liabilities			
Warrant liability	\$ —	\$ —	\$ 10
Derivative liability	—	—	2
Earnout liability	—	—	446
<b>As of December 31, 2022</b>			
Financial assets			
Cash equivalents	\$ 51,351	\$ —	\$ —
Financial Liabilities			
Warrant liability	\$ —	\$ —	\$ 60
Derivative liability	—	—	78
Earnout liability	—	—	2,265

As of June 30, 2023 and December 31, 2022, the Company had cash equivalents held in a money market account. The Company has concluded that due to the highly liquid nature of the money market account, the carrying value approximates fair value, which represents a Level 1 input.

As a result of the Business Combination, the Company assumed the liability associated with the Gig warrants. The Company accounts for the warrants as liabilities at fair value with subsequent changes in fair value recorded in the statement of operations for each reporting period. The fair value is determined using the Black-Scholes-Merton option-pricing model (“BSM”) where the share price input represents the Company’s stock price as of the valuation date. The BSM is a commonly-used mathematical model for pricing an option or warrant. In particular, the model estimates the variation in value over time of financial instruments. The fair value measurements are considered Level 3 measurements within the fair value hierarchy.

The Company estimates the fair value of its derivative liability associated with the Convertible Note at each reporting date, as well as at each conversion date. The Convertible Note and embedded conversion option are valued using a Binomial Lattice Model designed to capture incremental value attributed to the conversion options in addition to the value of the Convertible Note. The value of the Convertible Note without the conversion feature is valued utilizing the income approach, specifically the discounted cash flow method. Cash flows are discounted utilizing the U.S. Treasury rate and the credit spread to estimate the appropriate risk-adjusted rate. The conversion feature utilizes the Company’s stock price as of the valuation date as the starting point of the valuation. A Binomial Lattice Model is used to estimate a credit spread by solving for a premium to the U.S. Treasury rate that produces a value of the Convertible Note. As of issuance, the value of the Convertible Note and warrants related to the Convertible Note were set to equal \$100,000 to solve for the credit spread which is then updated quarterly. The fair value measurements are considered Level 3 measurements within the fair value hierarchy.

As a result of the Business Combination, the Company recognized additional earnout shares with performance conditions as a liability measured at fair value with subsequent changes in fair value recorded in the consolidated statement of operations for each reporting period. The earnout shares are valued using the Company’s stock price as of the valuation



date. The valuation methodology used is a Monte Carlo Simulation model (“MCS”) utilizing a Geometric Brownian motion process to capture meeting the various performance conditions. MCS is a technique that uses a stochastic process to create a range of potential future outcomes given a variety of inputs. Stochastic processes involve the use of both predictive assumptions (e.g., volatility, risk-free rate) and random numbers to create potential outcomes of value. MCS assumes that stock prices take a random walk and cannot be predicted; therefore, random number generators are used to create random outcomes for stock prices. The fair value measurements are considered Level 3 measurements within the fair value hierarchy.

The Company’s non-financial assets, which primarily consist of property and equipment, are not required to be carried at fair value on a recurring basis and are reported at carrying value. However, on a periodic basis or whenever events or changes in circumstances indicate that their carrying value may not be fully recoverable, these along with other non-financial instruments are assessed for impairment and, if applicable, written down to and recorded at fair value.

#### ***Beneficial conversion features***

The Company followed the beneficial conversion feature guidance in ASC 470-20, *Debt with Conversion and Other Options*, which applies to redeemable convertible preferred stock and convertible debt. A beneficial conversion feature is defined as a nondetachable conversion feature that is in the money at the commitment date.

The beneficial conversion feature guidance requires recognition of the conversion option’s in-the-money portion, the intrinsic value of the option, in equity, with an offsetting reduction to the carrying amount of the instrument. The resulting discount is amortized as interest over the life of the instrument. When there is a subsequent change to the conversion ratio based on a future occurrence, the new conversion price may trigger the recognition of an additional beneficial conversion feature on occurrence.

As a result of the Business Combination, the unamortized portion of the beneficial conversion feature was recorded to additional paid-in capital.

#### ***Stock-based compensation***

The Company accounts for share-based compensation in accordance with ASC 718, *Compensation – Stock Compensation*, under which share based payments that involve the issuance of common stock to employees and non-employees and meet the criteria for equity-classified awards are recognized in the financial statements as share-based compensation expense based on the fair value on the date of grant. The Company issues stock option awards and restricted stock unit awards to employees and non-employees.

The Company utilizes the Black-Scholes model to determine the fair value of the stock option awards, which requires the input of subjective assumptions. These assumptions include estimating (a) the length of time grantees will retain their vested stock options before exercising them for employees and the contractual term of the option for non-employees (“expected term”), (b) the volatility of the Company’s common stock price over the expected term, (c) expected dividends, and (d) the fair value of a share of common stock prior to the Business Combination. After the closing of the Business Combination, the Company’s board of directors determined the fair value of each share of common stock underlying stock-based awards based on the closing price of the Company’s common stock as reported by the NYSE on the date of grant. The Company has elected to recognize the adjustment to share-based compensation expense in the period in which forfeitures occur.

The assumptions used in the Black-Scholes model are management’s best estimates, but the estimates involve inherent uncertainties and the application of management judgment (see Note 10). As a result, if other assumptions had been used, the recorded share-based compensation expense could have been materially different from that recorded in the financial statements.

#### ***Warrants and Warrant liabilities***

As a result of the Business Combination, the Company assumed the liability associated with the Gig warrants. The Company accounts for the warrants for shares of the Company’s common stock that are not indexed to its own stock as liabilities at fair value on the consolidated balance sheets. The warrants are subject to remeasurement at each balance sheet date and any change in fair value is recognized as a “(Gain) loss from change in fair value of warrant liabilities” in the consolidated statements of operations. The Company will continue to adjust the liability for changes in fair value until the

earlier of the exercise or expiration of the common stock warrants. At that time, the portion of the warrant liability related to the common stock warrants will be reclassified to “Additional paid-in capital”.

#### **Research and development**

Research and development costs are primarily expensed when incurred and consist of personnel-related expenses including salaries, benefits, travel and stock-based compensation for personnel performing research and development activities; expenses related to materials, supplies and testing; and consulting and occupancy expenses. In addition, costs for certain property and equipment utilized for research and development are capitalized and depreciated to “Research and development” over the useful life of the asset based on the property and equipment policy discussed above.

#### **Advertising**

Advertising costs are expensed when incurred and are included in “Selling, general and administrative” expenses and total \$182 and \$128 for the three months ended June 30, 2023 and 2022, and \$395 and 244 for the six months ended June 30, 2023 and 2022, respectively.

#### **Derivative Liability**

The Company accounts for the embedded conversion feature of the Convertible Note as a derivative liability. Pursuant to ASC 815-15, *Derivatives and Hedging – Embedded Derivatives*, the embedded conversion feature meets all three criteria to be bifurcated and accounted for separately from the host instrument, i.e., the Convertible Notes. Because this feature meets all criteria of a derivative instrument, it was accounted for and recorded as a derivative liability at fair value on the Company’s balance sheet with subsequent changes in fair value recorded in the consolidated statement of operations each reporting period.

#### **Earnout Liability**

As a result of the Business Combination, the Company recognized additional earnout shares as a liability. Pursuant to ASC 805, *Business Combinations*, the initial fair value of the earnout shares was recorded as a liability with the offset going to additional paid-in capital and with subsequent changes in fair value recorded in the consolidated statement of operations for each reporting period. The following table provides a reconciliation of the beginning and ending balances for the earnout liability measured at fair value using significant unobservable inputs (Level 3):

	<b>June 30, 2023</b>
Balance at beginning of period	\$ 2,265
(Gain) loss	(1,819)
Balance at end of period	<u>\$ 446</u>

#### **Income taxes**

Income taxes are accounted for using the asset and liability method which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax basis of other assets and liabilities. The Company provides for income taxes at the current and future enacted tax rates and laws applicable in each taxing jurisdiction. The Company uses a two-step approach for recognizing and measuring tax benefits taken or expected to be taken in a tax return and disclosures regarding uncertainties in income tax positions. The Company recognizes interest and penalties related to income tax matters in income tax expense in the consolidated statement of operations.

#### **Earnings per share**

Basic earnings (loss) per share (“EPS”) are computed by dividing net earnings (loss) by the weighted average number of common shares outstanding for the period. Diluted EPS attributable to common shareholders is computed by adjusting net earnings by the weighted average number of common shares and potential common shares outstanding (if dilutive) during each period. Potential common shares include shares issuable upon exercise of stock options and vesting of restricted stock awards. Anti-dilutive securities are excluded from diluted EPS.

The Company applies the treasury stock method to account for the dilutive impact of its options, warrants and restricted stock units and the if converted method for its Convertible Note.

#### ***Recent accounting pronouncements issued and adopted***

In June 2016, the Financial Accounting Standards Board issued Accounting Standards Update (“ASU”) 2016-13 related to the measurement of credit losses on financial instruments and has since modified the standard with several ASUs (collectively, the “credit loss standard”). The credit loss standard requires a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected. The measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions and reasonable and supportable forecasts that affect the collectability of the reported amount. The credit loss standard took effect for public entities for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. As amended in ASU 2019-10, for smaller reporting companies, the credit loss standard will take effect for fiscal years beginning after December 15, 2022, and for interim periods within those fiscal years. The adoption of this ASU will require a cumulative-effect adjustment to accumulated deficit as of the beginning of the first reporting period in which the guidance is effective (that is, a modified-retrospective approach). The Company adopted this standard on January 1, 2023, and this ASU did not have a material impact to the Company’s financial statements.

#### **Note 3 – Inventories**

At June 30, 2023 and December 31, 2022, inventories consist of the following:

	June 30, 2023	December 31, 2022
Raw materials	\$ 36,609	\$ 30,763
Work in progress	3,404	3,357
Finished goods	17,134	12,946
Total inventories	<u>\$ 57,147</u>	<u>\$ 47,066</u>

The Company reduced the cost of certain inventory to net realizable value by zero and \$682 during the three months ended June 30, 2023 and 2022 and \$2,864 and \$777 for the six months ended June 30, 2023 and 2022, respectively, which was recorded in “Cost of revenues.”

#### **Note 4 – Prepaid Expenses and Other Current Assets**

At June 30, 2023 and December 31, 2022, prepaid expenses and other current assets consist of the following:

	June 30, 2023	December 31, 2022
Vendor deposits	\$ 2,813	\$ 4,447
Prepaid insurance	1,564	2,367
Other prepaid expenses	2,281	2,559
Other current assets	21	28
Total prepaid expenses and other current assets	<u>\$ 6,679</u>	<u>\$ 9,401</u>

**Note 5 – Property and Equipment**

Cost and accumulated depreciation as of June 30, 2023 and December 31, 2022 are as follows:

	June 30, 2023	December 31, 2022
Machinery and equipment	\$ 3,232	\$ 2,945
Vehicles	4,443	3,634
Leasehold improvements	3,373	3,660
Computer equipment	1,060	688
Software	84	11
Furniture and fixtures	1,082	969
Capital projects in progress	3,529	2,317
Total cost	16,803	14,224
Accumulated depreciation and amortization	(3,832)	(2,705)
Total property and equipment, net	\$ 12,971	\$ 11,519

Depreciation and amortization expense associated with property and equipment is as follows for the periods indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Cost of revenues	\$ 231	\$ 125	\$ 389	\$ 210
Research and development	15	16	31	108
Selling, general and administrative	392	247	712	426
Total depreciation and amortization expense	\$ 638	\$ 388	\$ 1,132	\$ 744

**Note 6 – Accrued Expenses and Other Current Liabilities**

At June 30, 2023 and December 31, 2022, accrued expenses and other current liabilities consist of the following:

	June 30, 2023	December 31, 2022
Accrued professional services	\$ 666	\$ 597
Accrued interest	561	806
Accrued payroll and benefits	2,124	1,451
Other accrued expense	441	1,436
Warranty liability	1,599	1,268
Refund liability	1,285	—
Customer deposits	875	427
Deferred revenue	92	106
Current portion of finance lease obligation	210	179
Total accrued expenses and other current liabilities	\$ 7,853	\$ 6,270

Changes in warranty liability (included in accrued expenses and other current liabilities) were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Balance at beginning of period	\$ 1,851	\$ 1,191	\$ 1,268	\$ 994
Charge for the period	110	448	668	700
Utilized during the period	(362)	(427)	(337)	(482)
Balance at end of period	\$ 1,599	\$ 1,212	\$ 1,599	\$ 1,212

#### Note 7 – Notes Payable

Notes payable as of June 30, 2023 and December 31, 2022 consist of the following:

	June 30, 2023	December 31, 2022
Convertible Note	\$ 59,863	\$ 73,863
Facility	3,000	3,000
Prepaid Advance Agreement	1,650	—
Total debt principal	64,513	76,863
Unamortized debt discount - Convertible Note	(8,092)	(14,735)
Unamortized debt discount - Facility	(18)	(25)
Unamortized debt discount - Prepaid Advance Agreement	(131)	—
Total debt less unamortized debt discount	\$ 56,272	\$ 62,103
Less current portion - Convertible Note	\$ (51,771)	\$ —
Less current portion - Prepaid Advance Agreement	\$ (1,519)	\$ —
Total long-term debt	\$ 2,982	\$ 62,103

#### Convertible Note

In conjunction with the Business Combination, the Company entered into the 7.5% \$100,000 Convertible Note and paid issuance costs of \$5,000. The Convertible Note has a maturity date of May 15, 2024 and has semi-annual interest payments due May 15 and November 15 of each year starting on November 15, 2021. The Convertible Note has a conversion feature at a conversion price of \$230.00 and warrants to purchase up to 434,782 shares of common stock for a per share price of \$230.00. The Convertible Note has a mandatory conversion option that: a) is exercisable at the option of the Company on or after May 15, 2022; b) occurs when the Company's stock price (1) is greater than 120% of the conversion price of \$230.00, or \$276.00 for 20 trading days in a period of 30 consecutive trading days and (2) the 30-day average daily trading volume during the applicable exercise period, i.e., consecutive 30 trading day period, is greater than or equal to \$3,000; and c) the Company will make payments in accordance with the interest make-whole (defined below) amount in cash or issuance of additional shares of the Company's common stock.

The interest make-whole amount means, with respect to the conversion of the Convertible Note, in an amount denominated in U.S. dollars, the sum of all regularly scheduled interest payments, if any, due on such Convertible Note on each interest payment date occurring after the conversion date for such conversion and on or before the maturity date; provided, however, that (A) for these purposes, the amount of interest due on the interest payment date immediately after such conversion date will be deemed to be the following amount: any accrued and unpaid interest, if any, at such conversion date, plus any remaining amounts that would be owed to, but excluding, the maturity date in respect of such Convertible Note, including all regularly scheduled interest payments; and (B) if such conversion date occurs after the Company has sent a mandatory conversion notice, then the interest make-whole amount for such conversion shall be the sum of all regularly scheduled interest payments, if any, due on such Convertible Note on each interest payment date occurring after the conversion date for such conversion to, but excluding, the maturity date.

If the Company incurs other unpermitted indebtedness, it is required to redeem the Convertible Notes in full including outstanding principal and accrued and unpaid interest, plus a prepayment premium equal to the amount of interest which

would have accrued on the Convertible Notes through maturity (the “Redemption Feature”). In addition, the Company is required to issue to the holders a fixed number of warrants to purchase shares of Common Stock. The fixed number of warrants will be based on the principal balance of the Convertible Notes, divided by \$230.00 (“Redemption Warrants”). The Redemption Warrants will be exercisable from the date of repayment of the Convertible Notes through the original maturity date of the Convertible Notes.

If the number of outstanding shares of Common Stock is increased by a stock split or other similar event, the number of shares issuable on exercise of each warrant shall be increased proportionately and the exercise price shall be decreased proportionately. Consequently, if the number of outstanding shares of Common Stock is decreased by a reverse stock split, consolidation, combination or reclassification of shares of Common Stock or other similar event, the number of shares of Common Stock issuable on exercise of each warrant shall be decreased proportionately and the exercise price shall be increased proportionately.

The Company has identified certain embedded derivatives related to its Convertible Note. Since the Convertible Note has a conversion feature whereby the principal amount will convert into a variable number of shares based on the future trading price of the Company’s common stock, the conversion feature is recorded as a derivative liability. Therefore, the fair value of the convertible feature at inception on May 6, 2021 in the amount of \$17,063 was recorded as a debt discount and an addition to “Derivative liability” on the consolidated balance sheets. The derivative liability is adjusted to fair value each reporting period, with the changes in fair value reported in “(Gain) loss from change in fair value of derivative liability” on the consolidated statements of operations.

On November 21, 2022, the Company completed an exchange with certain holders of the Convertible Notes via privately negotiated exchange agreements, pursuant to which the holders agreed to exchange \$14,000 in aggregate principal amount of the Company's outstanding Convertible Notes for 663,822 newly issued shares of the Company's common stock, par value \$0.0001 per share, at a price of \$21.00 per share. The Company recognized a gain on extinguishment of \$2,921 in “(Gain) loss on extinguishment of debt” on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of \$8,138 and (2) the sum of the carrying amount of the converted debt \$11,021 and the fair value of the convertible note derivative liability of \$38.

On February 10, 2023, the Company completed an exchange with a holder of the Convertible Notes via a privately negotiated exchange agreement, pursuant to which the holder agreed to exchange \$3,500 in aggregate principal amount of the Company's outstanding Convertible Notes at 95% of par for 210,443 newly issued shares of the Company's common stock, par value \$0.0001 per share, at a price of \$15.80 per share. The Company recognized a gain on extinguishment of \$47 in “(Gain) loss on extinguishment of debt” on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of \$2,811 and (2) the sum of the carrying amount of the converted debt \$2,850 and the fair value of the convertible note derivative liability of \$8.

On March 15, 2023, the Company completed an exchange with certain holders of the Convertible Notes via privately negotiated exchange agreements, pursuant to which the holders agreed to exchange \$10,500 in aggregate principal amount of the Company's outstanding Convertible Notes for 937,500 newly issued shares of the Company's common stock, par value \$0.0001 per share, at a price of \$11.20 per share. The Company recognized a gain on extinguishment of \$2,918 in “(Gain) loss on extinguishment of debt” on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of \$5,756 and (2) the sum of the carrying amount of the converted debt \$8,669 and the fair value of the convertible note derivative liability of \$5.

The following table provides a reconciliation of the beginning and ending balances for the Convertible Note derivative liability measured at fair value using significant unobservable inputs (Level 3):

	<u>2023</u>
Balance at beginning of period	\$ 78
(Gain) Loss	(63)
Change resulting from conversions	(13)
Balance at end of period	<u>\$ 2</u>

The Convertible Note warrants are considered free-standing instruments and meet the criteria for equity classification because they are indexed to the Company’s own stock and provide a fixed number of shares. Therefore, the fair value of

the Convertible Note warrants on May 6, 2021 in the amount of \$14,522 was recorded as a debt discount and an addition to “Additional paid-in capital” on the consolidated balance sheets.

Interest expense for the three months ended June 30, 2023 and 2022 was \$3,117 and \$3,938, respectively, of which \$1,122 and \$1,647, respectively, related to contractual interest expense and \$1,995 and \$2,291, respectively, related to amortization of the discount. Interest expense for the six months ended June 30, 2023 and 2022 was \$6,538 and \$7,701, respectively, of which \$2,376 and \$3,295, respectively, related to contractual interest expense and \$4,162 and \$4,406, respectively, related to amortization of the discount.

#### ***Facility***

The Facility provides for both term and working capital loans for borrowings up to \$9,800 as of June 30, 2023. However, the Company’s Convertible Note requirements limit the Company’s permitted indebtedness to \$5,000. Interest is payable quarterly on borrowings at a fixed annual rate of 15%. Borrowings under the Facility are secured by substantially all the Company’s assets, are subject to borrowing base limitations, and require the Company to meet certain covenants. The Facility borrowings, with a maturity date of October 21, 2024, were \$3,000 as of June 30, 2023 and December 31, 2022. Interest expense related to the Facility was \$120 and \$115 for the three months ended June 30, 2023 and 2022, and \$238 and \$229 for the six months ended June 30, 2023 and 2022, respectively.

#### ***Pre-Paid Advance Agreement***

On May 16, 2023, the Company entered into a Pre-Paid Advance Agreement (the “PPA”) with YA II PN, Ltd., a Cayman Islands exempt limited partnership (the “Investor”). In accordance with the terms of the PPA, the Company may request pre-paid advances of up to \$2,000 from the Investor (or such greater amount that the parties may mutually agree) (each, a “Pre-Paid Advance”), with an aggregate limit of \$50,000, over an 18-month period. Such Pre-Paid Advances will be purchased by the Investor at 92% of the face amount. Interest will accrue on the outstanding balance of any Pre-Paid Advance at 0%, subject to an increase to 15% upon events of default described in the PPA. At any time while a Pre-Paid Advance is outstanding, the Investor may, by providing written notice to the Company (a “Purchase Notice”), require the Company to issue and sell shares of common stock to the Investor. The aggregate purchase price of the shares of common stock will be based on a price per share equal to the lower of: (a) with respect to each Pre-Paid Advance, 100% of the volume weighted average price (the “VWAP”) of the Company’s common stock on the trading day immediately preceding the closing of such Pre-Paid Advance (the “Fixed Price”) or (b) 92.0% of the average of the two lowest daily VWAPs during the seven trading days immediately prior to receipt of the Purchase Notice (as applicable, the “Purchase Price”), however in no event will the Purchase price be less than \$0.856 (the “Contractual Floor Price”).

While Pre-Paid Advances are outstanding, and within three trading days of a Trigger Event (as defined below), the Company must pay the Investor a monthly cash payment (the “Monthly Payment”) of \$1,000, plus any accrued and unpaid interest and a 7% redemption premium. Thereafter, the Company must pay the Investor the Monthly Payment every 30 calendar days after the due date of the initial Monthly Payment; provided that the Company’s monthly obligation to make such payments will end with respect to a particular Trigger Event if the daily VWAP of the Company’s common stock for five consecutive trading days immediately prior to the due date of the next Monthly Payment is 20% or greater than the Contractual Floor Price, unless a new Trigger Event occurs. A “Trigger Event” occurs if (i) the common stock is lower than the Contractual Floor Price for any five of seven consecutive trading days or (ii) the Company has issued substantially all of the shares available under the rules of the New York Stock Exchange until stockholder approval is received (19.9% of the shares outstanding as of the date hereof) (excluding the initial Pre-Paid Advance).

During the three and six months ended June 30, 2023, the Company received Pre-Paid Advances in the aggregate amount of \$3,200 and received proceeds in the amount of \$2,944, net of issuance cost in the amount of \$256. During the three and six months ended June 30, 2023, the Company converted \$1,550 with the issuance of 461,548 newly issued shares of common stock to Yorkville. The Company recognized a loss on extinguishment of \$468 in “Interest expense, net” on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of \$1,894 and (2) the sum of the carrying amount of the converted debt \$1,426. Interest expense related to the PPA was \$468 for the three and six months ended June 30, 2023 and zero for the three and six months ended June 30, 2022.

### Debt maturities

The total balance of all debt matures as follows:

Period Ending December 31,	Amount
2023 (remainder of the year)	\$ —
2024	64,513
2025	—
Thereafter	—
Total	\$ 64,513

### Note 8 – Leases

A contract is or contains a lease when, (1) the contract contains an explicitly or implicitly identified asset and (2) the customer obtains substantially all of the economic benefits from the use of that underlying asset and directs how and for what purpose the asset is used during the term of the contract in exchange for consideration. The Company assesses whether an arrangement is or contains a lease at inception of the contract. For all leases, other than those that qualify for the short-term recognition exemption, the Company recognizes as of the lease commencement date on the balance sheet a liability for its obligation related to the lease and a corresponding asset representing the Company's right to use the underlying asset over the period of use.

The Company leases its manufacturing center, distribution center, and office space (collectively "Operating Facility") and certain information technology ("IT") equipment under non-cancelable operating leases. The Company also leases equipment utilized in the manufacturing process under non-cancelable financing leases. These financing leases include either a bargain purchase option or the equipment reverts ownership to the Company at the end of the lease term.

The Company assesses the expected lease term at lease inception and discounts the lease using a fully-secured, annual incremental borrowing rate (or rate implicit in the lease, if readily determinable), adjusted for time value corresponding with the expected lease term. The Company elected, for all classes of underlying assets, to not apply the balance sheet recognition requirements of ASC 842, *Leases*, to leases with a term of one year or less and not expected to be renewed, and instead, recognize the lease payments in the income statement on a straight-line basis over the lease term. The Company elected to combine lease and non-lease components for its Operating Facility, IT equipment and manufacturing equipment leases.

Right-of-use assets and lease liabilities as of June 30, 2023 and December 31, 2022 consist of the following:

	June 30, 2023		December 31, 2022	
	Operating	Finance	Operating	Finance
<b>Assets</b>				
Right-of-use assets, net <sup>(1)</sup>	\$ 7,072	\$ 973	\$ 7,735	\$ 893
<b>Liabilities</b>				
Lease obligation - current portion <sup>(2)</sup>	\$ 1,822	\$ 210	\$ 1,649	\$ 179
Lease obligation - long-term portion <sup>(3)</sup>	6,772	640	7,735	619
Total lease obligations	\$ 8,594	\$ 850	\$ 9,384	\$ 798
Weighted average remaining lease terms (in years)	3.7	4.4	4.2	4.8
Weighted average discount rate	15%	4%	15%	4%

(1) Finance right-of-use assets, net are included in "Other assets" on the consolidated balance sheets.

(2) Finance lease obligation – current portion is included in "Accrued expenses and other current liabilities" on the consolidated balance sheets.

(3) Finance lease obligation – long-term portion is included in "Other long-term liabilities" on the consolidated balance sheets.



The Company's lease cost is presented below. The Company does not have any short-term leases or leases with variable lease payments. The financing lease cost for the three and six months ended June 30, 2023 and 2022 was immaterial.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Operating Lease Cost				
Cost of revenues	\$ 404	\$ 261	\$ 808	\$ 522
Research and development	76	77	152	155
Selling, general and administrative	183	319	366	627
Total operating lease cost	\$ 663	\$ 657	\$ 1,326	\$ 1,304

The maturities of the Company's lease liabilities are as follows:

	June 30, 2023	
	Operating	Finance
2023 (remainder of year)	\$ 1,459	\$ 118
2024	2,997	237
2025	3,043	192
2026	3,105	160
2027	518	113
Thereafter	—	95
Total future minimum lease payments	11,122	915
Less: imputed interest	(2,528)	(65)
Total maturities	\$ 8,594	\$ 850

## Note 9 – Capital Structure

### Reverse Stock Split

On April 24, 2023, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment (the "Certificate of Amendment") to the Company's Second Amended and Restated Certificate of Incorporation to effect a 1-for-20 reverse stock split (the "Reverse Stock Split") of the Company's issued and outstanding shares of common stock, par value \$0.0001 per share, effective as of 5:00 p.m. Eastern Time on April 27, 2023. Beginning with the opening of trading on April 28, 2023, the Company's common stock traded on the New York Stock Exchange on a split-adjusted basis under the new CUSIP number 53228T 200 and will continue to trade under the symbol "ZEV."

As a result of the Reverse Stock Split, every twenty shares of common stock issued and outstanding were automatically reclassified into one share of common stock. No fractional shares were issued in connection with the Reverse Stock Split. Stockholders who otherwise would have been entitled to receive fractional shares because they held a number of shares of common stock not evenly divisible by the Reverse Stock Split ratio were automatically entitled to receive a cash payment equal to the value of such fractional share based on the closing price of the common stock as of the effective time of the Reverse Stock Split adjusted for the Reverse Stock Split.

The Reverse Stock Split did not reduce the number of authorized shares of common stock of 250,000,000, or change the par value of the common stock. The Reverse Stock Split affected all stockholders uniformly and did not affect any stockholder's ownership percentage of the Company's shares of common stock.

All outstanding options, warrants, restricted stock units and similar securities entitling their holders to receive or purchase shares of common stock were adjusted as a result of the Reverse Stock Split, as required by the terms of each security. Prior to the Reverse Stock Split, the Company had outstanding issued warrants listed on the NYSE to purchase a total of 14,999,970 shares of common stock, with each whole warrant being exercisable to purchase one share of common stock at \$11.50 per share. After giving effect to the Reverse Stock Split, these warrants are now exercisable for a total of approximately 749,998 shares of common stock, resulting in each warrant becoming exercisable for 1/20th of a share of common stock with an exercise price of \$230.00 per whole share.

### ***Equity Line of Credit (“ELOC”)***

On August 30, 2022, the Company entered into the ELOC Agreement with Lincoln Park, pursuant to which Lincoln Park committed to purchase up to \$50.0 million of shares of the Company’s common stock, subject to certain limitations and conditions set forth in the ELOC Agreement. The Company may not issue or sell any shares of common stock under the ELOC Agreement which, when aggregated with all other shares of common stock beneficially owned by Lincoln Park, would result in beneficial ownership of more than 9.99% of the Company’s outstanding shares of common stock.

Under the terms of the ELOC Agreement, the Company has the right, but not the obligation, to sell to Lincoln Park, shares of its common stock over the period commencing on or about August 30, 2022 (the “Closing Date”) and ending on the first day of the month following the 36-month anniversary of the Closing Date. Purchase notices for regular or accelerated purchases to Lincoln Park include share volume limitations and are at prevailing market prices as defined in the ELOC Agreement.

During the three months ended September 30, 2022 and concurrently with the signing of the ELOC Agreement, the Company issued 14,974 shares of its common stock to Lincoln Park as a commitment fee. The fair value of the shares issued for the commitment fee of \$851 was recorded in "Selling, general and administrative" expense on the Company's consolidated statements of operations.

As of June 30, 2023, the Company had not sold any common stock to Lincoln Park under the ELOC Agreement, other than the shares of common stock issued as a commitment fee. The Company has agreed with the Investor that it will not utilize the ELOC while there are outstanding Pre-Paid Advances without the Investor’s consent.

### ***Warrants***

As of June 30, 2023, there are warrants outstanding convertible into 1,218,285 shares of common stock. In total, the warrants include 14,999,970 public warrants convertible into 749,998 shares of common stock, 8,695,641 Convertible Note warrants convertible into 434,782 shares of common stock, and 670,108 private placement warrants convertible into 33,505 shares of common stock outstanding. Each warrant entitles the holder to purchase 1/20th of a share of common stock at a price of \$230.00 per whole share, subject to adjustment as discussed below. The warrants will expire at 5:00 p.m., New York City time, on May 26, 2026, the fifth anniversary of the completion of the Company’s Business Combination, or earlier upon redemption or liquidation.

The private placement warrants are identical to the public warrants except that such private placement warrants will be exercisable for cash or on a cashless basis, at the holder’s option, and will not be redeemable by the Company, in each case so long as they are still held by the sponsor or its affiliates.

The Company may redeem the outstanding warrants (excluding the private placement warrants):

- in whole and not in part;
- at a price of \$0.01 per warrant;
- upon a minimum of 30 days’ prior written notice of redemption, which the Company refers to as the 30-day redemption period; and
- if, and only if, the last reported sale price of the Company’s common stock equals or exceeds \$360.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within a 30 trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders.

The fair value of the private placement warrants on May 6, 2021 in the amount of \$1,253 was recorded as a “Warrant liability” and a reduction to “Additional paid-in capital” on the consolidated balance sheets. The change in fair value at each reporting date was recognized in “(Gain) loss from change in fair value of warrant liabilities” on the consolidated statements of operations. The fair value of the Convertible Note warrants on May 6, 2021 in the amount of \$14,522 was recorded as a debt discount and an addition to “Additional paid-in capital” on the consolidated balance sheets.

The following table presents information for privately placed warrants that were assumed in the Business Combination:

	Number of Warrants <sup>(1)</sup>	Warrant Fair Value	Weighted Average Exercise Price	Weighted Average Remaining Life
<b>Private warrants assumed through Business Combination</b>				
Outstanding at December 31, 2021	670,108	\$ 2,185	\$ 230.00	4.3
Change in fair value	—	(2,125)	—	—
Outstanding — December 31, 2022	670,108	60	230.00	3.4
Change in fair value	—	(50)	—	—
Outstanding — June 30, 2023	670,108	10	230.00	2.8

(1) The 670,108 private placement warrants are convertible into 33,505 shares of common stock outstanding. Each warrant entitles the holder to purchase 1/20th of a share of common stock at a price of \$230.00 per whole share, subject to adjustment.

## Note 10 – Stock-Based Compensation

### 2021 Equity Incentive Plan

In connection with the Business Combination, the stockholders approved the 2021 Equity Incentive Plan (the “2021 Plan”). The 2021 Plan provides the Company the ability to grant incentive stock options, non-qualified stock options, restricted stock awards, stock appreciation rights, restricted stock units, performance units, performance shares, cash-based awards and other stock-based awards. The purpose of the 2021 Plan is to advance the interests of the Company and its stockholders by providing an incentive to attract, retain and reward persons for performing services and by motivating such persons to contribute to the growth and profitability of the Company and its subsidiaries. As of June 30, 2023, there were 889,711 shares reserved and 428,167 shares available for grant under the 2021 Plan.

### Prior Lightning Systems 2019 Equity Incentive Plan

The legacy Lightning Systems 2019 Equity Incentive Plan (“2019 Plan”) provided for the grant of incentive stock options, non-qualified stock options, and other awards. As a result of the Business Combination, the 2019 Plan was superseded by the 2021 Plan; therefore, no further awards will be granted under the 2019 Plan. In connection with the Business Combination, awards outstanding were converted into an option exercisable for common stock of the Company based on the Exchange Ratio. As of June 30, 2023, there were 75,103 stock options previously granted and unexercised under the 2019 Plan, which remain subject to the terms and conditions of the 2019 Plan.

### Compensation Expense

To date, the Company has issued stock option and restricted stock unit (“RSU”) awards. The Company recognizes stock-based compensation expense based on the fair value of the awards issued at the date of grant and amortized on a straight-line basis as the employee renders services over the requisite service period. Forfeitures are accounted for as they occur by

reversing the expense previously recognized for non-vested awards that were forfeited during the period. The following table presents the stock-based compensation related to stock option and RSU awards for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Stock options expense				
Cost of revenues	\$ 5	\$ 5	\$ 7	\$ 10
Research and development	1	10	7	19
Selling, general and administrative	322	192	519	384
Total stock options expense	\$ 328	\$ 207	\$ 533	\$ 413
Restricted stock units expense				
Cost of revenues	\$ 73	\$ 53	\$ 160	\$ 107
Research and development	(7)	33	54	79
Selling, general and administrative	965	1,143	2,054	1,809
Total restricted stock units expense	\$ 1,031	\$ 1,229	\$ 2,268	\$ 1,995
Total stock-based compensation	\$ 1,359	\$ 1,436	\$ 2,801	\$ 2,408

The estimated unrecognized expense for stock options and RSUs not vested as of June 30, 2023, which will be recognized over the remaining requisite service period, is as follows:

Stock options unrecognized expense	\$ 2,717
Stock options weighted-average remaining requisite service period (in years)	1.7
Restricted stock units unrecognized expense	\$ 8,458
Restricted stock units weighted-average remaining requisite service period (in years)	1.5

#### Stock Option Awards

Stock option awards are issued to employees with an exercise price equal to the estimated fair market value per share at the date of grant and a term of 10 years. Stock option awards generally vest over 4 years. It is the Company's policy to issue new shares upon option exercise. Changes in the Company's stock options for the six months ended June 30, 2023 are presented in the table below.

	Number of Options	Weighted Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)	Weighted Average Remaining Life (in years)
Outstanding at January 1, 2023	138,091	\$ 45.60		
Granted	—	\$ —		
Exercised	(9,502)	\$ 1.08		
Forfeited	(4,100)	\$ 12.96		
Expired	(1,093)	\$ —		
Outstanding at June 30, 2023	123,396	\$ 50.32	\$ 96	7.5
Vested and exercisable at June 30, 2023	70,636	\$ 39.56	\$ 64	7.2

Changes in the status of the Company’s non-vested stock option awards for the six months ended June 30, 2023 are presented in the table below.

	Non-vested Shares Under Option	Weighted Average Grant Date Fair Value per Share
Non-vested at January 1, 2023	73,939	\$ 35.00
Granted	—	\$ —
Vested	(17,079)	\$ 87.65
Forfeited	(4,100)	\$ 12.96
Non-vested at June 30, 2023	<u>52,760</u>	<u>\$ 64.73</u>

The aggregate intrinsic value of options exercised were \$60 and \$106 during the three months ended June 30, 2023 and 2022, respectively.

**Restricted Stock Unit Awards**

The Company grants RSU awards to employees that generally vest over 3 years. RSU awards are valued based on the closing market price of the Company’s common stock on the grant date.

	Number of RSUs	Weighted Average Grant Date Fair Value per Share
Outstanding at January 1, 2023	188,223	\$ 71.40
Granted	239,189	\$ 5.45
Vested	(39,069)	\$ 89.26
Forfeited	(31,949)	\$ 57.07
Outstanding at June 30, 2023	<u>356,394</u>	<u>\$ 26.51</u>

**Other Employee Benefits - 401(k) Savings Plan**

The Company has an employee-directed 401(k) savings plan (the “401(k) Plan”) for all eligible employees. Under the 401(k) Plan, employees may make voluntary contributions based on a percentage of their pretax income, subject to statutory limitations. The Company matches 100% for the first 3% of each employee’s contribution and 50% for the next 2% of each employee’s contribution. The Company’s cash contributions are fully vested upon the date of match. The Company made matching cash contributions of \$240 and \$200 for the three months ended June 30, 2023 and 2022, respectively, and \$497 and \$365 for the six months ended June 30, 2023 and 2022, respectively.

**Note 11 – Income Taxes**

The provision for income taxes is recorded at the end of each interim period based on the Company’s best estimate of its effective income tax rate expected to be applicable for the full fiscal year. There is no provision for income taxes because the Company has incurred taxable losses since inception. The Company’s effective income tax rate was 0% for the three and six months ended June 30, 2023 and 2022 and the realization of any deferred tax assets is not more likely than not.

**Note 12 – Earnings (Loss) per Common Share**

Basic income or loss per common share is computed by dividing net income or loss by the weighted average number of common shares outstanding during the period. Diluted income or loss per common share is computed by dividing net income or loss by the weighted average number of common shares outstanding, plus the issuance of potentially dilutive common shares that could result from the exercise of outstanding stock options and warrants, vesting of restricted stock and conversion of convertible notes. No potentially dilutive common shares are included in the computation of any diluted per share amount when a loss is reported, which was the case for the three and six months ended June 30, 2023 and 2022. The Company applied the treasury stock method to account for the dilutive impact of its options, warrants and restricted stock units and the if-converted method for its Convertible Note.

The following table reconciles the earnings (loss) and number of common shares used to calculate basic and diluted earnings per common share attributable to the Company's shareholders:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
<b>Basic earnings per common share:</b>				
Net income (loss) - basic	\$ (21,448)	\$ 35,738	\$ (44,883)	\$ 24,982
Weighted shares outstanding - basic	5,800,106	3,770,406	5,299,921	3,763,443
Basic earnings (loss) per common share	\$ (3.70)	\$ 9.48	\$ (8.47)	\$ 6.64
<b>Diluted earnings per common share:</b>				
Net income (loss) - basic	\$ (21,448)	\$ 35,738	\$ (44,883)	\$ 24,982
Add: Convertible Note interest expense, net of tax	—	3,938	—	7,701
Reverse: Change in fair value of derivative liability	—	(10,087)	—	(12,642)
Net income (loss) - diluted	\$ (21,448)	\$ 29,589	\$ (44,883)	\$ 20,041
Weighted shares outstanding - basic	5,800,106	3,770,406	5,299,921	3,763,443
Add: Dilutive effects of stock options and restricted stock units	—	108,092	—	118,610
Add: Dilutive effects of if-converted Convertible Note	—	382,012	—	382,012
Weighted shares outstanding - diluted	5,800,106	4,260,511	5,299,921	4,264,065
Diluted earnings (loss) per common share	\$ (3.70)	\$ 6.94	\$ (8.47)	\$ 4.70

All potentially dilutive common shares in the following table were excluded from the computation of diluted loss per share for the three and six months ended June 30, 2023 and 2022 because including them would have had an anti-dilutive effect due to losses reported during those periods.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Convertible notes payable	260,273	—	260,273	—
Outstanding warrants	1,218,286	1,218,286	1,218,286	1,218,286
Stock options	123,396	47,328	123,396	47,328
Restricted stock units	356,394	45,766	356,394	39,991
Common and preferred Series C warrants	—	—	—	—
Total anti-dilutive stock	1,958,349	1,311,380	1,958,349	1,305,605

### Note 13 – Commitments and Contingencies

#### *Firm Purchase and Other Commitments*

The Company is party to firm purchase commitments with some of its suppliers. A firm purchase commitment represents an agreement that specifies all significant terms, including price and timing of the transactions, and includes a disincentive for non-performance that is sufficiently large to make performance probable. This disincentive is generally in the form of a take-or-pay provision, which requires the Company to pay for committed volumes regardless of whether the Company actually acquires the materials. The Company evaluates these agreements and records a loss, if any, on firm purchase commitments using the same lower of cost or market approach as that used to value inventory.

The Company amended certain firm purchase commitments during the year ended December 31, 2022, which significantly reduced its commitments. Negotiations with other suppliers are still ongoing to blend and extend or terminate other future commitments due to supply chain constraints and cost increases for both parties. If negotiations to amend certain purchase

commitments are not successful, the Company may incur additional losses in future periods.

The Company also has other commitments, including marketing and software subscription agreements.

The amounts in the table below represent the Company's future minimum commitments.

	As of June 30, 2023		
	Firm Purchase	Other	Total
2023 (remainder of the year)	\$ 40,551	\$ 469	\$ 41,020
2024	—	457	457
2025	—	178	178
2026	—	138	138
2027	—	—	—
Thereafter	—	—	—
Total	\$ 40,551	\$ 1,242	\$ 41,793

### Legal Proceedings

Aside from the proceedings described below, the Company may be involved in legal matters arising in the ordinary course of business from time to time. While the Company believes that such matters are currently not material, there can be no assurance that matters arising in the ordinary course of business for which the Company is or could become involved in litigation will not have a material adverse effect on its business, financial condition or results of operations. The Company records an accrual for legal contingencies when it determines that it is probable that it has incurred a liability and it can reasonably estimate the amount of the loss.

On August 4, 2021, a purported stockholder of the Company filed a putative class action complaint in the Delaware Chancery Court, captioned *Delman v. GigCapitalAcquisitions3, LLC, et al.* (Case No. 2021-0679) on behalf of a purported class of stockholders. The lawsuit names GigCapitalAcquisitions3, LLC and the Company's former directors Dr. Katz, Dr. Dinu, and Messrs. Betti-Berutto, Mikulsky, Miotto and Wang, as defendants. The lawsuit alleges that the defendants breached their fiduciary duty stemming from Gig's merger with Lightning Systems and unjust enrichment of certain of the defendants. The lawsuit seeks, among other relief, unspecified damages, redemption rights, and attorneys' fees. Neither the Company nor any of its current officers or directors are parties to the lawsuit. The Company's former directors are subject to certain indemnification obligations of the Company. On January 4, 2023, the Delaware Chancery Court denied the defendant's motion to dismiss.

In addition, on October 15, 2021, the Company and certain of its officers were named as defendants in a putative securities class action. The action is pending in the U.S. District Court for the District of Colorado, and is captioned *Shafer v. Lightning eMotors, Inc., et al.*, Case No. 1:21-cv02774. The lawsuit alleges violations of Sections 10(b), Section 14(a) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder for purported false or misleading statements regarding the Company's business operations and financial condition. A related lawsuit captioned *Cohen v. Lightning eMotors, Inc., et al.*, Case No. 1:21-cv-03215, was filed in the United States District Court for the District of Colorado on December 1, 2021. On December 17, 2021, the Cohen lawsuit was consolidated with the Shafer lawsuit. On April 22, 2022, the court appointed a lead plaintiff in the consolidated lawsuit. The lead plaintiff's filed a consolidated complaint on May 20, 2022. The plaintiffs seek damages in an unspecified amount, attorneys' fees, and other remedies. The Company believes the allegations are without merit and intends to defend vigorously against such allegations.

On February 6, 2023, a purported stockholder of the Company filed a derivative complaint in the Delaware Chancery Court, captioned *Uvaydov v. Robert Fenwick-Smith, Tim Reeser, et al.* (Case No. 2023-0137-LWW). The lawsuit names certain current and former officers and directors of the Company as defendants. The lawsuit alleges that the defendants breached their fiduciary duty stemming from GigCapital3's merger with Lightning Systems. The lawsuit seeks, among other relief, unspecified damages, redemption rights, and attorneys' fees. The Company believes the allegations are without merit and intends to defend vigorously against them.

On February 24, 2023, a purported stockholder of the Company filed a derivative complaint in the U.S. District Court for the District of Colorado, captioned *Lanham v. Robert Fenwick-Smith, et al.* (Case No. 1:23-cv00507). The lawsuit names

certain current and former officers and directors of the Company as defendants. The lawsuit alleges, among others, that the defendants breached their fiduciary duty stemming from GigCapital3's merger with Lightning Systems. The lawsuit seeks, among other relief, unspecified damages, and attorneys' fees. The Company believes the allegations are without merit and intends to defend vigorously against them.

On March 9, 2023, the Company filed a lawsuit against Romeo Systems, Inc. and Nikola Corporation in the Larimer County District Court, Colorado (Case No. 2023CV30187) seeking damages for breach of contract and tortious interference related to the product supply agreement between the Company and Romeo dated July 13, 2020, arising from Romeo's failure to deliver batteries under the agreement and for costs associated with a recall of the batteries. The Company initiated a voluntary recall after Romeo refused to take action as the supplier of the batteries. On June 28, 2023, the Company was awarded a default judgment in the amount of \$9,800 against Romeo. Romeo recently instituted an assignment for the benefit of creditors in California and the Company will file a claim for recovery in the proceeding. It is uncertain if the Company will receive any distribution of the claim. The Company will continue to pursue claims against Nikola in the lawsuit.

#### ***Recall Campaigns***

On December 16, 2022, the Company initiated a voluntary recall for certain 2021-2022 model year Lightning eMotors ZEV4 vehicles due to multiple software and hardware discrepancies internal to the Romeo battery packs installed in the ZEV4 series vehicles. The affected vehicles may fail to operate in cold temperatures, fail to start, or may lose traction power while driving, increasing the risk of an accident. Romeo has been formally notified of the recall; however, Romeo has not reached a solution to honor their battery warranty. The Company's current remedy is to either replace the ZEV4 manufactured with Romeo battery packs with updated ZEV4 models manufactured with Proterra battery packs or to refund full value of the purchase price to the customer. The Company will seek to recover the costs and expenses associated with the recall from Romeo and Nikola.

On March 27, 2023, the Company initiated a voluntary recall for certain model year 2020 FT3-43, 2019-2022 FT3-86, 2020 FE4-86 and 2019-2021 FE4-129 vehicles equipped with eMatrix battery packs. Defective structural welds and internal radiator leaks have been found in the battery packs which may result in isolation faults and cell imbalances. The affected vehicles may lose traction power, increasing the potential for collisions or experience a thermal runaway which could result in vehicle fires. Because the remedy is still being developed, the Company is unable to reasonably estimate a range of the potential losses associated with the recall.

#### **Note 14 - Subsequent Events**

##### ***Settlement Agreement***

On July 24, 2023, Company entered into a Settlement Agreement and Mutual Release (the "Settlement Agreement") with eMatrix Energy Systems, Inc. ("eMatrix") and Linamar Corporation ("Linamar") in the matter of eMatrix Energy Systems, Inc. v. Lightning eMotors, Inc. v. eMatrix Energy Systems, Inc. and Linamar Corporation, Case No. 2021-191769 (Oakland County Circuit Court, Michigan) (the "Action"). The Settlement Agreement settles all claims asserted or that could have been asserted in the Action by eMatrix against the Company, and those asserted or that could have been asserted by the Company against eMatrix and Linamar, related to eMatrix's sales of electric vehicle battery packs to the Company.

Pursuant to the Settlement Agreement, Linamar, on behalf of itself and eMatrix, has agreed to pay the Company \$3.0 million in cash, and the Company, eMatrix and Linamar executed mutual releases and agreed to dismiss the Action with prejudice without any party admitting fault, liability or wrongdoing.

##### ***Amendment to Security Agreement***

On August 10, 2023, Lightning Systems, Inc. and Cupola Infrastructure Income Fund, L.L.L.P. entered into Amendment No. 2 (the "Amendment") to the Loan and Security Agreement dated October 10, 2019, as amended (the "Loan and Security Agreement"). The Amendment modifies certain terms of the Loan and Security Agreement: (i) the Amendment modifies our Facility's financial covenant requiring that total equity plus expected EBITDA at the end of the next quarter and the following quarter be greater than \$0, by establishing that the covenant is to now be evaluated beginning with the quarter ending September 30, 2023; and (ii) the Amendment also provides for a 3% increase, from 15% to 18%, on the fixed annual interest rate under our Facility for any principal amount outstanding on any working capital loans. The description of the Amendment is qualified in its entirety by reference to the text of the Amendment, which is filed as Exhibit 10.9 to this report and is incorporated herein by reference.



## Item 2. Management's Discussion of Analysis of Financial Condition and Results of Operations

References to “we,” “us,” “our” or the “Company” are to Lightning eMotors, Inc., together with its wholly owned subsidiary, except where the context requires otherwise. The following discussion should be read in conjunction with our unaudited consolidated financial statements and related notes thereto included elsewhere in this report and our audited consolidated financial statements and the related notes included in our annual report on Form 10-K for the year ended December 31, 2022 filed with the Securities and Exchange Commission on March 13, 2023.

### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Our forward-looking statements include, but are not limited to, statements regarding our or our management team’s expectations, hopes, beliefs, intentions, or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this report are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to the risks described herein and in our annual report on Form 10-K, including, but not limited to: our ability to continue as a going concern; our ability to continue operations; our ability to become profitable; our ability to raise additional funds or find a strategic partner; our ability to service our debt; our ability to control costs of our operations; our ability to obtain sufficient supplies of chassis, motors, batteries and other critical components for the manufacture of our ZEVs and powertrains; an increase in the cost of raw materials due to inflation; the impact of inflation and rising rates on customers’ decisions to purchase ZEVs; the number of orders placed by our commercial fleet customers; the market acceptance of our products; the availability, amount and disbursement of government grants, loans or other incentives; and other risks and uncertainties.

Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. These forward-looking statements speak only as of the date hereof. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law.

### Overview

We are a leading designer and manufacturer of zero-emission commercial trucks and buses and charging infrastructure solutions for fleets, large enterprises, original equipment manufacturers, and governments. Our product offerings range from cargo vans, transit and shuttle buses, school buses, specialty work trucks, ambulances and electric powertrains for school buses, transit buses and motorcoaches. Our product solutions help our customers reduce their greenhouse gas emissions, lower operating costs and improve energy efficiency.

We started in 2008 as a manufacturer of hybrid systems for commercial vehicles. In 2017, we redirected our efforts to focus exclusively on the market opportunity in ZEVs. We successfully and quickly adapted to developing ZEVs by leveraging nearly 10 years of extensive knowledge and production infrastructure for the hybrid systems. Our 14-year track-record of research and development, significant customer engagement and validation, and focus on building highly customized vehicles has allowed us to create an electric solution that we believe remains ahead of the competition in terms of technology, reliability, and versatility. We combine internally-developed, optimized modular software, which can be used in multiple platforms and applications, with hardware designs that allows us to address a diverse range of opportunities in the markets in which we operate in a cost-effective manner. Our flexible approach provides a significant time-to-market advantage. We believe we are the only full-range manufacturer of Class 3 to 7 ZEVs in the United States providing end-to-end electrification solutions including advanced analytics software and mobile charging solutions to our customers.

### **Recent Developments**

**Production.** During the three months ended June 30, 2023 and 2022, we produced 46 and 74 units, respectively, consisting of zero-emission vehicles, or ZEVs, mobile battery vehicle chargers and separately sold zero-emission powertrains. During the three months ended June 30, 2023, we sold 70 units compared to the sale of 36 units in the same period in 2022. During the six months ended June 30, 2023 and 2022, we produced 99 and 144 units, respectively. During the six months ended June 30, 2023, we sold 99 units compared to the sale of 104 units in the same period in 2022. As of August 4, 2023, we had over 600 vehicles on the road with over 4.9 million miles driven. We are currently focused on increasing production of our ZEVs and our mobile battery vehicle charger, reducing costs, increasing the affordability and efficiency of our ZEVs, and bringing new products to market, such as ZEV4 work trucks.

**Orders.** In May 2023, we signed a contract with Macnab EV Sales Corp. to deliver 126 ZEVs to the leading Canadian commercial vehicle distributor by the end of 2023. Deliveries of ZEV3 vans to Macnab have already begun. The full order of 126 vehicles includes ZEV3 cargo and passenger van configurations and ZEV4 shuttle buses.

**Reverse Stock Split.** We effected a 1-for-20 reverse stock split, or the Reverse Stock Split, of our issued and outstanding shares of common stock, par value \$0.0001 per share, effective as of 5:00 p.m. Eastern Time on April 27, 2023. As a result of the Reverse Stock Split, every twenty shares of common stock issued and outstanding were automatically reclassified into one share of common stock. All share and per share amounts were retroactively adjusted for all periods presented to give effect to the Reverse Stock Split, including reclassifying an amount equal to the reduction in par value of our common stock to additional paid-in capital.

### **Material Trends and Uncertainties**

**Macroeconomic Factors.** The impact of current macroeconomic conditions on our business - including slowed economic growth or the potential for a recession, increasing inflation and interest rates which affect the demand of our ZEVs, supply chain constraints, and geopolitical events - is uncertain. In addition, although the impact is lessening, the extent to which the effects of the COVID-19 pandemic may impact our business in future periods remains uncertain and unpredictable. Our outlook for future growth in ZEVs depends upon the various economic and regulatory conditions, and on our ability to manage through supply chain issues that have, and will continue to, limit the level to which we can increase output in the near term. Our long-term outlook remains positive as we believe the adoption of alternative fuel vehicles and the electric vehicle market will continue to grow.

**Ability to Continue as a Going Concern.** As discussed herein, we have suffered recurring losses from operations and there is substantial doubt about our ability to continue as a going concern. Our continuation as a going concern is dependent upon us attaining and maintaining profitable operations and/or raising additional capital from equity offerings, debt financings or other capital markets transactions, collaborations, strategic partnerships or licensing arrangements. We have been working with financial advisors to assist us in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to us when, and in the amounts needed, we could be required to liquidate inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that we will be able to raise the capital we need to continue our operations.

**Availability of grant funding.** Many of our customers utilize state and federal incentive programs to offset the higher initial costs of electric vehicles, as well as to fund the installation of charging equipment. In connection with the new tax credits for certain commercial EVs established by the Inflation Reduction Act of 2022, we have been transitioning some of our efforts towards larger ZEVs that qualify for the larger tax credits. The IRS is still in the process of releasing further guidance on specific aspects of the aforementioned credits. The announcement of the IRA and the delay in receiving adequate IRS guidance as to the roll-out of the new tax credits has slowed order volumes thus far in 2023 and increased customer buying decision cycle times, as many existing or potential customers are waiting to place orders until they are certain of the amount of tax credits available per ZEV. In addition, many customers are evaluating the size and type of ZEV they intend to purchase because the amount of the tax credit depends on the weight of the vehicle, among other factors. Furthermore, other government programs, such as the FTA's Low- and No-Emission Vehicle Program, the Colorado Electric School Bus Grant Program or certain other state programs, recently announced new funding and are in the process of making these funds available for eligible purchases. Until these processes are established, we believe, customer orders may be delayed.

**Supply-Chain challenges.** We have been experiencing significant delivery delays from our suppliers since April 2020. In addition, we often do not get informed of delivery delays until or after the expected delivery dates and have, at times, also

experienced deliveries in advance of expected delivery dates without prior notice (for orders that were previously delayed), which does not allow for adequate planning. We have also been experiencing shortages of chassis and other components. We have increased our raw material inventories and added new suppliers. However, adding new suppliers, especially for chassis, increases cost and delays production. We expect supply chain challenges will continue for the foreseeable future. As a result of these challenges, we are carefully monitoring our inventory of chassis, batteries, motors and other raw materials to optimize cost, minimize supply chain issues. We have also entered into multi-year minimum purchase commitments with some of our suppliers of critical components. As of June 30, 2023, the minimum purchase commitment for the next twelve months is \$40.6 million under these agreements. However, we are constantly evaluating our commitments and are currently in negotiations to either blend and extend or terminate some of our future commitments to address supply chain constraints and costs.

***Inflation and interest rates.*** We are experiencing cost increases due to inflation resulting from various supply chain disruptions and general global economic conditions. The cost of raw materials, manufacturing equipment, labor and shipping and transportation has increased considerably. We expect higher levels of inflation to persist for the foreseeable future. If we are unable to fully offset higher costs through price increases or other measures, we could experience an adverse impact to our business, prospects, financial condition, results of operations, and cash flows. Interest rates have also increased considerably. The increase in inflation and interest rates impacts the demand for our ZEVs, as customers may delay purchasing ZEVs and/or have difficulty financing their ZEV purchases. Rising interest rates also present a recent challenge impacting the U.S. economy and could make it more difficult for us to obtain financing on acceptable terms, if at all, in the future. Additionally, the general consensus among economists suggests that we should expect a higher recession risk to continue over the next year, which, together with the foregoing, could result in further economic uncertainty and volatility in the capital markets in the near term, and could negatively affect our operations. Furthermore, such economic conditions have produced downward pressure on share prices.

***Ability to Attract New Customers and Customer Demand.*** Our growth will depend in large part on our ability to attract new customers. We have invested heavily in developing our ZEVs and electric powertrains and plan to continue to do so. We anticipate that our sales activities will lead to additional orders and deliveries, and, as a result, increase our base of customers. An inability to attract new customers would substantially impact our ability to grow revenue or improve our financial results. Further, we often receive binding and non-binding purchase orders from customers that are contingent on various factors, such as completing a successful pilot program, obtaining third-party financing or obtaining government grants, such as HVIP. In addition, some customers are interested in future products, not yet in our production. While we continuously strive to expand our product catalog, developing new platforms takes a significant amount of time and expense, such as engineering work, sourcing new suppliers, marketing, testing and quality control. In addition, orders may be delayed for a number of reasons, many of which are beyond our control, including supplier delays, which may cause delays in our manufacturing process, or delays in customers obtaining financing. As a result, any such orders may not result in actual revenue in the near term or at all. Accordingly, revenue estimates and the amount and timing of work expected to be performed at the time the estimate of order backlog is developed is subject to change.

## Results of Operations

### Comparison of Three and Six Months Ended June 30, 2023 and 2022

#### Revenue

The following table compares revenue for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Change	% Change
	2023	2022		
	(dollar amounts in thousands)			
Gross Revenue	\$ 8,170	\$ 3,536	\$ 4,634	131 %
Customer refunds <sup>(1)</sup>	(254)	—	\$ (254)	nm*
Revenue, net of customer refunds	\$ 7,916	\$ 3,536	\$ 4,380	124 %
ZEV units sold	70	36	34	94 %
	Six Months Ended June 30,		Change	% Change
	2023	2022		
	(dollar amounts in thousands)			
Gross Revenue	\$ 11,736	\$ 8,948	\$ 2,788	31 %
Customer refunds <sup>(1)</sup>	(2,509)	—	\$ (2,509)	nm*
Revenue, net of customer refunds	\$ 9,227	\$ 8,948	\$ 279	3 %
ZEV units sold	99	104	(5)	(5)%

(1) Customer refunds are related to the ZEV4 recall on vehicles that were manufactured with Romeo battery packs.

Revenue is primarily derived from the sale of our ZEVs. Revenue, net of customer refunds increased by \$4.4 million, or 124%, during the three months ended June 30, 2023, due to an increase in ZEV sales and an increase in the average sales price by unit. Excluding the adjustment for customer refunds, revenue increased by \$4.6 million, or 131%, during the three months ended June 30, 2023.

Revenue, net of customer refunds increased by \$0.3 million, or 3%, during the six months ended June 30, 2023 due to an increase in average sales price, offset by a decrease in ZEV sales and by refunds of the purchase price made to customers for the ZEV4 manufactured with Romeo batteries in connection with the Romeo recall. We will seek to recover the costs and expenses associated with the recall from Romeo. Excluding the adjustment for customer refunds, revenue increased by \$2.8 million, or 31%, during the six months ended June 30, 2023.

#### Cost of Revenues, Gross Loss and Gross Margin

The following table compares the cost of revenues, gross loss and gross margin for the three and six months ended June 30, 2023 and 2022:

	<b>Three Months Ended June 30,</b>		<b>Change</b>	<b>% Change</b>
	<b>2023</b>	<b>2022</b>		
	(dollar amounts in thousands)			
Cost of revenues	\$ 12,933	\$ 4,889	\$ 8,044	165 %
Gross loss	\$ (5,017)	\$ (1,353)	\$ (3,664)	(271)%
Gross margin	(63)%	(38)%		

	<b>Six Months Ended June 30,</b>		<b>Change</b>	<b>% Change</b>
	<b>2023</b>	<b>2022</b>		
	(dollar amounts in thousands)			
Cost of revenues	\$ 21,085	\$ 12,611	\$ 8,474	67 %
Gross loss	\$ (11,858)	\$ (3,663)	\$ (8,195)	(224)%
Gross margin	(129)%	(41)%		

Cost of revenues includes direct costs (parts, material, and labor); indirect manufacturing costs (manufacturing overhead, depreciation and plant operating lease expense); shipping, field services, logistics and warranty costs.

Cost of revenues increased during the three and six months ended June 30, 2023 due to an increase in the lower of cost or net realizable value expense associated with finished goods, an increase in inventory obsolescence expense, as well as an increase in costs per unit due to an increase in raw material costs and factory overhead and other fixed costs during the six months ended June 30, 2023 compared to the prior year period.

### **Research and Development**

The following table compares research and development expense for the three and six months ended June 30, 2023 and 2022:

	<b>Three Months Ended June 30,</b>		<b>Change</b>	<b>% Change</b>
	<b>2023</b>	<b>2022</b>		
	(dollar amounts in thousands)			
Research and development	\$ 1,381	\$ 1,810	\$ (429)	(24)%

	<b>Six Months Ended June 30,</b>		<b>Change</b>	<b>% Change</b>
	<b>2023</b>	<b>2022</b>		
	(dollar amounts in thousands)			
Research and development	\$ 3,468	\$ 3,752	\$ (284)	(8)%

Research and development expenses consist primarily of costs incurred for the discovery and development of our zero-emission powertrain solutions and the production thereof, which principally include personnel-related expenses including salaries, benefits, travel and stock-based compensation, for personnel performing research and development activities; expenses related to materials, supplies and testing; and consulting and occupancy expenses.

Research and development expenses decreased during the three and six months ended June 30, 2023 primarily due to a decrease in our engineering headcount year-over-year.

### *Selling, General and Administrative*

The following table compares selling, general and administrative expense for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Change	% Change
	2023	2022		
	(dollar amounts in thousands)			
Selling, general and administrative	\$ 13,025	\$ 12,559	\$ 466	4 %

	Six Months Ended June 30,		Change	% Change
	2023	2022		
	(dollar amounts in thousands)			
Selling, general and administrative	\$ 27,873	\$ 24,158	\$ 3,715	15 %

Selling, general and administrative expenses consist of personnel-related expenses for our corporate, executive, engineering, finance, sales, marketing, program management support, and other administrative functions, expenses for outside professional services, including legal, audit and accounting services, as well as expenses for information technology, facilities, insurance, depreciation, amortization, travel, and sales and marketing costs. Personnel-related expenses consist of salaries, payroll taxes, benefits, and stock-based compensation.

Selling, general and administrative expenses remained flat during the three months ended June 30, 2023. Selling, general and administrative expenses increased by \$3.7 million, or 15%, during the six months ended June 30, 2023, primarily due to an increase in headcount in sales and administration staff.

### *Interest Expense, net*

The following table compares interest expense for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Change	% Change
	2023	2022		
	(dollar amounts in thousands)			
Interest expense, net	\$ 3,492	\$ 3,849	\$ (357)	(9)%

	Six Months Ended June 30,		Change	% Change
	2023	2022		
	(dollar amounts in thousands)			
Interest expense, net	\$ 6,621	\$ 7,710	\$ (1,089)	(14)%

Interest expense consists of interest paid on notes payable, the amortization of debt issuance costs, the amortization of debt discounts attributable to the bifurcation of warrants issued, and amortization of an embedded conversion feature. The notes payable included, over the periods presented, the Convertible Note and the Facility, as described in more detail in Note 7 to the consolidated financial statements.

Interest expense for the three months ended June 30, 2023 included \$3.1 million of accrued interest and discount amortization related to the Convertible Note, \$0.1 million of interest expense associated with the Facility and \$0.5 million of interest expense associated with the PPA, offset by \$0.2 million of interest income on our cash equivalents. Interest expense for the three months ended June 30, 2022 included \$3.9 million of accrued interest and discount amortization related to the Convertible Note and \$0.1 million of interest expense associated with the Facility, offset by \$0.2 million of interest income on our cash equivalents. Interest expense for the six months ended June 30, 2023 included \$6.5 million of accrued interest and discount amortization related to the Convertible Note, \$0.2 million of interest expense associated with the Facility and \$0.5 million of interest expense associated with the PPA, offset by \$0.6 million of interest income on our cash equivalents. Interest expense for the six months ended June 30, 2022 included \$7.7 million of accrued interest and discount amortization related to the Convertible Note and \$0.2 million of interest expense associated with the Facility,

offset by \$0.2 million of interest income on our cash equivalents. The decrease in interest expense for the three and six months ended June 30, 2023 was due to the decrease in the Convertible Note balance from \$87.8 million as of June 30, 2022 to \$59.9 million as of June 30, 2023.

***Change in Fair Value of Warrant Liabilities***

The following table compares the change in fair value of warrant liabilities for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Change
	2023	2022	
	(dollar amounts in thousands)		
Gain from change in fair value of warrant liabilities	\$ (44)	\$ (1,126)	\$ 1,082

	Six Months Ended June 30,		Change
	2023	2022	
	(dollar amounts in thousands)		
Gain from change in fair value of warrant liabilities	\$ (50)	\$ (1,314)	\$ 1,264

The change in fair value of the warrant liabilities for the three and six months ended June 30, 2023 and June 30, 2022 reflect the impact of the marking-to-market of the warrant liabilities.

***Change in Fair Value of Derivative Liability***

The following table compares the change in fair value of derivative liability embedded in the Convertible Note for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Change
	2023	2022	
	(dollar amounts in thousands)		
Gain from change in fair value of derivative liability	\$ (24)	\$ (10,087)	10,063

	Six Months Ended June 30,		Change
	2023	2022	
	(dollar amounts in thousands)		
Gain from change in fair value of derivative liability	\$ (63)	\$ (12,642)	12,579

The changes in fair value of the derivative liability for the three and six months ended June 30, 2023 and June 30, 2022 reflect the impact of the marking-to-market of the underlying derivative embedded in the Convertible Note.

**Change in Fair Value of Earnout Liability**

The following table compares the change in fair value of earnout liability for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Change
	2023	2022	
	(dollar amounts in thousands)		
Gain from change in fair value of earnout liability	\$ (1,413)	\$ (44,131)	\$ 42,718

	Six Months Ended June 30,		Change
	2023	2022	
	(dollar amounts in thousands)		
Gain from change in fair value of earnout liability	\$ (1,819)	\$ (50,303)	\$ 48,484

The changes in fair value of the earnout liability for the three and six months ended June 30, 2023 and June 30, 2022 reflect the impact of the marking-to-market of the earnout shares.

**Non-GAAP Financial Measures**

In addition to our results determined in accordance with GAAP, we believe the following non-GAAP measures, as defined in Item 10(e) of Regulation S-K, are useful in evaluating our operational performance. We use the following non-GAAP financial information among other operational metrics to evaluate our ongoing operations and for internal planning and forecasting purposes. We believe that non-GAAP financial information, when taken collectively, may be helpful to investors in assessing our operating performance. The presentation of non-GAAP financial information should not be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP.

**EBITDA and Adjusted EBITDA**

We define EBITDA as net income (loss) before depreciation and amortization and interest expense. We define adjusted EBITDA as net income (loss) before depreciation and amortization, interest expense, stock-based compensation, gains or losses related to the change in fair value of warrant, derivative and earnout share liabilities and other non-recurring costs determined by management, such as gains or losses on extinguishment of debt and losses related to the Romeo battery recall. We believe EBITDA and adjusted EBITDA are meaningful metrics intended to supplement measures of our performance that are neither required by, nor presented in accordance with, GAAP. We believe that using EBITDA and adjusted EBITDA provides an additional tool for investors to use in evaluating ongoing operating results and trends while comparing our financial measures with those of comparable companies, which may present similar non-GAAP financial measures to investors. However, you should be aware that when evaluating EBITDA and adjusted EBITDA we may incur future expenses similar to those excluded when calculating these measures. In addition, our presentation of these measures should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Our computation of EBITDA and adjusted EBITDA may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate EBITDA and adjusted EBITDA in the same fashion.

Because of these limitations, EBITDA and adjusted EBITDA should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. We compensate for these limitations by relying primarily on our GAAP results and using EBITDA and adjusted EBITDA on a supplemental basis. No undue reliance should be placed on these non-GAAP measures.



The following table reconciles net income (loss) to EBITDA and adjusted EBITDA for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income (loss)	\$ (21,448)	\$ 35,738	\$ (44,883)	\$ 24,982
Adjustments:				
Depreciation and amortization	681	407	1,213	768
Interest expense, net	3,492	3,849	6,621	7,710
EBITDA	\$ (17,275)	\$ 39,994	\$ (37,049)	\$ 33,460
Stock-based compensation expense	1,359	1,436	2,801	2,408
(Gain) loss from change in fair value of warrant liabilities	(44)	(1,126)	(50)	(1,314)
(Gain) loss from change in fair value of derivative liability	(24)	(10,087)	(63)	(12,642)
(Gain) loss from change in earnout liability	(1,413)	(44,131)	(1,819)	(50,303)
(Gain) loss on extinguishment of debt	—	—	(2,965)	—
Romeo battery recall	254	—	2,509	—
Adjusted EBITDA	\$ (17,143)	\$ (13,914)	\$ (36,636)	\$ (28,391)

#### Adjusted Revenue

Adjusted revenue is defined as revenue before customer refunds. The following table reconciles revenue, net of customer refunds and adjusted revenue for the three and six months ended June 30, 2023 and 2022:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenue, net of customer refunds	\$ 7,916	\$ 3,536	\$ 9,227	\$ 8,948
Customer refunds	254	—	2,509	—
Adjusted Revenue	\$ 8,170	\$ 3,536	\$ 11,736	\$ 8,948

#### Liquidity and Going Concern

Since our inception, we have financed our operations primarily from debt financing and the sales of common and convertible preferred shares.

In accordance with the ASC 205-40, Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, ("ASC 205-40"), we have evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about our ability to continue as a going concern within one year after the date that the consolidated financial statements are issued.

As of June 30, 2023, we had \$12,620 in cash and cash equivalents and an accumulated deficit of \$211,277. For the six months ended June 30, 2023, our net loss amounted to \$44,883 and cash used in operating activities was \$43,700. We had positive working capital of \$11,876 as of June 30, 2023. The current and historical operating cash flows, current cash and working capital balances, and forecasted obligations were considered in connection with management's evaluation of our ongoing liquidity. However, we will require additional capital to fund our operations. Our ability to access capital is critical. Until we can generate sufficient cash flow from operations, we expect to finance our operations equity offerings, debt financings or other capital markets transactions, collaborations, strategic partnerships or licensing arrangements. The amount and timing of future funding requirements depend on many factors, including the pace and results of development efforts and our ability to scale our operations. We have been working with financial advisors to assist us in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to us when, and in the amounts needed, we could be required to liquidate inventory, cease or curtail operations, or seek

protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that we will be able to raise the capital we need to continue our operations.

We have secured and intend to employ various strategies to obtain the required funding for future operations such as accessing capital through our ELOC Agreement with Lincoln Park Capital, LLC or the Pre-Paid Advance Agreement with Yorkville. However, the ability to access the ELOC Agreement is dependent on our common stock trading volumes and the market price of our common stock, which cannot be assured, and as a result cannot be included as sources of liquidity for our ASC 205-40 analysis. As of June 30, 2023 and through the date of this filing, we have not sold any shares of common stock to Lincoln Park under the ELOC Agreement other than the commitment shares. We agreed with Yorkville that we will not utilize the ELOC while there are outstanding advances without Yorkville's consent.

Due to uncertainties discussed above, there is substantial doubt about our ability to continue as a going concern through the next twelve months from the date of issuance of the consolidated financial statements contained herein.

### ***Material Cash Requirements***

From time to time in the ordinary course of business, we enter into agreements with vendors for the purchase of components and raw materials to be used in the manufacture of our products. To provide flexibility in our development and production plan and opportunities to renegotiate pricing, we generally do not have binding and enforceable purchase orders beyond the near term. However, in order to secure raw materials vital to our products, we have entered into multi-year minimum purchase commitments with some of our suppliers. If we fail to meet the minimum purchase commitments, we must pay a penalty. As of June 30, 2023, the minimum purchase commitment for the next twelve months is \$41.8 million under these agreements. However, we are currently in negotiations with certain suppliers to either blend and extend or terminate some of our future commitments due to supply chain constraints and cost increases for both parties. See Note 13 to the consolidated financial statements for additional information.

Our capital expenditures are typically difficult to project beyond the short term given potential supply chain constraints and market conditions. We estimate our total capital expenditures for the year 2023 to be between \$5.0 and \$8.0 million for development and production activities.

### ***Debt***

As of June 30, 2023, we had outstanding \$59.9 million of principal indebtedness associated with our Convertible Note, which matures on May 15, 2024. We are obligated to make semi-annual interest payments of \$2.3 million in May and November through maturity based on an annual interest rate of 7.5%.

On February 10, 2023, we completed an exchange with a holder of the outstanding Convertible Notes via privately negotiated exchange agreements, pursuant to which the holder agreed to exchange \$3.5 million in aggregate principal amount of the Convertible Notes at a discount of 95% of par for 210,443 shares of our common stock at a price of \$15.80 per share.

On March 15, 2023, we entered into privately negotiated exchange agreements with certain holders pursuant to which the holders agreed to exchange \$10.5 million in aggregate principal amount of the outstanding Convertible Notes for 937,500 shares of our common stock, par value \$0.0001 per share, at a price of \$11.20 per share.

We also had outstanding \$3.0 million of principal indebtedness associated with our Facility, which matures on October 21, 2024. We are obligated to make quarterly interest payments of \$0.1 million through maturity based on an annual interest rate of 15%. See Note 7 to the consolidated financial statements for additional information.

On May 16, 2023, we entered into a Pre-Paid Advance Agreement, or the PPA, with YA II PN, Ltd., a Cayman Islands exempt limited partnership, or Yorkville. In accordance with the terms of the PPA, we may request pre-paid advances of up to \$2,000 from the Investor at a discount of 92% (or such greater amount that the parties may mutually agree), with an aggregate limit of \$50,000, over an 18-month period. Interest will accrue on the outstanding balance of any Pre-Paid Advance at 0%, subject to an increase to 15% upon events of default described in the PPA. At any time while a Pre-Paid Advance is outstanding, Yorkville may, by providing written notice, require us to issue and sell shares of common stock. The aggregate purchase price of the shares of common stock will be based on a price per share equal to the lower of: (a) with respect to each advance, 100% of the volume weighted average price (the "VWAP") of our common stock on the trading day immediately preceding the closing of such advance (the "Fixed Price") or (b) 92.0% of the average of the two lowest daily VWAPs during the seven trading days immediately prior to receipt of the notice (as applicable, the "Purchase

Price”), however in no event will the Purchase price be less than \$0.856 (the “Contractual Floor Price”). During the quarter ended June 30, 2023, we received \$3,200 in advances under the PPA and issued 461,548 shares of common stock to Yorkville. Since June 30, 2023 and through the filing date, we issued 315,605 shares of common stock to Yorkville. We reserved 1,124,782 shares of our common stock for issuances to Yorkville. However, we will need to obtain stockholder approval to issue more shares. We agreed with Yorkville that we will not utilize the ELOC while there are outstanding advances without Yorkville’s consent.

During the three and six months ended June 30, 2023, the Company received Pre-Paid Advances in the aggregate amount of \$3.2 million and received proceeds in the amount of \$2.9 million, net of issuance cost in the amount of \$0.3 million. During the three and six months ended June 30, 2023, the Company converted \$1.6 million with the issuance of 461,548 newly issued shares of common stock to Yorkville. Since June 30, 2023 and through the filing date, the Company converted \$1.1 million with the issuance of 315,605 shares of common stock to Yorkville. Interest expense related to the PPA was \$0.5 million for the three and six months ended June 30, 2023 and zero for the three and six months ended June 30, 2022.

#### **Leases**

We have one material lease commitment, an operating lease covering our manufacturing center, distribution center and office space. We also have an operating lease for IT equipment and finance leases for manufacturing equipment. As of June 30, 2023, our total minimum lease commitments were \$12.0 million, with \$3.2 million due in the next twelve months. See Note 8 to the consolidated financial statements for additional information.

#### **Cash Flows**

The following table provides a summary of cash flow data (in thousands):

	<b>Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>
	<b>(dollar amounts in thousands)</b>	
Net cash used in operating activities	\$ (43,700)	\$ (39,178)
Net cash used in investing activities	(2,539)	(3,930)
Net cash provided by (used in) financing activities	2,848	(20)
Net (decrease) increase in cash	<u>\$ (43,391)</u>	<u>\$ (43,128)</u>

#### **Cash Flows Used In Operating Activities**

Net cash used in operating activities for the six months ended June 30, 2023 and 2022 was \$43.7 million and \$39.2 million, respectively. Cash flows from operating activities are significantly affected by revenue levels, mix of products and services, and investments in the business in research and development and selling, general and administrative costs in order to develop products and services, improve manufacturing capacity and efficiency, and support revenue growth. With respect to the six months ended June 30, 2023, increases in net cash used in operating activities, in comparison to the corresponding prior period, were principally driven by increases in cost of revenues and selling, general and administrative expenses, as described in more detail above.

#### **Cash Flows Used In Investing Activities**

Net cash used in investing activities for the six months ended June 30, 2023 and 2022 was \$2.5 million and \$3.9 million, respectively. The decrease is primarily related to a decrease in capital expenditures.

#### **Cash Flows From Financing Activities**

Net cash provided in financing activities for the six months ended June 30, 2023 was \$2.8 primarily from the Pre-Paid Advance Agreement offset by payments of finance lease obligations. Net cash used in financing activities for the six June 30, 2022 was de minimis.

### **Off-Balance Sheet Arrangements**

We have not engaged in any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

### **Critical Accounting Policies and Estimates**

We believe that there have been no significant changes to our critical accounting policies and estimates during the six months ended June 30, 2023 as compared to those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022.

### **Emerging Growth Company Status**

We are an emerging growth company, or EGC, as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act. As an EGC, we are permitted to take advantage of an extended transition period to comply with new or revised accounting standards, delaying the adoption of these accounting standards until they would apply to private companies. We have elected to use this extended transition period to enable us to comply with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period. As a result, our financial statements may not be comparable to companies that comply with the new or revised accounting standards as of public company effective dates.

In addition, we intend to rely on the other exemptions and reduced reporting requirements provided by the JOBS Act. Subject to certain conditions set forth in the JOBS Act, if, as an EGC, we intend to rely on such exemptions, we are not required to, among other things: (i) provide an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act; (ii) provide all of the compensation disclosure that may be required of non-emerging growth public companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act; (iii) comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (auditor discussion and analysis); and (iv) disclose certain executive compensation-related items such as the correlation between executive compensation and performance and comparisons of the Chief Executive Officer's compensation to median employee compensation.

We will remain an EGC under the JOBS Act until the earliest of (i) December 31, 2025, which is the last day of our first fiscal year following the fifth anniversary of our initial public offering, (ii) the last date of our fiscal year in which we have total annual gross revenue of at least \$1.24 billion, (iii) the date on which we are deemed to be a "large accelerated filer" under the rules of the SEC with at least \$700.0 million of our common equity held by non-affiliates, or (iv) the date on which we have issued more than \$1.0 billion in non-convertible debt securities during the previous three-year period.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

As a small reporting company defined by Rule 12b-2 of the Exchange Act and in Item 10(f)(1) of regulation S-K, we are not required to provide the information requested by this item.

### **Item 4. Controls and Procedures**

#### ***Disclosure Controls and Procedures***

The Company maintains disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms. Any controls and procedures, no matter how well designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives. The Company's management, with participation from our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our design and operation of the Company's disclosure controls and procedures as of June 30, 2023. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of June 30, 2023.

***Changes in Internal Control over Financial Reporting***

During the three months ended June 30, 2023, there has been no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II — OTHER INFORMATION

### Item 1. Legal Proceedings

The information with respect to this Part II, Item 1 can be found in Note 13 to the consolidated financial Statements included in this quarterly report on Form 10-Q, and is incorporated herein by reference.

#### Item 1A. Risk Factors

Except as set forth below, there have been no material changes from the risk factors previously discussed in Part 1, Item 1A Risk Factors in our annual report on Form 10-K for the year ended December 31, 2022. However, these risks are not the only risks facing us. There may be additional risks and uncertainties that are not currently known to us or that we currently consider to be insignificant that could materially and adversely affect our business, financial condition, or operating results in the future.

***We have a history of losses, and we expect to incur significant expenses and continuing losses for the foreseeable future and there is substantial doubt regarding our ability to continue as a going concern.***

As indicated in our annual report on Form 10-K for the year ended December 31, 2022, we have a history of losses, and expect to incur losses and significant expenses for the foreseeable future, which casts substantial doubt regarding our ability to continue as a going concern.

Doubts about our ability to continue as a going concern have and could continue to negatively impact our relationships with our suppliers, vendors, and other third parties and our ability to obtain, maintain or renew agreements with them, or negatively impact our negotiating leverage with such parties, which could have a material adverse effect on our business, financial condition and results of operations. Furthermore, any loss of key personnel, employee attrition or material erosion of employee morale arising out of doubts about our ability to operate as a going concern could have a material adverse effect on our ability to effectively conduct our business, and could impair our ability to execute our business plan, thereby having a material adverse effect on our business, financial condition and results of operations.

We need significant additional funding to execute our business plan and to continue operations. We continue to seek and evaluate opportunities to raise additional funds through the issuance of our securities, asset sales, and through arrangements with strategic partners. We have engaged a financial advisor to assist us in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to us when, and in the amounts needed, we could be required to liquidate our inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that we will be able to raise the capital we need to continue our operations.

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

During the three months ended June 30, 2023, we did not issue unregistered shares.

### Item 3. Defaults Upon Senior Securities

None.

### Item 4. Mine Safety Disclosures

Not applicable.

### Item 5. Other Information

#### ***Amendment to Security Agreement***

On August 10, 2023, we entered into Amendment No. 2 (the “Amendment”) to the Loan and Security Agreement dated October 10, 2019, as amended (the “Loan and Security Agreement”) with Cupola Infrastructure Income Fund, L.L.L.P.. The Amendment modifies certain terms of the Loan and Security Agreement: (i) the Amendment modifies our Facility’s financial covenant requiring that total equity plus expected EBITDA at the end of the next quarter and the following quarter be greater than \$0, by establishing that the covenant is to now be evaluated beginning with the quarter ending September 30, 2023; and (ii) the Amendment also provides for a 3% increase, from 15% to 18%, on the fixed annual

interest rate under our Facility for any principal amount outstanding on any working capital loans. The description of the Amendment is qualified in its entirety by reference to the text of the Amendment, which is filed as Exhibit 10.9 to this report and is incorporated herein by reference.

## Item 6. Exhibits

## EXHIBIT INDEX

Exhibit No.	Description
2.1*	<u>Business Combination Agreement, dated as of December 10, 2020, by and among GigCapital3, Inc., Project Power Merger Sub, Inc. and Lightning Systems, Inc.</u> (included as Annex A to the Final Proxy Statement/Prospectus filed under Rule 424(b)(3) on March 26, 2021).
3.1	<u>Second Amended and Restated Certificate of Incorporation of Lightning eMotors, Inc.</u> (incorporated by reference to Exhibit 3.1 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
3.2	<u>Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, effective April 27, 2023</u> (incorporated by reference to Exhibit 3.1 filed on the Company's Current Report on Form 8-K, filed by the Company of April 24, 2023)
3.3	<u>Amended and Restated Bylaws of Lightning eMotors, Inc.</u> (incorporated by reference to Exhibit 3.2 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
4.1	<u>Specimen Common Stock Certificate</u> (incorporated by reference to Exhibit 4.1 filed on the Company's Form S-1 (File No. 333-257237), filed by the Company on June 21, 2021)
4.2	<u>Specimen Warrant Certificate</u> (incorporated by reference to Exhibit A in Exhibit 10.4 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
4.3	<u>Description of the Company's Securities</u> (incorporated by reference to Exhibit 4.3 filed on the Company's Annual Report on Form 10-K for the year ended December 31, 2021, filed by the Company on March 30, 2022)
10.1	<u>Lightning Systems, Inc. 2019 Equity Incentive Plan</u> (incorporated by reference to Exhibit 10.16 filed on the Company's Current Report on Form 8-K/A, filed by the Company on May 17, 2021)
10.2	<u>2021 Equity Incentive Plan</u> (incorporated by reference to Exhibit 10.7 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
10.3	<u>Indenture dated May 6, 2021, by and between the Company and Wilmington Trust, National Association, in its capacity as trustee thereunder</u> (incorporated by reference to Exhibit 10.3 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
10.4	<u>Amended and Restated Warrant Agreement, dated May 6, 2021, by and between the Company and Continental Stock Transfer &amp; Trust Company, as warrant agent</u> (incorporated by reference to Exhibit 10.4 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
10.5	<u>Purchase Agreement, dated August 30, 2022, between the Company and Lincoln Park Capital Fund, LLC</u> (incorporated by reference to Exhibit 10.1 filed on the Company's Current Report on Form 8-K, filed by the Company on August 30, 2022)
10.6†	<u>Settlement Agreement and Mutual Release, dated July 24, 2023, in the matter of eMatrix Energy Systems, Inc. v. Lightning eMotors, Inc. v. eMatrix Energy Systems, Inc. and Linamar Corporation</u>



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10.7†	<u>Loan and Security Agreement, dated October 10, 2019, between the Company and Cupola Infrastructure Income Fund L.L.L.P.</u>
10.8†	<u>First Amendment to the Loan and Security Agreement, dated November 15, 2021, between the Company and Cupola Infrastructure Income Fund L.L.L.P.</u>
10.9†	<u>Second Amendment to the Loan and Security Agreement, dated August 10, 2023, between the Company and Cupola Infrastructure Income Fund L.L.L.P.</u>
31.1†	<u>Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>
31.2†	<u>Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>
32.1**	<u>Certification of Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer) Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>
101.INS	Inline XBRL Instance Document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104†	Cover Page Interactive Data File (formatted in iXBRL and contained in Exhibit 101)

\* Schedules and similar attachments to this exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K and the Company agrees to furnish a copy of such omitted materials to the SEC upon request.

† Filed herewith.

# Indicates a management contract or compensatory plan, contract or arrangement.

\*\* Furnished herewith.

**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 thereunto duly authorized.

Date: August 14, 2023

**LIGHTNING EMOTORS, INC.**

By: /s/ Timothy Reeser  
Name: Timothy Reeser  
Title: Chief Executive Officer and President  
(Principal Executive Officer)

By: /s/ David Agatston  
Name: David Agatston  
Title: Chief Financial Officer  
(Principal Financial Officer)

## **CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Confidential Settlement Agreement and Mutual Release (the “Settlement Agreement” or “Agreement”) is entered into on July 21, 2023 (“Effective Date”), by and between eMatrix Energy Systems, Inc. (“eMatrix”) and Linamar Corporation (“Linamar”), on the one hand, and Lightning E-Motors, Inc. and Lightning Systems, Inc. (collectively “Lightning”), on the other hand. eMatrix, Linamar, and Lightning are together referred to as the “Parties” and individually as a “Party.”

### **RECITALS**

WHEREAS, eMatrix has produced and sold or loaned hundreds of battery packs to Lightning since 2018, including models designated MH1, M36, 35E, and M48 (each, an “eMatrix Battery Pack” and, collectively, the “eMatrix Battery Packs”);

WHEREAS, eMatrix and Lightning entered into a purchase order in December 2020 (the “Initial Purchase Order”) under which eMatrix agreed to produce and sell 200 M48 battery packs to Lightning;

WHEREAS, eMatrix and Lightning amended the Initial Purchase Order to, among other things, increase the quantity of M48 battery packs to 400 (the “Amended Purchase Order”);

WHEREAS, Linamar became a minority investor in eMatrix in or about August 2021;

WHEREAS, Lightning paid eMatrix for certain invoices, including invoices for prepayments, pursuant to the Initial Purchase Order and the Amended Purchase Order;

WHEREAS, by September 2021, Lightning had paid over \$2 million in prepayments, but had not received all of the eMatrix Battery Packs for which those payments were made;

WHEREAS, eMatrix continued to request additional payments from Lightning;

WHEREAS, as of October 2021, Lightning had not paid at least three outstanding invoices from eMatrix and requested that eMatrix provide it with account credits based upon its \$2 million+ in prepayments that it had made for eMatrix Battery Packs that were not received;

WHEREAS, eMatrix rejected Lightning’s request for account credits and informed Lightning that it would stop production of the eMatrix Battery Packs for Lightning until its outstanding invoices were paid;

WHEREAS, prior to eMatrix’s completion of its deliveries pursuant to the Amended Purchase Order, Lightning informed eMatrix that it no longer wanted to receive further eMatrix Battery Packs;

WHEREAS, eMatrix has delivered at least 73 eMatrix Battery Packs to Lightning pursuant to the Amended Purchase Order;

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WHEREAS, eMatrix and Lightning engaged in negotiations to attempt to resolve the dispute arising from the fulfillment of the Amended Purchase Order;

WHEREAS, Linamar was involved in certain of the dispute resolution negotiations;

WHEREAS, on December 23, 2021, eMatrix initiated an action for breach of contract and promissory estoppel against Lightning in Michigan State Court, County of Oakland, No. 2021-191769, and, on February 4, 2022, Lightning counterclaimed against eMatrix for, among other things, breach of contract and breach of warranty, and against Linamar for tortious interference (the "Litigation");

WHEREAS, Lightning has issued a recall of all vehicles it has manufactured, produced, or sold that utilize an eMatrix Battery Pack because, as it stated in that recall notice, the eMatrix Battery Packs "may have defective structural welds and experience an internal radiator leak, causing battery failure" ("the Recall");

WHEREAS, eMatrix and Linamar deny any wrongdoing or liability in connection with the Litigation or Recall, with the design, testing, manufacture, production, sale, use, and performance of eMatrix Battery Packs, or otherwise;

WHEREAS, Linamar has no responsibility for the Recall, any changes to the eMatrix Battery Packs, or the design, testing, manufacture, production, sale, use, warranty, repairs, maintenance, and performance of eMatrix Battery Packs;

WHEREAS, Lightning denies any wrongdoing or liability in connection with the Litigation or otherwise; and

WHEREAS, to avoid further costs and expenditure of resources associated with the Litigation, disputes in connection with the Recall, and eMatrix's sale of eMatrix Battery Packs to Lightning, the Parties now desire to settle, compromise, and resolve all rights, claims, and demands that the Parties may have against one another as specified herein, on the terms set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **AGREEMENT**

1. Incorporation of Recitals

The recitals listed above are true and correct and are incorporated by reference into this Settlement Agreement.

2. Payment

Linamar, on behalf of itself and eMatrix, agrees to pay Lightning a one-time payment of Three Million and 00/100 Dollars (\$3,000,000.00) pursuant to wiring instructions to be provided

by Lightning. Lightning shall provide those instructions contemporaneously with the execution of this Settlement Agreement, and Linamar shall make the payment within three (3) business days of the later of Linamar's receipt of those instructions, the Effective Date, and entry of an order of dismissal with prejudice of all claims asserted in the Litigation.

3. Dismissal of Claims in the Litigation

The Parties agree that, contemporaneously with the execution of this Settlement Agreement, the Parties shall execute a Stipulation of Dismissal with Prejudice in the form attached as Exhibit 1. Counsel for eMatrix will file the Stipulation of Dismissal with Prejudice within one (1) business day of its execution by all Parties. Each Party will bear its own costs and fees, including attorneys' fees, in connection with the Litigation.

The Parties agree to cooperate fully and execute any and all additional documents and to take all additional actions that may be necessary or appropriate to effectuate the dismissal of the claims and counterclaims in the Litigation.

4. Releases

a) For and in consideration of the covenants and promises set forth in this Settlement Agreement, eMatrix, on behalf of itself and each of its current and/or former employees, agents, officers, directors, representatives, principals, parents, affiliates, subsidiaries, joint ventures, shareholders, members, partners, successors, predecessors, executors, assigns, trusts, trustees, beneficiaries, administrators, insurers, attorneys, auditors and accountants (collectively, the "eMatrix Releasing Parties"), fully, finally and forever releases, remises, acquits, and discharges Lightning in all capacities and each of its current and/or former employees, agents, officers, directors, representatives, principals, parents, affiliates, subsidiaries, joint ventures, shareholders, members, partners, successors, predecessors, executors, assigns, trusts, trustees, beneficiaries, administrators, insurers, attorneys, auditors and accountants (collectively, the "Lightning Released Parties"), from any and all claims, demands, suits, actions, causes of action, obligations, damages, punitive damages, penalties, costs, losses, interest, expenses and liabilities of any kind or nature whatsoever, whether legal, equitable or statutory, liquidated or unliquidated, asserted or unasserted, known or unknown, suspected or unsuspected, reasonably discoverable or not, present, fixed or contingent, which any or all of the eMatrix Releasing Parties ever had, now has, could have had, or will have, regardless of when such claim, demand, suit, action, cause of action, obligation, damage, punitive damages, penalty, cost, loss, interest, expense or liability accrues or ripens, related to or arising from or in connection with the events at issue in the Litigation. This release does not affect eMatrix's rights or obligations related to or arising from or in connection with this Settlement Agreement.

b) For and in consideration of the covenants and promises set forth in this Settlement Agreement, Linamar, on behalf of itself and each of its current and/or former employees, agents, officers, directors, representatives, principals, parents, affiliates, subsidiaries, joint ventures, shareholders, members, partners, successors, predecessors, executors, assigns, trusts, trustees, beneficiaries, administrators, insurers, attorneys, auditors and accountants (collectively, the "Linamar Releasing Parties"), fully, finally and forever releases, remises, acquits, and discharges the Lightning Released Parties from any and all claims, demands, suits, actions, causes of action,

obligations, damages, punitive damages, penalties, costs, losses, interest, expenses and liabilities of any kind or nature whatsoever, whether legal, equitable or statutory, liquidated or unliquidated, asserted or unasserted, known or unknown, suspected or unsuspected, reasonably discoverable or not, present, fixed or contingent, which any or all of the Linamar Releasing Parties ever had, now has, could have had, or will have, regardless of when such claim, demand, suit, action, cause of action, obligation, damage, punitive damages, penalty, cost, loss, interest, expense or liability accrues or ripens, related to or arising from or in connection with the events at issue in the Litigation. This release does not affect Linamar's rights or obligations related to or arising from or in connection with this Settlement Agreement.

c) For and in consideration of the covenants and promises set forth in this Settlement Agreement, Lightning, on behalf of itself and each of its current and/or former employees, agents, officers, directors, representatives, principals, parents, affiliates, subsidiaries, joint ventures, shareholders, members, partners, successors, predecessors, executors, assigns, trusts, trustees, beneficiaries, administrators, insurers, attorneys, auditors and accountants (collectively, the "Lightning Releasing Parties"), fully, finally and forever releases, remises, acquits, and discharges eMatrix in all capacities and each of its current and/or former employees, agents, officers, directors, representatives, principals, parents, affiliates, subsidiaries, joint ventures, shareholders, members, partners, successors, predecessors, executors, assigns, trusts, trustees, beneficiaries, administrators, insurers, attorneys, auditors and accountants (collectively, the "eMatrix Released Parties"), from any and all claims, demands, suits, actions, causes of action, obligations, damages, punitive damages, penalties, costs, losses, interest, expenses and liabilities of any kind or nature whatsoever, whether legal, equitable or statutory, liquidated or unliquidated, asserted or unasserted, known or unknown, suspected or unsuspected, reasonably discoverable or not, present, fixed or contingent, which any or all of the Lightning Releasing Parties ever had, now has, could have had, or will have, regardless of when such claim, demand, suit, action, cause of action, obligation, damage, punitive damages, penalty, cost, loss, interest, expense or liability accrues or ripens, related to or arising from or in connection with the events at issue in (i) the Litigation, (ii) the eMatrix Battery Packs, or (iii) the Recall. Notwithstanding the generality of the foregoing, this release does not affect (x) any remaining contractual warranty obligations that eMatrix may have with respect to the M48 battery packs, which the Parties agree pursuant to the terms of the Amended Purchase Order expire two (2) years from the shipping date, subject to Section 7 below; or (y) eMatrix's February 24, 2022 service bulletin for the M48 battery packs. This release does not affect Lightning's rights or obligations related to or arising from or in connection with this Settlement Agreement. The Parties further agree that eMatrix's performance of any work pursuant to Sections 4(c)(x) or (y) does not modify, change, extend, or otherwise impact the deadline or expiration of any of eMatrix's warranty obligations.

d) For and in consideration of the covenants and promises set forth in this Settlement Agreement, the Lightning Releasing Parties fully, finally and forever release, remise, acquit, and discharge Linamar in all capacities and each of its current and/or former employees, agents, officers, directors, representatives, principals, parents, affiliates, subsidiaries, joint ventures, shareholders, members, partners, successors, predecessors, executors, assigns, trusts, trustees, beneficiaries, administrators, insurers, attorneys, auditors and accountants (collectively, the "Linamar Released Parties"), from any and all claims, demands, suits, actions, causes of action, obligations, damages, punitive damages, penalties, costs, losses, interest, expenses and liabilities of any kind or nature whatsoever, whether legal, equitable or statutory, liquidated or unliquidated,

asserted or unasserted, known or unknown, suspected or unsuspected, reasonably discoverable or not, present, fixed or contingent, which any or all of the Lightning Releasing Parties ever had, now has, could have had, or will have, regardless of when such claim, demand, suit, action, cause of action, obligation, damage, punitive damages, penalty, cost, loss, interest, expense or liability accrues or ripens, related to or arising from or in connection with the events at issue in (i) the Litigation, (ii) the eMatrix Battery Packs, or (iii) the Recall. This release does not affect Lightning's rights or obligations related to or arising from or in connection with this Settlement Agreement.

5. Waiver Pursuant to California Civil Code Section 1542

Each party has been fully advised of the contents of Section 1542 of the California Civil Code and said Section and the benefits thereof are hereby expressly waived. Section 1542 reads as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

Each of the Parties hereby knowingly and voluntarily waives application of section 1542 of the California Civil Code and all similar federal or state laws, rights, rules, or legal principles of any jurisdiction that may be applicable to any claims described in this Settlement Agreement.

Each of the Parties acknowledges that the result of this waiver of section 1542 of the Civil Code is that even if such Party should suffer additional damages arising out of claims of which that Party is currently aware or should discover additional claims, that Party will not be permitted to assert such claims if such claims are or would be within the scope of the released matters. Furthermore, by signing this Settlement Agreement each of the Parties acknowledges that it intends this result even as to (i) claims that may exist as of the date of this release but that such Party does not know exist that are, or, if known would be, within the scope of the released matters, or (ii) facts in addition to or different from those which such Party now knows or believes to be true with respect to the released matters and which, if known, would materially affect such Party's decision to execute this release, regardless of the reason for such Party's lack of knowledge. It is the intention of each of the Parties through this release fully, finally and forever to settle and release all of the released matters and such potential unknown claims that would be within the released matters, that exist, may exist, or might have existed. In furtherance of such intention, this release shall be and remain in effect as a full and complete release of such additional claims or facts that are or would be within the scope of the released matters. The Parties acknowledge and agree that this mutual waiver is an essential and material term of this release and the compromise that led to it, and that without this waiver the settlement would not have been accomplished. The Parties have been advised by their respective counsel with respect to this waiver and, being of competent mind, understand and acknowledge its significance.

6. Indemnification

a) In return for the payment as set forth herein and other good and valuable consideration, Lightning agrees to indemnify and to forever hold harmless the eMatrix Released Parties, and to defend them and to assume their cost of defense (though the eMatrix Released Parties shall retain the right to choose their counsel for said defense), including attorneys' fees, against any and all claims relating to the eMatrix Battery Packs, provided, however, that this provision does not obligate Lightning to (i) defend or indemnify the eMatrix Released Parties against any potential liability to any third party arising from Personal Injury resulting from any defect or flaw in any eMatrix Battery Pack, or (ii) indemnify the eMatrix Released Parties for liability to any third party for injury and damage to real or tangible property, other than eMatrix Battery Packs or any vehicle containing an eMatrix Battery Pack. For the avoidance of doubt, in the event that any eMatrix Released Party faces claims that arise from Personal Injury and claims that do not arise from Personal Injury, Lightning will defend and indemnify the eMatrix Released Party for the claims that do not arise from Personal Injury, subject to (ii) in the preceding sentence.

b) In return for the payment as set forth herein and other good and valuable consideration, Lightning agrees to indemnify and to forever hold harmless the Linamar Released Parties, and to defend them and to assume their cost of defense (though the Linamar Released Parties shall retain the right to choose their counsel for said defense), including attorneys' fees, against any and all claims relating to the eMatrix Battery Packs, provided, however, that this provision does not obligate Lightning to (i) defend or indemnify the Linamar Released Parties against any potential liability to any third party arising from Personal Injury resulting from any defect or flaw in any eMatrix Battery Pack, or (ii) indemnify the Linamar Released Parties for liability to any third party for injury and damage to real or tangible property, other than eMatrix Battery Packs or any vehicle containing an eMatrix Battery Pack. For the avoidance of doubt, in the event that any Linamar Released Party faces claims that arise from Personal Injury and claims that do not arise from Personal Injury, Lightning will defend and indemnify the Linamar Released Party for the claims that do not arise from Personal Injury, subject to (ii) in the preceding sentence.

7. Previously Loaned Battery Packs

Lightning may keep and is deemed to have clear ownership of the fifteen (15) M48 eMatrix Battery Packs that eMatrix had previously loaned to Lightning in connection with the Service Bulletin, identified by serial number on Exhibit 2 (the "Previously Loaned Packs"). Lightning agrees that eMatrix has no warranty obligations, whether contractual, statutory, or otherwise, with respect to any of the Previously Loaned Packs.

8. Information Obligations

In return for the payment as set forth herein and other good and valuable consideration, Lightning shall provide updates to eMatrix regarding the status of the Recall on at least a quarterly basis until complete.

9. Covenant Not to Sue

Each Party (including for such purpose, any and all of the eMatrix Releasing Parties, Linamar Releasing Parties, and Lightning Releasing Parties) providing a release hereunder



covenants not to sue the other Party (including for such purpose, any and all of the eMatrix Released Parties, Linamar Released Parties, and Lightning Released Parties) with respect to any claim, demand, suit, action, cause of action, obligation, damage, punitive damage, penalty, cost, loss, interest, expense or liability released in this Settlement Agreement. Neither the releases herein nor this covenant not to sue shall extend to the Parties' obligations under this Settlement Agreement.

10. Non-Admission

This Settlement Agreement shall not be construed to be an admission of liability or wrongdoing by any Party. The Parties further agree and acknowledge that neither this Settlement Agreement, nor the terms herein or negotiations relating thereto, shall be offered as evidence in any action or proceeding for any purpose whatsoever, except to enforce the terms herein.

11. No Assignment of Claims

a) The eMatrix Releasing Parties, and each of them, represent and warrant to the Lightning Released Parties that none of them has assigned or otherwise transferred any interest in any claim which the eMatrix Releasing Parties, or any of them, may have against the Lightning Released Parties, or any of them, and the eMatrix Releasing Parties, and each of them, agree to indemnify and hold the Lightning Released Parties, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred as a result of any person asserting any such assignment or transfer of any rights or claims under any such assignment or transfer from such party.

b) The Linamar Releasing Parties, and each of them, represent and warrant to the Lightning Released Parties that none of them has assigned or otherwise transferred any interest in any claim which the Linamar Releasing Parties, or any of them, may have against the Lightning Released Parties, or any of them, and the Linamar Releasing Parties, and each of them, agree to indemnify and hold the Lightning Released Parties, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred as a result of any person asserting any such assignment or transfer of any rights or claims under any such assignment or transfer from such party.

c) The Lightning Releasing Parties, and each of them, represent and warrant to the eMatrix Released Parties and the Linamar Released Parties that none of them has assigned or otherwise transferred any interest in any claim which the Lightning Releasing Parties, or any of them, may have against the eMatrix Released Parties or the Linamar Released Parties, or any of them, and the Lightning Releasing Parties, and each of them, agree to indemnify and hold the eMatrix Released Parties and Linamar Released Parties, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred as a result of any person asserting any such assignment or transfer of any rights or claims under any such assignment or transfer from such party.

12. Confidentiality

a) The Parties agree to keep this Settlement Agreement, including its existence, its provisions, the amount of the settlement, and the negotiations leading thereto, confidential and not

disclose it to any person that is not a signatory hereto, except that each Party may disclose the existence and terms of this Settlement Agreement, if necessary, to its respective tax advisors, attorneys, auditors, insurers, regulators, investors, and bona fide consultants or partners, and as otherwise required in connection with the enforcement of this Settlement Agreement or by law, including federal securities law. For the avoidance of doubt, this provision does not preclude (i) Lightning from disclosing this Agreement or the terms thereof in reports required to be filed with the Securities and Exchange Commission, or (ii) the Parties or their counsel from disclosing safety-related information to government and/or regulatory entities, or as otherwise required by law. This provision is intended to be a material and substantial part of this Settlement Agreement, and breach hereof will be considered a material breach.

b) In the event that a Party is requested or required to produce any information that is confidential under this Settlement Agreement pursuant to request for production, subpoena, court order, regulatory process, or otherwise, that Party shall make reasonable efforts to determine whether such production is necessary and to prevent production if it is not. Within five (5) business days of receipt of any such request or requirement, or within another reasonably practicable time frame as may be longer or shorter depending on the circumstances, the Party subject to the request or requirement shall provide Notice to the other Parties to this Agreement thereof to provide the Parties with the opportunity to seek a protective order or other similar relief. In the event that a Party produces any information that is confidential under this Settlement Agreement in any court, regulatory, or other proceeding, it shall designate the information confidential and otherwise take reasonable steps to ensure that the information is not publicly disclosed.

c) In the event that Lightning is required to disclose any information to its investors or the Securities and Exchange Commission that is confidential under this Settlement Agreement, Lightning will provide a draft of the proposed disclosure to eMatrix and Linamar reasonably in advance of making the disclosure. For the avoidance of doubt, neither eMatrix's nor Linamar's consent shall be required for Lightning to make any such required disclosure, provided, however, that Lightning agrees to consider in good faith any comments that eMatrix or Linamar may have with respect to the disclosure. Lightning further agrees to make reasonable efforts to keep any such disclosure as narrow as possible under applicable law or regulation.

### 13. No Public Announcement

The Parties agree to make no public announcement (other than as made in connection with the exceptions in Section 12 related to disclosures required by applicable law, including federal securities law) concerning the settlement or any terms of this Settlement Agreement. If any inquiry is made by any news or other media organization, the Parties agree that the only response that will be provided is: "The parties have resolved the litigation to their mutual satisfaction."

### 14. Non-Disparagement

The Parties agree to make reasonable efforts not to disparage (as defined below) each other or, as applicable, the other Parties' products or services. As used in this Settlement Agreement, "disparage" means making comments or statements, whether orally, in writing, or otherwise, that (i) a reasonable person would construe as portraying the person, entity, or product or service at issue (or such person or entity's professional or business reputation) in a negative, derogatory, or

unflattering manner, (ii) could otherwise be reasonably expected to have an adverse effect on such person, entity, or product or service's professional or business image or reputation, or (iii) constitute libel, slander, or defamation in respect of the person, entity, or product or service at issue. For purposes of this section, "Parties" includes predecessors in interest, successors in interest, parents, subsidiaries, and affiliates. This section applies to any and all statements in any mode of communication, including but not limited to all statements made in print, photographic, video, or electronic forums, such as Facebook, Instagram, Twitter, Google Reviews, email, blogs, and other electronic or online forums. Nothing herein will restrict any of the above-referenced persons or entities from: (x) making truthful statements; or (y) responding accurately and fully to any question, inquiry, or request for information made by valid legal process or otherwise complying with applicable law.

#### 15. Legal Fees and Costs

The Parties agree that each Party is responsible for its own attorneys' fees and costs in connection with the Litigation, the negotiation and execution of this Settlement Agreement, and the claims released hereby. This paragraph does not affect any obligations the Parties may have with respect to indemnification or provision of defense under this Settlement Agreement.

The substantially prevailing Party in any action to enforce or obtain compliance with this Settlement Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

#### 16. Authority, Binding Effect, Legality

Each of the Parties hereto represents and warrants that, where appropriate, (i) it has the requisite power and authority to execute and deliver this Settlement Agreement and the related documents to which such Party is a signatory; (ii) the execution and delivery of this Settlement Agreement by such Party has been duly authorized by all requisite action(s) and creates valid and binding obligations of such Party, enforceable in accordance with its terms; (iii) neither the execution and delivery of this Settlement Agreement nor the consummation of the transactions contemplated hereby or thereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree or other restriction of any governmental authority or conflict with, result in a breach of, or constitute a default under any contract, lease, license instrument, or other arrangement to which such Party is bound; and (iv) it is authorized to execute this Settlement Agreement on behalf of its officers, directors, beneficiaries, representatives, employees, agents, affiliates, subsidiaries, attorneys, insurers, successors, predecessors and assigns.

#### 17. Warranty of Signatories

Each person who signs this Settlement Agreement in a representative capacity represents and warrants that he or she is duly authorized to do so.

#### 18. Entire Agreement

This Settlement Agreement contains all of the representations and warranties, express and implied, oral and written, between and among the Parties hereto, and the entire understanding and agreement between and among the Parties, with respect to the subject matter of the Settlement Agreement. Each Party agrees that it is not relying upon any representations or statements by the

other Party other than those set forth in this Settlement Agreement. This Settlement Agreement is an integrated agreement and may not be altered, amended, modified or otherwise changed in any respect whatsoever except in a written instrument executed by all Parties (or their successors in interest) that expressly states that it is a modification or alteration of this Settlement Agreement.

19. Notices

All Notices, requests, directions or other communications hereunder will be in writing and deemed to have been sufficiently given when delivered in person, sent by confirmed email, by certified mail (with return receipt) or reputable overnight delivery service (with confirmation of receipt) to the address of the respective party below:

**If to eMatrix:**

eMatrix Energy Systems, Inc.  
Attn: Ted Oshman  
21520 Bridge Street  
Southfield, MI 48033  
oshmeister@gmail.com

With a copy to:  
Wheeler Trigg O'Donnell LLP  
370 17th St., Suite 4500  
Denver, CO 80202  
Attn: Marissa Ronk  
ronk@wtotrial.com

**If to Linamar:**

Linamar Corporation  
Attn: Elliot Burger  
287 Speedvale Avenue West  
Guelph, ON N1H 1C5, Canada

With a copy to:  
Wheeler Trigg O'Donnell LLP  
370 17th St., Suite 4500  
Denver, CO 80202  
Attn: Marissa Ronk  
ronk@wtotrial.com

**If to Lightning:**

Lightning E-Motors, Inc.  
Attn: Steve Mason  
815 14th Street SW  
Loveland, CO 80537

With a copy to:  
Foley & Lardner LLP  
500 Woodward Ave., Suite 2700

Detroit, MI 48226  
Attn: Vanessa Miller  
vmiller@foley.com

The foregoing notice information may be updated by a Party from time to time upon notice to the other Parties.

20. Destruction of Documents Produced in Discovery

Consistent with the provisions of the Stipulated Protective Order, filed April 20, 2022 and thereafter amended on February 23, 2023, the Parties shall destroy all documents produced by another Party and designated “Confidential” or “Attorneys Eyes Only” within sixty (60) days of the Effective Date, provided that counsel for the Parties may retain one complete set of pleadings and motion papers filed with the Court (including exhibits) and one complete set of deposition testimony given in this action. Notwithstanding the foregoing, the Parties’ counsel may preserve any documents required to satisfy their ethical and legal obligations.

21. Enforcement

This Settlement Agreement shall be governed in all respects by the laws of the State of Michigan without regard to any laws relating to choice of laws. The state courts sitting in the State of Michigan will have proper jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Settlement Agreement, and each Party irrevocably consents thereto.

22. Additional Terms

a) Representation by Counsel and Full Knowledge of Terms of Agreement. Each Party has been represented by counsel in the negotiation and execution of this Agreement, and enters into this Agreement voluntarily. Each Party represents and warrants that it has fully discussed the meaning and effect of this Agreement with its attorneys and fully understands the meaning and effect of all of its terms.

b) Joint Preparation. This Settlement Agreement will not be construed against any Party. The Parties agree that this Settlement Agreement was prepared jointly by the Parties.

c) Cooperation. The Parties shall reasonably cooperate in doing all things and executing all documents necessary or convenient to achieve the purposes of this Agreement.

d) Counterparts. This Agreement may be executed in counterparts, and when so executed, shall constitute a binding original and one instrument.

e) Headings for Convenience Only. Section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning of any term or provision of this Agreement.

f) Severability. If any provision of this Settlement Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable in any respect, good faith efforts

shall be made to resolve the illegality or unenforceability of such provision(s) to reflect the intent of the parties and provision(s) added similar in terms to such illegal or unenforceable provision(s) as may be possible and legal, valid, and enforceable. If such resolution is not possible, such illegal or unenforceable provision(s) shall be fully severable and deleted and not impair the validity, legality, or enforceability of the remaining provisions and overall agreement.

g) Personal Injury. As used in this Settlement Agreement, "Personal Injury" means physical injury inflicted to a natural person's body, including, without limitation, claims for negligence, emotional distress, loss of consortium or similar tort claims. It excludes all other claims, including by way of illustrative but not exhaustive example, claims for reputational harm, claims sounding in contract or warranty, and claims for economic loss not arising (directly or indirectly) from physical injury inflicted to a natural person's body.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, this Settlement Agreement has been duly executed by the Parties in counterparts, and each is an original as of the Effective Date.

EMATRIX ENERGY SYSTEMS, INC.


LIGHTNING E-MOTORS, INC.

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

LINAMAR CORPORATION

LIGHTNING SYSTEMS, INC.

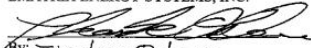
  
\_\_\_\_\_  
By: Elliot Burger  
General Counsel, Corporate Secretary,  
Global VP Corporate Development

\_\_\_\_\_  
By:

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by the Parties in counterparts, and each is an original as of the Effective Date.

EMATRIX ENERGY SYSTEMS, INC.

LIGHTNING E-MOTORS, INC.

  
By: Theodore Oshman  
Board Chairperson / VP

By: \_\_\_\_\_

LINAMAR CORPORATION

LIGHTNING SYSTEMS, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_



IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by the Parties in counterparts, and each is an original as of the Effective Date.

EMATRIX ENERGY SYSTEMS, INC.

By: \_\_\_\_\_

LIGHTNING E-MOTORS, INC.

By:   
Steve Mason  
Chief Legal Officer

LINAMAR CORPORATION

By: \_\_\_\_\_

LIGHTNING SYSTEMS, INC.

By:   
Steve Mason  
Secretary

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT

EMATRIX ENERGY SYSTEMS, INC.,  
a Delaware Corporation,  
*Plaintiff,*

v.

LIGHTNING E-MOTORS, INC.,  
a Delaware Corporation,  
*Defendant/Counterclaim Plaintiff,*

v.

EMATRIX ENERGY SYSTEMS, INC.,  
LINAMAR CORP.,  
*Counterclaim Defendants.*

James P. Feeney (P13335)  
John D. Black (P81027)  
Connor B. Walby (P82022)  
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Denver, CO 80202-5647  
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1400 16<sup>th</sup> Street, Suite 200  
Denver, CO 80202  
(720) 437-2013  
kboehm@foley.com

*Attorneys for Defendant/Counterclaim Plaintiff*

**STIPULATED ORDER OF DISMISSAL OF ALL CLAIMS WITH PREJUDICE**

At a session of said Court, held in the City of  
Pontiac, County of Oakland, Michigan

on: \_\_\_\_\_

PRESENT: Hon. \_\_\_\_\_  
Circuit Court Judge

WHEREAS, this matter comes before the Court upon the stipulation of the parties for an Order dismissing their respective claims with prejudice and this Court being fully advised of the premises:

IT IS ORDERED that Plaintiff eMatrix Energy Systems, Inc.'s Complaint and its claims against Defendant Lightning E-Motors Inc. are hereby dismissed with prejudice and without costs or fees to any party.

IT IS FURTHER ORDERED that Defendant Lightning E-Motors Inc.'s Second Amended Countercomplaint and its claims against Plaintiff eMatrix Energy Systems, Inc. are hereby dismissed with prejudice and without costs or fees to any party.

IT IS FURTHER ORDERED that Defendant Lightning E-Motors Inc.'s Second Amended Countercomplaint and its claims against Counterclaim-Defendant Linamar Corporation are hereby dismissed with prejudice and without costs or fees to any party.

**THEREFOR IT IS HEREBY ORDERED** that this action is dismissed with prejudice and without costs or fees to either party.

This is a final order that resolves all pending claims, including the last pending claim, and closes this case.

SO STIPULATED:

/s/

James P. Feeney (P13335)  
John D. Black (P81027)  
Connor B. Walby (P82022)  
**DYKEMA GOSSETT PLLC**  
39577 Woodward Avenue, Suite 300  
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*Attorneys for eMatrix Energy Systems, Inc.  
and Linamar Corp.*

/s/

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(720) 437-2013  
kboehm@foley.com

*Attorneys for Lightning E-Motors, Inc.*

**CERTIFICATE OF SERVICE**

I certify that, on \_\_\_\_\_, 2023, I electronically filed the foregoing **STIPULATED ORDER OF DISMISSAL OF ALL CLAIMS WITH PREJUDICE** with the Clerk of Court using the MiFile system which will send notification of such filing to the following email addresses:

Vanessa L. Miller (P67794)  
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*Attorneys for Defendant/Counterclaim Plaintiff,  
Lightning eMotors, Inc.*

/s/ \_\_\_\_\_

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**EXHIBIT 2**

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## LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT (this "Agreement") dated as of October 10, 2019 (the "Effective Date") between Cupola Infrastructure Income Fund, L.L.P., a Colorado limited liability limited partnership ("Lender"), and Lightning Hybrids, LLC, a Delaware limited liability company ("Borrower"), provides the terms on which Lender shall lend to Borrower and Borrower shall repay Lender.

### RECITALS

- A. Borrower wishes to obtain from Lender working capital and term loans and issue to Lender certain warrants to purchase Common Units or Series C Preferred Units of Borrower.
- B. Lender is willing to provide such working capital and term loans and receive such warrants subject to the terms and conditions of this Agreement.

### AGREEMENT

In consideration of the mutual covenants of the parties set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

#### 2. LOANS AND TERMS OF REPAYMENT

2.1 **Promise to Pay.** Borrower hereby unconditionally promises to pay Lender the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon and all other Obligations as and when due in accordance with this Agreement.

#### 2.2 **Term Loans.**

(a) **Availability.** Subject to the terms and conditions of this Agreement, upon Borrower's request and no more frequently than Quarterly, Lender shall make term loan advances available to Borrower in multiple advances during the Draw Period (each, a "Term Loan" and, collectively, the "Term Loans") in an aggregate principal amount not to exceed the Available Draw Amount. Each Term Loan shall be in increments of One Million Dollars (\$1,000,000) unless otherwise approved by the Lender. Each Term Loan shall be set forth on Schedule 1 hereto.

(b) **Repayment.** With respect to each Term Loan, commencing on January 1, 2020 and continuing each Quarter thereafter until the Term Loan Maturity Date for such Term Loan, Borrower shall make Quarterly payments to the Lender of interest, in arrears, on the principal amount of such Term Loan at the rate set forth in Section 2.4. Borrower shall pay to the Lender the Term Loan Final Payment for each Term Loan on the Term Loan Maturity Date for such Term Loan.

(c) **Mandatory Prepayment Upon an Acceleration.** If the Term Loans are accelerated by Lender following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Lender an amount equal to (i) the Term Loan Final Payment for each Term Loan, plus (ii) scheduled interest from the date of acceleration until Term Loan Maturity Date for each Term Loan at the rate set forth in Section 2.4(a)(ii), plus (iii) all other sums, if any, that shall have become due and payable with respect to the Term Loans, including interest at the Default Rate with respect to any past due amounts.

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(d) Prepayments Upon Change in Control. If a Change in Control has been approved by Borrower's Board and the Change in Control transaction requires prepayment of the Obligations, then Borrower may prepay all outstanding Obligations under this Agreement in connection with such Change in Control transaction in accordance with this section, provided that Borrower delivers written notice of such Change in Control and prepayment to Lender at least thirty (30) days' prior to such prepayment. If Borrower is not required by the Change in Control transaction and does not desire to prepay all outstanding Obligations under this Agreement in connection with such Change in Control, Borrower shall send a written notice to Lender on the earlier of (i) 30 days prior to such Change in Control or (ii) within three (3) Business Days after Borrower becomes aware that a Change in Control has occurred seeking Lender's consent to the Change in Control. If Lender, in its reasonable discretion exercised in good faith, does not consent to such Change in Control, Lender shall give notice of such decision, and Lender may require Borrower to prepay all outstanding Obligations under this Agreement in connection with such Change in Control in accordance with this section. In the event of any prepayment of all Obligations in connection with a Change in Control described in this section, Borrower shall pay to Lender (x) all outstanding principal and accrued interest on all Credit Extensions and all other Obligations, (y) an Exit Premium with respect to each Term Loan being prepaid, and (z) scheduled interest, if any, from the date of the prepayment through twelve (12) months after the Funding Date with respect to each Working Capital Loan being prepaid. This Agreement shall be terminated upon the payment and satisfaction of all Obligations as described in this Section in connection with a Change in Control.

(e) Voluntary Prepayment. Except as permitted in Section 2.2(d) and Section 2.11, Borrower may not voluntarily prepay all or any portion of any Term Loan.

(f) Initial Term Loan. On or before the date thirty (30) days after the Effective Date, Lender shall make an initial Term Loan to Borrower, in a principal amount of Three Million Dollars (\$3,000,000) (the "Initial Credit Extension").

### 2.3 Working Capital Line.

(a) Availability. Subject to the terms and conditions of this Agreement, upon Borrower's request and no more frequently than Quarterly, Lender shall make advances to Borrower under a Working Capital Line during the Draw Period (each a "Working Capital Loan" and collectively, the "Working Capital Loans") in an aggregate principal amount not to exceed the lesser of the Available Draw Amount or the outstanding principal balance of any Term Loans. Each Working Capital Loan shall be in increments of One Million Dollars (\$1,000,000) unless otherwise approved by the Lender. Amounts borrowed under the Working Capital Line may be repaid and, during the Draw Period, reborrowed, subject to the applicable terms and conditions precedent herein. Each Working Capital Loan shall be set forth on Schedule 1 hereto.

(b) Repayment. With respect to each Working Capital Loan, commencing on January 1, 2020 and continuing on each Quarter thereafter until the Working Capital Line Maturity Date for such Working Capital Loan, Borrower (i) shall make Quarterly payments to the Lender of interest, in arrears, on the principal amount of such Working Capital Loan at the rate set forth in Section 2.4 and (ii) may make the Working Capital Line Final Payment for such Working Capital Loan. Borrower shall pay to the Lender the Working Capital Line Final Payment for each Working Capital Loan on the Working Capital Line Maturity Date for such Working Capital Loan.

(c) Mandatory Prepayment Upon an Acceleration. If the Working Capital Loans are accelerated by Lender following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Lender an amount equal to (i) the Working Capital Line Final Payment for such Working Capital Loans, plus (ii) scheduled interest, if any, from the date of acceleration until twelve (12) months after the Funding Date for each Working Capital Loan at the rate set forth in Section 2.4(a)(i), plus (iii) interest, if any and applicable, at the Default Rate with respect to any past due amounts in accordance with the terms hereof.

(d) Voluntary Prepayment. Borrower may prepay any Working Capital Loan by paying all outstanding principal balance, unpaid accrued interest, and any additional scheduled interest that would have been charged through the twelve (12) months after the Funding Date on such Working Capital Loan; provided that such prepayment shall be made only on a Payment Date and provided, further, that if the prepayment of the Working

Capital Loan occurs pursuant to the prepayment of the Obligations as set forth in Section 2.11, then Section 2.11 shall govern such prepayment of the Working Capital Loans.

2.4 Payment of Interest on the Credit Extensions.

(a) Interest Rate.

(i) Working Capital Loans. The principal amount outstanding under each Working Capital Loan shall accrue interest at a per annum rate equal to fifteen percent (15.00%), which interest shall be payable Quarterly in accordance with Section 2.4(c) below.

(ii) Term Loans. The principal amount outstanding under each Term Loan shall accrue interest at a per annum rate equal to fifteen percent (15.00%); provided, however, if Borrower achieves three (3) consecutive fiscal year Quarters of positive EBITDA, then the principal amount outstanding under each Term Loan shall accrue interest at a per annum rate equal to thirteen percent (13.00%) per annum commencing as of the first day of the subsequent Quarter following such third Quarter of positive EBITDA, which interest shall be payable Quarterly in accordance with Section 2.4(c) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, all Obligations shall bear interest at a rate per annum which is five percent (5.0%) above the rate that is otherwise applicable thereto (the "Default Rate"). Fees and expenses that Borrower is required to pay pursuant to the Loan Documents (including, without limitation, Lender Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.4(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Lender.

(c) Payment; Interest Computation. Interest is payable Quarterly on the Payment Date and shall be computed on the basis of a 365-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Mountain time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension. After each Payment Date, Lender may deliver an updated Payment Schedule to Borrower to reflect any payments made with respect to each Credit Extension and any new Credit Extensions.

2.5 Fees. Borrower shall pay to Lender a fully earned, non-refundable commitment fee of Seventy-Five Thousand Dollars (\$75,000) ("Closing Fee") on the date of funding by Lender of the Initial Credit Extension, which Closing Fee shall be paid to Lender by deducting the amount of the Closing Fee from the Initial Credit Extension.

2.6 Payments; Application of Payments; Debit of Accounts.

(a) All payments to be made by Borrower under this Agreement or any other Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Mountain time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Mountain time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and there shall be no fees or accrual of interest in addition to the standard accrual of interest resulting from delay of payment until such next Business Day.

(b) Lender has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Lender shall allocate or apply any payments required to be made by Borrower to Lender or otherwise received by Lender under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Lender may debit any of Borrower's Deposit Accounts for principal and interest payments or any other amounts Borrower owes Lender when due. These debits shall not constitute a set-off.

2.7 **Overadvances.** If, at any time, the outstanding principal amount and accrued interest that is due and payable of all outstanding Credit Extensions exceed the Borrowing Base, Borrower shall pay to Lender in cash the amount of such excess (such excess, the "Overadvance") as set forth under Section 8.2(c)(i). Without limiting Borrower's obligation to repay Lender any Overadvance, Borrower agrees to start paying Lender interest on the outstanding amount of any Overadvance at the Default Rate as of the end of such next Quarter until such time as no Overadvance exists.

2.8 **Termination.** Unless terminated earlier pursuant to this Agreement, the Credit Extensions terminate on the Loan Maturity Date, when the principal amount of all Credit Extensions, the unpaid interest thereon, and all other Obligations relating to the Working Capital Line shall be immediately due and payable, notwithstanding any Working Capital Line Maturity Date or Term Loan Maturity Date that may be later.

2.9 **Withholding.** Payments received by Lender from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Lender, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Lender with proof reasonably satisfactory to Lender indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.9 shall survive the termination of this Agreement.

2.10 **Borrowing Procedures.** To obtain a Credit Extension (other than the Initial Credit Extension), an Authorized Signer of Borrower must notify Lender in writing, which such notice shall be irrevocable, by delivering to Lender (i) a duly executed Initial Loan Request as required pursuant to Section 3.2(a) and (ii) an updated and duly executed Loan Request as required pursuant to Section 3.2(b); provided that Lender shall not be obligated to fund any Credit Extension requested in the updated Loan Request to the extent it is in excess of the Initial Loan Request. Borrower shall attach to each Loan Request: (i) a schedule of expected payments, (ii) Borrower's Financial Projections, and (iii) a Borrowing Base Statement, attached as Exhibit A to Loan Request, Exhibit D, and Exhibit E, respectively. Lender may reasonably request in its discretion from Borrower before approving the Loan Request any documentation evidencing compliance with the terms set forth in this Agreement. Lender shall review each Initial Loan Request within twenty (20) days after receipt of such request (the "Review Period") and promptly inform the Borrower in writing of the results of its review following the expiration of the Review Period. Lender shall review each updated Loan Request prior to the requested Funding Date and promptly inform the Borrower in writing of its decision to make or decline the requested Credit Extension, subject to the terms and conditions of this Agreement.

2.11 **Failure to Fund Initial Additional Commitment.** In the event Borrower makes an Initial Loan Request which is a reasonable request based upon prior forecasts provided by Borrower and which meets the requirements of this Agreement (including, for the avoidance of doubt, that the Borrowing Base as of the date of the Initial Loan Request and Funding Date shall exceed the outstanding Credit Extensions plus the amount requested in such Loan Request), which, if such Credit Extension were made, would require an Additional Commitment from Lender no greater than the Initial Additional Commitment, Lender must, within five (5) Business Days after the Review Period (the "Review Period Decision Deadline") notify Borrower (an "Initial Additional Commitment Lender Election Notice") that Lender elects to either (i) make available the entire amount of the Loan Request without any condition other than those expressly set forth in Section 3.2, in which case the Additional Commitment shall be deemed increased as such, or (ii) decline to provide the Additional Commitment. If Lender elects to decline to provide the Additional Commitment or otherwise does not provide in an Initial Additional Commitment Lender

Election Notice that it shall make available the entire amount of the Loan Request without any condition other than those expressly set forth in Section 3.2, then Borrower may, for a period of ninety (90) days commencing as of the Review Period Decision Deadline, prepay all outstanding Obligations under this Agreement by paying to Lender all outstanding principal and accrued interest thereon (without, for the avoidance of doubt, any prepayment penalties) and any other amounts due hereunder as of the date of such prepayment, unless Lender, prior to such prepayment, has in fact subsequently provided notice that it agrees to fund, without any condition other than as set forth in Section 3.2, the entire Initial Loan Request. During such ninety (90) day period, Borrower agrees to use good faith efforts to work with Lender to identify whether a new lender may be willing to provide a credit facility to replace such Initial Additional Commitment without prepayment of the Obligations (an "Alternative Lender"), on terms and conditions satisfactory to each of Borrower and Lender in their respective sole discretions, but under no circumstances shall Borrower be obligated to accept any financing offered by an Alternative Lender and this sentence shall not limit, restrict or otherwise vitiate Borrower's right to prepay the Obligations as set forth above in this Section 2.11. This Agreement shall be terminated upon the payment and satisfaction of the Obligations as described in this Section 2.11.

### 3. CONDITIONS OF LOANS

3.1 **Conditions Precedent to Initial Credit Extension.** Lender's obligation to make the Initial Credit Extension is subject to the condition precedent that Lender shall have received, in form and substance satisfactory to Lender, such documents, and completion of such other matters, as Lender may reasonably deem necessary or appropriate, including, without limitation:

- (a) duly executed signatures to this Agreement and the other Loan Documents;
- (b) duly executed signatures to the Warrants, together with a capitalization table and copies of Borrower's equity documents, including without limitation, documents related to Borrower's Series C financing;
- (c) Borrower's Operating Documents and long-form good standing certificates certified by the Secretary of State (or equivalent agency) of Borrower's jurisdiction of organization or formation and each jurisdiction in which Borrower is qualified to conduct business, each as of a date no earlier than ten (10) days prior to the Effective Date;
- (d) a secretary's certificate of Borrower with respect to such Borrower's Operating Documents, incumbency, specimen signatures and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents to which it is a party;
- (e) duly executed signatures to the completed Borrowing Resolutions for Borrower;
- (f) certified copies of financing statement searches dated within the last thirty (30) days, as Lender may request, accompanied by written evidence (including any UCC termination statements) that any Liens indicated in any such financing statements constitute Permitted Liens;
- (g) the Perfection Certificate of Borrower, together with the duly executed signature thereto;
- (h) a landlord's consent in favor of Lender for each of Borrower's leased locations containing Collateral having a value in excess of Fifty Thousand Dollars (\$50,000), by the respective landlord thereof, together with the duly executed original signatures thereto;
- (i) Collateral Access Agreements, each of which shall have been executed by the landlord of any property at which Borrower keeps at least ten percent (10%) of its Inventory, no later than 90 days after the Effective Date;
- (j) evidence satisfactory to Lender that Borrower's insurance policies and endorsements as required in Section 6.8 are in full force and effect, together with appropriate evidence showing lender loss payable, additional insured and waiver of subrogation clauses or endorsements in favor of Lender;

- (k) the completion of the Initial Audit;
- (l) a completed Borrowing Base Statement (and any schedules related thereto and including any other information requested by Lender with respect to Borrower's Accounts);
- (m) [Intentionally Omitted];
- (n) duly executed Control Agreements with respect to the Chase Accounts; and
- (o) a representative chosen by Lender in its sole discretion shall be duly elected to serve as a director on Borrower's Board;
- (p) Borrower's payment of the Closing Fee, which shall be set off from the Initial Credit Extension as specified in Section 2.5;
- (q) A subordination agreement, in form and substance acceptable to Lender, with respect to the Shell Foundation Loan; and
- (r) A collateral access and subordination agreement from Borrower's landlord in Loveland, CO in form and substance acceptable to Lender.

3.2 Conditions Precedent to all Credit Extensions. Lender's obligations to make each Credit Extension (excluding, however, the Initial Credit Extension), is subject to the following conditions precedent:

- (a) at least two (2) months and fifteen (15) Business Days prior to the proposed Funding Date of such Credit Extension, Lender's receipt of an executed Loan Request, Borrowing Base Statement and the Monthly Statements for the prior financial reporting period (an "Initial Loan Request");
- (b) at least ten (10) Business Days prior to the proposed Funding Date of such Credit Extension, Lender's receipt of an executed Loan Request, Borrowing Base Statement and any other materials and documents required by Section 3.2(a), each being updated versions of the documents provided pursuant to Section 3.2(a);
- (c) Borrower's representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Credit Extension request under Section 3.2(a) and on the Funding Date of each Credit Extension; provided, however, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all respects; provided, however, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;
- (d) [Intentionally Omitted];
- (e) Lender shall have received satisfactory evidence that Borrower's Board has approved that such Authorized Signer may provide such notices and request Credit Extensions; and
- (f) no Material Adverse Change has occurred.

3.3 **Covenant to Deliver.** Borrower agrees to deliver to Lender each item required to be delivered to Lender under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Lender of any such item shall not constitute a waiver by Lender of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Lender's sole discretion.

3.4 [Intentionally Omitted].

#### 4. SECURITY INTEREST

4.1 **Grant of Security Interest.** Borrower hereby grants Lender, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Lender, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (the "Security Interest").

Lender's Security Interest in the Collateral shall survive the termination of this Agreement and shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon Borrower's full repayment in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Lender's obligation to make Credit Extensions has terminated, Lender shall, at the sole cost and expense of Borrower, release its Security Interest in the Collateral and all rights therein shall revert to Borrower.

4.2 **Priority of Security Interest.** Borrower represents, warrants, and covenants that the Security Interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Lender in a writing signed by Borrower of the general details thereof and grant to Lender in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Lender.

4.3 **Authorization to File Financing Statements.** Borrower hereby authorizes Lender to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Lender's Security Interest or rights hereunder, including a notice that any disposition of the Collateral in violation of this Agreement, by either Borrower or any other Person, shall be deemed to violate the rights of Lender under the Code.

#### 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender on the Effective Date, the date of each Credit Extension request under Section 3.2(a) and the Funding Date of each Credit Extension as follows:

5.1 **Due Organization, Authorization; Power and Authority.** Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. Borrower has all requisite limited liability company power to execute and deliver this Agreement and the other Loan Documents, and to carry out and perform its obligations under the terms hereof and thereof. All limited liability company action on the part of Borrower, its directors and its members necessary for the authorization, execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and the performance of Borrower's obligations hereunder and thereunder, including the issuance and delivery of the Warrants and Warrant Units have been taken. This Agreement and the other Loan Documents, when executed and delivered, will be valid and binding obligations of Borrower enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) general principles of equity that restrict the availability of equitable remedies. In connection with this Agreement, Borrower has delivered to Lender a completed certificate signed by Borrower, entitled "Perfection Certificate" in the form attached hereto as Exhibit F, as may be updated in Lender's sole discretion (the "Perfection Certificate"). Borrower represents and warrants to Lender that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof;

(b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction, except Borrower's planned conversion to a C Corp or election to be taxed as a C Corp, as previously disclosed in writing by Borrower to Lender; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of this Agreement and the other Loan Documents have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral. Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Security Interest hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than the Collateral Accounts described in the Perfection Certificate delivered to Lender in connection herewith and which Borrower has taken such actions as are necessary to give Lender a perfected security interest therein, to the extent required pursuant to the terms of Section 6.9(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as permitted pursuant to Section 7.2. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Neither the operations of the Borrower as currently conducted or as currently contemplated to be conducted nor any product or service of the Borrower infringes or violates any Intellectual Property of any third party. Except pursuant to a written confidentiality agreement, the Borrower has not disclosed or made available any material Borrower confidential information or trade secrets to any other person or entity. Except for end-user licenses to standard commercially available software and agreements and licenses that have been provided to the Lender, the Borrower is not a party to, or bound by, any contract, agreement or license with respect to the Intellectual Property of a third party. Except for standard end-user licenses granted by the Borrower with respect to the licensing or sale of Borrower products or services and agreements and licenses that have been provided to the Lender, the Borrower has not granted any third party any rights, options or licenses with respect to any Intellectual Property that is or was owned by the Borrower. The Borrower has not received any communication alleging, or that would put the Borrower on notice, that the Borrower is or may be infringing or violating or, by conducting its business as currently conducted, would infringe or violate any of the Intellectual Property of any other person or entity, nor is the Borrower aware of any basis therefor. There are no agreements, understandings, instruments, contracts, judgments, orders or decrees to which the Borrower is a party or by which it is bound which involve indemnification by the Borrower with respect to infringement of Intellectual Property.



Each person that was or is an officer or employee of the Borrower has executed a confidential information and invention assignment agreement substantially in the form(s) delivered to the Borrower.

Each consultant to the Borrower that has had access to any Borrower confidential information or trade secrets has entered into an agreement containing appropriate confidentiality and invention assignment provisions.

To the knowledge of the Borrower, (i) no person that is or was an officer, employee or consultant of the Borrower is in violation of any confidential information and invention assignment agreement with the Borrower and (ii) no current officer, employee or consultant of the Borrower is in violation of any prior employee contract or proprietary information agreement with any other corporation or third party.

Except as noted on the Perfection Certificate or as otherwise disclosed to Lender pursuant to Section 6.11, Borrower is not a party to, nor is it bound by, any Restricted License.

### 5.3 Accounts Receivable.

(a) For each Account included in the Borrowing Base, on the dates any Credit Extension is requested and made and on the date of delivery of any Borrowing Base Statement, such Account shall be an Eligible Account.

(b) All statements made and all unpaid balances appearing in all of Borrower's invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Statement. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

5.4 Litigation. There are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually, One Hundred Thousand Dollars (\$100,000);

5.5 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Lender fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the dates and for the periods presented (except with respect to unaudited financial statements, subject to normal year-end adjustments and for the absence of footnotes). There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Lender.

5.6 Solvency. The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a Material Adverse Change. Borrower and each of its Subsidiaries have obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted. Borrower and its Subsidiaries are in compliance with all applicable Anti-Money Laundering and Anti-Terrorism Laws.

5.8 Environmental.

(a) Borrower is in material compliance with all applicable Environmental Laws and Borrower has not Released or stored any Hazardous Materials in violation of Environmental Laws. None of Borrower or any of its Subsidiaries is obligated to remove or remediate any Hazardous Materials pursuant to any Environmental Law or any contract entered into with any other Person that has resulted or would reasonably be expected to result in a Material Adverse Change.

(b) There are no actions pending or threatened against Borrower under Environmental Law and Borrower has not received any written request for information, any written notice relating to a violation or alleged violation by Borrower or any of its Subsidiaries of any Environmental Law, or any written notice that Borrower or its Subsidiaries is or may be responsible for any remedial action under any Environmental Law.

5.9 Material Contracts. Each Material Contract is a valid, binding and enforceable obligation of Borrower or its Subsidiaries, as applicable. Neither Borrower nor its Subsidiaries, and to Borrower's knowledge, no other party to a Material Contract, is in breach in any material respect under any Material Contract, and, to Borrower's knowledge, there does not exist any event that, with the lapse of time or the giving of notice or both, would constitute such a breach. No party to any Material Contract has (i) indicated in writing to Borrower its intention to amend or terminate an Material Contract, or (ii) made any claims against, or sought indemnification from Borrower or any of its Subsidiaries as to any matter arising under or with respect to an Material Contract, and neither Borrower nor its Subsidiaries, nor any of their respective directors, managers, members or officers, has been advised in writing that any such claims may be asserted or initiated.

5.10 Subsidiaries; Investments. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

5.11 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports (or filed valid extensions, related thereto), and Borrower has timely paid all federal and state and all material foreign and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with IRS Guidelines shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Fifty Thousand Dollars (\$50,000).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Lender in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a Permitted Lien. Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower in excess of Fifty Thousand Dollars (\$50,000). Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.12 Warrants. When issued the Warrants and the Warrant Units will be validly issued, fully paid and nonassessable, and will be free of any liens or encumbrances other than liens and encumbrances created by or imposed upon the Lender; provided, however, that the Warrants and the Warrant Units may be subject to restrictions on transfer under state and/or federal securities laws or as otherwise required by such laws at the time a transfer is proposed. The initial sale of the Warrants to Lender and the initial issuance of the Warrant Units will not be subject to any preemptive rights or rights of first refusal that have not been properly waived or complied with. The offer, sale and issuance of the Units, the Warrants and the Warrant Units will be exempt from the registration requirements of the Securities Act of 1933, as amended, and will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws.

5.13 **Full Disclosure.** No written representation, warranty or other statement of Borrower in any report, certificate, or written statement submitted to Lender, as of the date such representation, warranty, or other statement was made contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the reports, certificates, or written statements not misleading. Borrower has disclosed to Lender all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject as of the Funding Date, and all other matters known to it as of the Funding Date, that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Change.

5.14 **Definition of "Knowledge."** For purposes of this Agreement and the other Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, or constructive knowledge based on a reasonable investigation, of any Responsible Officer.

## 6. AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

### 6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a Material Adverse Change. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under this Agreement and the other Loan Documents to which it is a party and the grant of a Security Interest to Lender in the Collateral. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Lender.

### 6.2 Financial Statements, Reports. Submit to Lender:

(a) The following reports on a monthly basis, no later than fifteen (15) Business Days after the last day of each month:

(i) a Borrowing Base Statement in the form attached as Exhibit E;

(ii) a consolidated balance sheet, statement of cash flows and income statement covering Borrower's consolidated operations for such month in a form reasonably acceptable to Lender (the "Monthly Statements"); and

(iii) a duly completed and executed Compliance Statement, confirming that, as of the end of such month, Borrower was in full compliance in all material respects with all of the terms and conditions of this Agreement, and setting forth such other information as Lender may reasonably request.

(b) The following reports on a quarterly basis, no later than fifteen (15) Business Days after the end of each Quarter:

(i) a six (6) month forecast of Borrower's Financial Projections; and

(ii) a consolidated balance sheet, statement of cash flows and income statement covering Borrower's consolidated operations for such Quarter.

The following reports on an annual basis:

(iii) Borrower's annual operating budgets (broken out by month) for the upcoming fiscal year and quarterly Financial Projections for the upcoming fiscal year together with any related business forecasts used in preparation of such Financial Projections, in each case approved by Borrower's Board, no later than thirty (30) Business Days after the end of each fiscal year of Borrower; and

(iv) commencing with Borrower's fiscal year ending on December 31, 2019, annual, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements (other than a qualification as to concerns typical for venture-backed companies similar to Borrower) from an independent certified public accounting firm reasonably acceptable to Lender, no later than one hundred eighty (180) days after the last day of Borrower's fiscal year;

(c) Prompt written notice of and additional documentation, as required, regarding any of the following:

(i) any changes to the beneficial ownership information set out in Section 2 of the Perfection Certificate. Borrower understands and acknowledges that Lender relies on such true, accurate and up-to-date beneficial ownership information to meet Lender's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(ii) in the event that Borrower becomes subject to the reporting requirements under the Exchange Act within five (5) Business Days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address; provided, however, Borrower shall promptly notify Lender in writing (which may be by electronic mail) of the posting of any such documents;

(iii) copies of all statements, reports and notices made available to Borrower's equity holders or to any holders of Subordinated Debt within five (5) Business Days of delivery;

(iv) any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries;

(v) any breach in any material respect under any Material Contract or any agreement to any amendment, modification or other change to or waiver of any of its rights under any Material Contract if such amendment, modification, change or waiver would be adverse in any material respect to the Lender;

(vi) any amendment to or termination of any Collateral Access Agreement or if Borrower enters into a new Collateral Access Agreement; and

(vii) such other information regarding Borrower or compliance with the terms of this Agreement or any Loan Documents as reasonably requested by Lender from time to time.

Any submission by Borrower of a Compliance Statement, a Borrowing Base Statement or any other financial statement submitted to the Lender pursuant to this Section 6.2 shall be deemed to be a representation by Borrower that (i) as of the date of such Compliance Statement, a Borrowing Base Statement or other financial statement, the information and calculations set forth therein are true, accurate and correct in all material respects, (ii) as of the end of the compliance period set forth in such submission, Borrower is in complete compliance with all required covenants except as noted in such Compliance Statement, a Borrowing Base Statement or other financial statement, as applicable, (iii) as of the date of such submission, no Events of Default have occurred and are

continuing, (iv) all representations and warranties other than any representations or warranties that are made as of a specific date in Section 5 remain true and correct in all material respects as of the date of such submission except as noted in such Compliance Statement, a Borrowing Base Statement or other financial statement, as applicable, (v) as of the date of such submission, Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9, and (vi) as of the date of such submission, no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Lender.

6.3 **Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. Borrower must promptly notify Lender of all returns, recoveries, disputes and claims that on an individual basis involve more than Fifty Thousand Dollars (\$50,000).

6.4 **Accounts Receivable.**

(a) **Schedules and Documents Relating to Accounts.** Borrower shall deliver to Lender transaction reports and schedules of collections, as provided in Section 6.2, on Lender's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Lender's Security Interest and other rights in all of Borrower's Accounts, nor shall Lender's failure to advance or lend against a specific Account affect or limit Lender's Security Interest and other rights therein. If requested by Lender, Borrower shall furnish Lender with copies (or, at Lender's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Lender, on its reasonable request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.

(b) **Disputes.** Borrower shall promptly notify Lender of all disputes or claims relating to Accounts in excess of Fifty Thousand Dollars (\$50,000) individually. Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of Borrower's Business, in arm's-length transactions, and reports the same to Lender in the regular reports provided to Lender; (ii) no Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, the total outstanding Credit Extensions will not exceed the Available Draw Amount.

(c) **Reserves.** Notwithstanding any terms in this Agreement to the contrary, upon the occurrence and during the continuance of an Event of Default, Lender may hold any proceeds of the Accounts as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.

(d) **Warranty Accounting.** Borrower shall maintain a warranty reserve in an amount equal to that percentage of the purchase price of all sales for which Borrower has provided a warranty to the purchaser recommended or required by Borrower's auditor. In the event there is no warranty recommended or required by Borrower's auditor, Borrower shall maintain a warranty reserve of at least five percent (5%) of the purchase price of all sales for which Borrower has provided a warranty to purchaser.

(e) [Intentionally Omitted].

(f) **No Liability.** Lender shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Lender be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Lender from liability for its own gross negligence or willful misconduct.

6.5 Remittance of Proceeds. Except as otherwise provided in Section 6.4(c), deliver, in kind, all proceeds arising from the disposition of any Collateral in violation of Section 7.1, to Lender in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, pursuant to the terms of Section 6.4(c), and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4. Borrower agrees that it will not commingle proceeds of Collateral with any of Borrower's other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Lender. Nothing in this Section 6.5 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

6.6 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all federal and state and all material foreign and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9, and shall deliver to Lender, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.7 Access to Collateral; Books and Records. At reasonable times, on fifteen (15) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Lender, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. The foregoing inspections and audits shall be conducted no more often than once every twelve (12) months, unless Lender, in its reasonable discretion determines that conditions warrant quarterly inspections and audits or an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Lender shall determine is necessary. Borrower hereby acknowledges and agrees that the Initial Audit will be conducted prior to the Initial Credit Extension, but in no event later than ninety (90) days after the Effective Date.

6.8 Insurance.

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Lender may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are satisfactory to Lender. All property policies shall have a lender's loss payable endorsement showing Lender as the sole lender loss payee. All liability policies shall show, or have endorsements showing, Lender as an additional insured. Lender shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral. Commencing January 1, 2020, Borrower shall thereafter at all times carry a key man insurance policy of at least \$1,000,000 for each of its then duly elected Chief Executive Officer and Chief Technology Officer.

(b) Ensure that proceeds payable under any property policy are, at Lender's option, payable to Lender on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Lender has been granted a first priority security interest (subject to Permitted Liens), and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Lender, be payable to Lender on account of the Obligations.

(c) At Lender's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.8 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Lender, that it will give Lender thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled. If Borrower fails to obtain insurance as required under this Section 6.8 or to pay any amount or furnish any required proof of payment to third persons and Lender, Lender may make all or part of such payment or obtain such insurance policies required in this Section 6.8, and take any action under the policies Lender deems prudent.

**6.9 Borrower's Chase Accounts.**

(a) (i) If AMG National Trust Bank or an Affiliate of Lender offers banking services that are substantially similar to or better than the banking services that Borrower receives from JP Morgan Chase Bank, N.A. as of the Effective Date, then prior to March 31, 2020, Borrower shall deliver to Lender evidence that Borrower's deposit accounts with JP Morgan Chase Bank, N.A., as more fully described in the Perfection Certificate dated as of the Effective Date (the "Chase Accounts"), have been closed and the funds therein have been transferred to new deposit accounts established with AMG National Trust Bank or such Affiliate of Lender and (ii) Borrower shall, after March 31, 2020, maintain at all times all of its primary operating and other deposit accounts, cash management and excess deposit accounts, asset management accounts, primary securities/investment accounts, letters of credit and business credit cards and foreign exchange business with AMG National Trust Bank or an Affiliate of Lender if such banking services are substantially similar to or better than the banking services that Borrower would be able to receive from another banking institution.

(b) In addition to and without limiting the restrictions in (a), Borrower shall provide Lender five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Lender or Lender's Affiliates and shall maintain at all times a Control Agreement with respect to any such Collateral Accounts.

**6.10 Financial Covenants.**

(a) Maintain:

(i) As of the end of each Quarter and on each Funding Date, a Borrowing Base that equals or exceeds the aggregate of the outstanding principal of all outstanding Credit Extensions;

(ii) At all times, Total Equity greater than Zero Dollars (\$0); and

(iii) Total Equity plus expected EBITDA at the end of the next Quarter and the following Quarter greater than Zero Dollars (\$0).

(b) Lender may, in a reasonable amount of time after the later of (i) the end of any Quarter or (ii) the date that the Financial Projections are provided to Lender, provide notice to Borrower that Lender has determined, in its reasonable judgment, based upon the Financial Projections and the most recent information provided by Borrower to Lender pursuant to the requirements of Section 6.2, that there is a reasonable likelihood that Borrower will fail to comply with one or more of the financial covenants in Section 6.10(a) during either of the next two (2) Quarters (as reasonably determined by Lender), whereupon Borrower shall consult with Lender to develop a course of action that is reasonably acceptable to Lender to address such projected failure within ten (10) Business Days of receipt of such notice (a "Remedial Action"). Borrower shall at all times comply with any such Remedial Action.

**6.11 Protection of Intellectual Property Rights.**

(a) (i) Protect, defend and maintain the validity and enforceability of its Intellectual Property material to Borrower's Business; (ii) promptly advise Lender in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Lender's written consent.

(b) Provide written notice to Lender within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Lender requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Lender to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms, in a manner enforceable under applicable law, of any such Restricted License, whether now existing or entered into in the future,

and (ii) Lender to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Lender's rights and remedies under this Agreement and the other Loan Documents.

6.12 **Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Lender, without expense to Lender, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Lender with respect to any Collateral or relating to Borrower.

6.13 **Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7, at the time that Borrower forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, Borrower shall, at Lender's request in its sole discretion (a) cause any such new Subsidiary to provide to Lender a joinder to this Agreement to cause such Subsidiary to become a co-borrower hereunder, together with such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Lender (including being sufficient to grant Lender a first priority Security Interest (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Lender appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Lender, (c) pledge sixty-five percent (65%) of the direct or beneficial ownership interest of any new Foreign Subsidiary directly owned by Borrower, and (d) provide to Lender all other documentation in form and substance satisfactory to Lender, including one or more opinions of counsel reasonably satisfactory to Lender, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.14 shall be a Loan Document.

6.14 **Further Assurances.** Execute any further instruments and take further action as Lender reasonably requests to perfect or continue Lender's Security Interest in the Collateral or to effect the purposes of this Agreement. Upon Lender's request, deliver to Lender, within five (5) Business Days after the same are requested, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

6.15 **Use of Proceeds.** The Initial Credit Extension shall be used first to repay the GreenLine Loan in its entirety. Otherwise, Borrower shall use the proceeds of the Credit Extensions solely (a) to payoff the Shell Foundation Loan on December 31, 2020 in its entirety, and (b) as working capital, for general corporate purposes and to fund its general business requirements and not for personal, family, household or agricultural purposes.

6.16 [Intentionally Omitted].

## 7. NEGATIVE COVENANTS

Borrower shall not do any of the following without Lender's prior written consent:

7.1 **Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of inventory in the ordinary course of Borrower's Business; (b) of worn-out or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of Borrower's Business; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2; (e) consisting of Borrower's use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the Loan Documents; and (f) of non-exclusive licenses for the use of the Intellectual Property of Borrower or its Subsidiaries in the ordinary course of Borrower's Business, and (g) other Transfers in an aggregate amount not to exceed Fifty Thousand Dollars (\$50,000) per fiscal year.



7.2 **Changes in Borrower's Business, Management, Control, or Business Locations.** (a) engage in or permit any of its Subsidiaries to engage in any business other than the Borrower's Business or businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) permit or suffer any two (2) Key Persons within six (6) months depart from or cease to be employed by Borrower or (d) permit or suffer any Change in Control not approved by the Lender pursuant to Section 2.2(d).

Borrower shall not, without at least thirty (30) days prior written notice to Lender: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than ten percent (10%) of Borrower's Inventory) or deliver any portion of the Collateral valued individually in excess of Fifty Thousand Dollars (\$50,000) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of 10% of Borrower's Inventory, then Borrower will first receive the written consent of Lender, and the landlord of any such new offices or business locations, including warehouses, shall execute and deliver a Collateral Access Agreement in form and substance satisfactory to Lender. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate to a bailee, and Lender and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Lender, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Lender.

7.3 **Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary), except: (i) a Permitted Acquisition, and (ii) a Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 **Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 **Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, except for Permitted Liens, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Lender) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property in favor of Lender, except as is otherwise permitted in Section 7.1 and the definition of "Permitted Liens" herein.

7.6 **Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.9(b).

7.7 **Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that Borrower may (i) convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) pay dividends solely in common stock; (iii) repurchase the stock of former employees, directors or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase, provided that the aggregate amount of all such repurchases does not exceed Two Hundred Thousand Dollars (\$200,000) per fiscal year; and (iv) Borrower may pay cash in lieu of issuing fractional shares in connection with the conversion of convertible securities, or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (i) transactions that are in the ordinary course of Borrower's Business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's

length transaction with a non-affiliated Person (ii) reasonable and customary compensation arrangements approved by the disinterested members of the Borrower's Board, (iii) equity financings and bridge financings with Borrower's existing investors approved by the Borrower's Board so long as any such Indebtedness is unsecured Subordinated Debt.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject or as contemplated by Section 6.15 hereof, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Lender, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

## 8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on a Working Capital Line Maturity Date or a Term Loan Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

### 8.2 Covenant Default.

(a) Affirmative Covenants. Borrower is in violation of any obligation required set forth in Sections 6.2, 6.3, 6.4, 6.5, 6.7, 6.8, 6.13 and has failed to cure such default within ten (10) Business Days after the occurrence of the default;

(b) Negative Covenants. Borrower is in violation of any negative covenant described in Section 7;

(c) Financial Covenants.

(i) Borrower fails or neglects to perform any obligation in Section 6.10(a) and either (x) fails to submit a cure plan approved by Lender within thirty (30) days after the occurrence of the default or (y) has failed to cure the default by the end of the subsequent calendar Quarter in accordance with a cure plan approved by the Lender (no Credit Extensions shall be made during such cure period); provided, that Borrower shall have the right to submit a cure plan to Lender, which shall be provided to Lender within ten (10) days of the occurrence of the default, and which Lender shall approve or reject in its discretion within twenty (20) Business Days from occurrence of the default. Such cure plan may include without limitation the right, but not the obligation, to prepay first the Working Capital Loans and then the

Term Loans (such prepayment shall be based on an amount determined as if the Credit Extensions were accelerated pursuant to Sections 2.2(c) and 2.3(c)). Notwithstanding the foregoing, Borrower's right under this Section 8.2(c) to cure a violation of the covenants in Section 6.10 shall only be available to the Borrower three (3) times during the term of this Agreement;

(ii) There is a reasonable likelihood that Borrower will fail to comply with one or more of the financial covenants in Section 6.10(a) in next Quarter (as determined by Lender in its reasonable judgment, based upon the Financial Projections and the most recent information provided by Borrower to Lender, all pursuant to the requirements of Section 6.2) and Borrower and Lender have not agreed upon a Remedial Action to address such projected failure required pursuant to Section 6.10(b);

(d) Other Covenants and Conditions. Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or the Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to either (i) submit a cure plan to Lender within ten (10) Business Days after the occurrence thereof, or (ii) cure the default within twenty (20) Business Days after the occurrence thereof (but no Credit Extensions shall be made during such cure period). Cure periods provided under this Section 8.2(d) shall not apply to any other covenants set forth in clauses (a) through (c) above;

8.3 **Investor Abandonment.** If Borrower violates the covenants under Section 6.10(a)(ii) or (iii), subject to the applicable cure periods, and Borrower fails to provide to Lender copies of written commitments from investors of Borrower evidencing the commitment of such investors to continue to fund the Borrower in the amounts and timeframe necessary to enable Borrower to satisfy the Obligations as they become due and payable, as set forth more fully in the cure plan set forth in Section 8.2;

8.4 **Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

8.5 **Insolvency.** (a) Borrower is unable to pay its debts (including trade debts) as they become due; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and is not dismissed or stayed within ninety (90) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 **Other Agreements.** There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of One Hundred Thousand Dollars (\$100,000) within the next Quarter; or (b) any breach or default by Borrower or Guarantor, the result of which could reasonably be expected to have a material adverse effect on Borrower's or any Guarantor's business;

8.7 **Judgments; Penalties.** One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars (\$100,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) Business Days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after

execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

8.8 **Misrepresentations.** Borrower or any Person acting for Borrower makes any material representation, warranty, omission or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Lender or to induce Lender to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect or misleading in any material respect when made;

8.9 **Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any applicable subordination or intercreditor agreement;

8.10 **Security Interest Priority.** There is a material impairment in the priority of Lender's Security Interest in the Collateral;

8.11 **Material Adverse Change.** There is a Material Adverse Change; provided, however, Borrower has the right to cure such Material Adverse Change, so long as Borrower provides written notice to Lender of its cure plan and such Material Adverse Change is cured within twenty (20) Business Days after the occurrence of the default;

8.12 **Change in Management.** Any two (2) Key Persons within six (6) months depart from or cease to be employed by Borrower, unless Borrower has obtained Lender's prior written approval; or

8.13 **Lender Board Seat.** A representative of Lender is no longer provided the opportunity to serve as a director on Borrower's Board.

## 9. **LENDER'S RIGHTS AND REMEDIES**

9.1 **Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Lender may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Lender);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Lender;

(c) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Lender considers advisable, and notify any Person owing Borrower money of Lender's Security Interest in such funds. Borrower shall collect all payments in trust for Lender and, if requested by Lender, immediately deliver the payments to Lender in the form received from the Account Debtor, with proper endorsements for deposit;

(d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Security Interest in the Collateral. Borrower shall assemble the Collateral if Lender requests and make it available as Lender designates. Lender may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its Security Interest and pay all expenses incurred. Borrower grants Lender a license to enter and occupy any of its premises, without charge, to exercise any of Lender's rights or remedies;

(e) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Lender owing to or for the credit or the account of Borrower;

(f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral;

(g) place a "hold" on any Account maintained with Lender and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(h) demand and receive possession of Borrower's Books; and

(i) exercise all rights and remedies available to Lender under this Agreement and the other Loan Documents or at law or equity, including without limitation all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 **Power of Attorney.** Borrower hereby irrevocably appoints Lender as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuation of an Event of Default, to: (a) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Lender's or Borrower's name, as Lender chooses); (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Lender or a third party as the Code permits. Borrower hereby appoints Lender as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Lender's Security Interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and the Loan Documents have been terminated. Lender's foregoing appointment as Borrower's attorney in fact, and all of Lender's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and the Loan Documents have been terminated.

9.3 **Protective Payments.** If Borrower fails to obtain and maintain the insurance required under Section 6.8 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any Loan Document or which may be required to preserve the Collateral, Lender may obtain such insurance or make such payment, and all amounts so paid by Lender are Lender Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Lender will make reasonable efforts to provide Borrower with notice of Lender obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Lender are deemed an agreement to make similar payments in the future or Lender's waiver of any Event of Default.

9.4 **Application of Payments and Proceeds Upon Default.** If an Event of Default has occurred and is continuing (or at any time on the terms set forth in Section 6.4(c), regardless of whether an Event of Default exists), Lender shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Lender shall pay any surplus to Borrower by credit to the designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Lender for any deficiency. If Lender, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Lender shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Lender of cash therefor.

9.5 **Lender's Liability for Collateral.** Lender shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the

Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Lender's rights and remedies under this Agreement and the other Loan Documents are cumulative. Lender has all rights and remedies provided under the Code, by law, or in equity. Lender's exercise of one right or remedy is not an election and shall not preclude Lender from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Lender's waiver of any Event of Default is not a continuing waiver. Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 License. Upon the occurrence and during the continuance of an Event of Default, Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral. In connection with Lender's exercise of its rights under this Section 9.7, Borrower's rights under all licenses and all franchise agreements inure to Lender's benefit.

9.8 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Lender on which Borrower is liable.

#### 10. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or email address indicated below. Lender or Borrower may change its mailing or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:

Lightning Hybrids LLC  
815 14<sup>th</sup> Street SW  
Suite A100  
Loveland, CO 80537  
Attn: Chief Executive Officer  
Email: tim.reeser@lightningsystems.com  
Telephone: (800) 223-0740

With a copy to:

Mark W. Weakley, Esq.  
Bryan Cave Leighton Paisner LLP  
One Boulder Plaza  
1801 13<sup>th</sup> Street  
Suite 300  
Boulder, CO 80302  
Email: mark.weakley@bclplaw.com

If to Lender: Cupola Infrastructure Income Fund, L.L.L.P.  
6295 Greenwood Plaza Blvd, Greenwood Village, CO 80111  
Attn: Trent Yang  
Email: TTYang@amgnational.com  
Telephone: (303) 486-1448

11. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE

Except as otherwise expressly provided in any of the Loan Documents, Colorado law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Lender each submit to the exclusive jurisdiction of the State and Federal courts in Denver, Colorado; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with Section 10, and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

This Section 11 shall survive the termination of this Agreement.

12. GENERAL PROVISIONS

12.1 Termination Prior to Maturity Date; Survival. All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations pursuant to the terms of this Agreement (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement), this Agreement may be terminated by Borrower, effective three (3) Business Days after written notice of termination is given to Lender. Those terms and obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Lender's prior written consent (which may be granted or withheld in Lender's discretion). Lender has the right, upon at least ten (10) Business Days' notice to Borrower and without the consent of Borrower, to sell, transfer, assign, negotiate, or grant participation in (a) all the Obligations, or (b) any part of the Obligations comprising principal equal to at least Two Million Dollars (\$2,000,000), in each case together with the applicable portion of Lender's obligations, rights, and benefits under this Agreement and the other Loan Documents (excluding, however, the Warrants and the Letter Agreement).

12.3 Indemnification. Borrower agrees to indemnify, defend and hold Lender and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Lender (each, an "Indemnified Person") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "Claims") claimed or asserted by any other party in connection with the transactions contemplated by this

Agreement and the other Loan Documents; and (ii) all losses or expenses (including Lender Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Lender and Borrower contemplated by this Agreement and the other Loan Documents (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

12.4 Time of Essence. Time is of the essence for the performance and payment of all Obligations in this Agreement.

12.5 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.6 Correction of Loan Documents. Lender may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties so long as Lender provides Borrower with written notice of such correction and allows Borrower at least ten (10) days to object to such correction. In the event of such objection, such correction shall not be made except by an amendment signed by both Lender and Borrower.

12.7 Amendments in Writing; Waiver; Integration. No purported amendment or modification of this Agreement or any Loan Document, or waiver, discharge or termination of any obligation under this Agreement or any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on this Agreement or any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. Notwithstanding the foregoing, Lender may, without any further action or consent from Borrower, (i) after each Funding Date for any Credit Extension, update Schedule 1 to reflect such Credit Extension and (ii) after each Payment Date, update Schedule 2 to reflect any payments and new Credit Extensions. This Agreement, including all Loan Documents, represents the entire agreement about this subject matter and supersedes prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.9 Confidentiality. In handling any Confidential Information, Lender shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Lender's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Lender, collectively, "Lender Entities"), provided that such Subsidiaries and Affiliates are required to exercise the same degree of care as Lender; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Lender shall use its best efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Lender's regulators or as otherwise required in connection with Lender's examination or audit; (e) as Lender considers appropriate in exercising remedies under this Agreement; and (f) to third-party service providers of Lender so long as such service providers have executed a confidentiality agreement with Lender with terms no less restrictive than those contained herein. Confidential Information does not include information that is either: (i) in the public domain or in Lender's possession when disclosed to Lender, or becomes part of the public domain (other than as a result of its disclosure by Lender in violation of this Agreement) after disclosure to Lender; or (ii) disclosed to Lender by a third party, if Lender does not know that the third party is prohibited from disclosing the information.



Lender Entities may use anonymous forms of Confidential Information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower; provided, however, that the foregoing shall not permit Lender to utilize any information obtained by or through Lender's representative sitting on the Board of Borrower, all such Board information deemed proprietary and private. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

12.10 **Attorneys' Fees, Costs and Expenses.** Each of Borrower and Lender shall be responsible for their own costs and expenses incurred in entering into this Agreement. All Lender Expenses in connection with any amendment to this Agreement shall be borne by the Borrower, unless such amendment was required or requested by Lender. In any action or proceeding between Borrower and Lender arising out of or relating to this Agreement or the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.11 **Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in this Agreement and any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.12 **Right of Setoff.** Borrower hereby grants to Lender a Security Interest and a right of setoff as security for all Obligations to Lender, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Lender (including a subsidiary of Lender) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Lender may set off the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.13 **Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.14 **Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.15 **Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.16 **Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

### 13. DEFINITIONS

13.1 **Definitions.** As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“Account” is, as to any Person, any “account” of such Person as “account” is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

“Account Debtor” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made. Unless the context otherwise requires, each reference to Account Debtor herein shall be a reference to an Account Debtor of Borrower.

“Accounts Payable” is on any day, under GAAP, the accounts payable on Borrower’s consolidated balance sheet.

“Additional Commitment” means the dollar amount Lender may make available to Borrower hereunder in addition to the Initial Commitment, which is an amount as specified in “Initial Additional Commitment,” subject to Lender being able to raise capital to fund such Initial Additional Commitment, which Initial Additional Commitment may be further increased up to an additional Ten Million Dollars (\$10,000,000), in each case in Lender’s sole discretion upon written notice to Borrower.

“Administrator” is an individual that is named as an Authorized Signer of Borrower in an approval by the Borrower’s Board.

“Affiliate” is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members. For purposes of the definition of Eligible Accounts, Affiliate shall include a Specified Affiliate.

“Agreement” is defined in the preamble hereof.

“Alternative Lender” is defined in Section 2.11.

“Anti-Money Laundering and Anti-Terrorism Laws” means any law relating to terrorism, economic sanctions or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (i.e., 18 U.S.C. §§ 1956 and 1957), (b) the Bank Secrecy Act of 1970 (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the implementing regulations promulgated thereunder, (c) the USA PATRIOT Act and the implementing regulations promulgated thereunder, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control, (e) any law prohibiting or directed against terrorist activities or the financing or support of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), and (f) any similar laws enacted in the United States or any other jurisdictions in which the parties to this Agreement operate, as any of the foregoing laws have been, or shall hereafter be, amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

“Authorized Signer” is any individual listed in Borrower’s Borrowing Resolutions who is authorized to execute this Agreement and the other Loan Documents, including requesting and executing any Credit Extension, on behalf of Borrower.

“Available Draw Amount” is the dollar amount Borrower can draw upon, which is the lesser of (A) the Total Commitment minus the outstanding principal balance of any Credit Extensions or (B) the Borrowing Base minus the outstanding principal amount and accrued interest of all outstanding Credit Extensions.

“Borrower” is defined in the preamble hereof.

“Borrower’s Board” is Borrower’s board of directors.

“**Borrower’s Books**” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrower’s Business**” means Borrower’s line of business, which primarily includes the design, manufacturing and/or sale of electric powertrains for commercial vehicles, substantially similar operations and/or all ancillary or other activities related thereto.

“**Borrowing Base**” shall initially be (x) Eligible Order Backlog divided by two and one-half (2.5) plus (y) Eligible Accounts divided by two (2). Following the first time that Borrower’s EBITDA is positive for three consecutive fiscal year Quarters, the Borrowing Base shall then be (x) Eligible Order Backlog divided by two (2) plus (y) Eligible Accounts divided by one and one-half (1.5). At no time shall the Borrowing Base exceed Recoverable Value. Lender has the right to modify the foregoing amounts with prior notice to Borrower in the event there is a material change in Borrower’s Business. If Lender modifies the Borrowing Base, Borrower shall comply with the modification in Borrowing Base by the end of the Quarter following such Borrowing Base modification.

“**Borrowing Base Statement**” is that certain statement of the value of certain Collateral in the form attached hereto as Exhibit E, or as specified by Lender to Borrower from time to time, which shall include, at a minimum, a detailed ledger of all Eligible Accounts, including the age of each Eligible Account, and the calculation of the Borrowing Base.

“**Borrowing Resolutions**” are those resolutions adopted by Borrower’s Board (and, if required under the terms of Borrower’s Operating Documents, stockholders or members) and delivered by Borrower to Lender approving this Agreement and the other Loan Documents and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of Borrower certifying (a) Borrower has the authority to execute, deliver, and perform its obligations under this Agreement and each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by Borrower of this Agreement and the other Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute this Agreement and the other Loan Documents, including requesting and executing any Credit Extension, on behalf of Borrower, together with a sample of the true signature(s) of such Person(s), and (d) that Lender may conclusively rely on such certificate unless and until Borrower shall have delivered to Lender a further certificate canceling or amending such prior certificate.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which the commercial banks in Denver, Colorado are authorized or required by law or regulation to close.

“**Cash Equivalents**” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; (c) Lender’s certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

“**Change in Control**” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of forty-nine percent (49%) or more of the ordinary voting power for the election of directors of Borrower (determined on a fully diluted basis); (b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time,

Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) of each class of outstanding capital stock of each subsidiary of Borrower (other than any directors' qualifying shares or other nominal share ownership required by applicable law) free and clear of all Liens (except Permitted Liens and the Security Interest created by this Agreement).

"Chase Accounts" is defined in Section 6.9(a).

"Claims" is defined in Section 12.3.

"Closing Fee" is defined in Section 2.5.

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of Colorado; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Lender's Security Interest on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of Colorado, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"Collateral" is any and all properties, rights and assets of Borrower and its Subsidiaries, which is described on Exhibit A.

"Collateral Account" means any of Borrower's Deposit Accounts, Securities Accounts, or Commodity Accounts.

"Collateral Access Agreements" means an agreement between the Lender and the landlord of any location leased by a Borrower or its Subsidiaries at which any Collateral is located, or any other Person that has possession of any Collateral, in any such case that provides the Lender with access to such Collateral on terms and conditions satisfactory to the Lender.

"Confidential Information" means: (i) any information (including any and all combinations of individual items of information) disclosed (directly or indirectly) by discloser to recipient in connection with this Agreement or the Loan Documents that is in written, graphic, machine readable or other tangible form (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, discoveries, ideas, processes, designs, drawings, formulations, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, and equipment) and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature; (ii) oral information disclosed (directly or indirectly) by discloser to recipient in connection with this Agreement or the Loan Documents; provided that such information is designated as confidential at the time of its initial disclosure and reduced to a written summary by discloser that is marked in a manner to indicate its confidential nature and delivered to recipient within thirty (30) days after its initial disclosure; and (iii) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure in connection with this Agreement or the Loan Documents or by the nature of the information itself. Confidential Information may include information of a third party that is in the possession of discloser and is disclosed to recipient in connection with this Agreement or the Loan Documents.

"Commodity Account" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"Compliance Statement" is that certain statement of Borrower's compliance in the form attached hereto as Exhibit B.

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation,

in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"Control Agreement" is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Lender pursuant to which Lender obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Credit Extension" is any Working Capital Loan, Term Loan, or any other extension of credit by Lender for Borrower's benefit.

"Default Rate" is defined in Section 2.4(b).

"Deferred Revenue" is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

"Deposit Account" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"Dollars," "dollars" or use of the sign "\$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "\$" sign to denote its currency or may be readily converted into lawful money of the United States.

"Domestic Subsidiary" means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

"Draw Period" is the period of time during which Borrower can request a Credit Extension commencing on the Effective Date through the earlier to occur of (a) three (3) years following the Effective Date and (b) the occurrence of an Event of Default.

"EBIDTA" means (a) Net Income, plus (b) Interest Expense, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense and amortization expense, plus (d) income tax expense.

"Effective Date" is defined in the preamble hereof.

"Eligible Accounts" means Accounts owing to Borrower which are due and owing from Account Debtors that are Qualifying Customers. Unless Lender otherwise agrees in writing, Eligible Accounts shall not include:

(a) Accounts (i) for which the Account Debtor is Borrower's Affiliate, officer, employee, investor, or agent, or (ii) that are intercompany Accounts;

(b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;

- (c) Accounts with credit balances over ninety (90) days from invoice date;
- (d) Accounts owing from an Account Debtor if fifty percent (50%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date;
- (e) Accounts in which Lender does not have a first priority, perfected security interest under all applicable laws;
- (f) Accounts billed and/or payable in a currency other than Dollars;
- (g) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called "contra" accounts, accounts payable, customer deposits or credit accounts);
- (h) Accounts with or in respect of accruals for marketing allowances, incentive rebates, price protection, cooperative advertising and other similar marketing credits, unless otherwise approved by Lender in writing;
- (i) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Lender and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;
- (j) Accounts with customer deposits and/or with respect to which Borrower has received an upfront payment, to the extent of such customer deposit and/or upfront payment;
- (k) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a "sale guaranteed", "sale or return", "sale on approval", or other terms if Account Debtor's payment may be conditional;
- (l) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);
- (m) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts) greater than ninety (90) days after delivery to the Account Debtor;
- (n) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);
- (o) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;
- (p) Accounts for which the Account Debtor has not been invoiced;
- (q) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond ninety (90) days (including Accounts with a due date that is more than ninety (90) days from invoice date);
- (r) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding (whether voluntary or involuntary), or becomes insolvent, or goes out of business; and
- (s) Accounts in which Borrower has received notice that the Account Debtor is attempting to cancel the order or return the product.

“Eligible Order Backlog” means the total dollar amount of all Qualifying Orders approved by Lender; provided that all deposits, prepayments, state incentives or grants with respect to a Qualifying Order shall not be included in the dollar amount of such order, unless otherwise approved in the sole discretion of the Lender.

“Ending Cash” is on any day, under GAAP, the cash on Borrower’s consolidated balance sheet.

“Ending Accounts Receivable” is on any day, under GAAP, the accounts receivable on Borrower’s consolidated balance sheet.

“Environmental Laws” means any applicable federal, state, or local laws, ordinances, rules or regulations in effect on each of the Effective Date and Funding Date relating to (a) protection of the air, water, land, natural resources, biological resources, or cultural resources, or (b) the exposure to, or generation, use, handling, release, treatment, storage, disposal and transportation of, Hazardous Materials, in each case, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), as amended by the Hazardous and Solid Waste Amendments Act of 1984, the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 et seq.), the National Environmental Policy Act (42 U.S.C. §4321 et seq.), and any similar or analogous state and local statutes and any regulations promulgated thereunder.

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

“ERISA” is the Employee Retirement Income Security Act of 1974, and its regulations.

“Event of Default” is defined in Section 8.

“Exchange Act” is the Securities Exchange Act of 1934, as amended.

“Exit Premium” is, with respect to an outstanding Term Loan being prepaid in connection with a Change in Control, the lesser of (i) twelve (12) months of interest on the principal of such Term Loan or (ii) the aggregate of all scheduled interest through the Maturity Date of such Term Loan, in each case at the interest rate set forth in Section 2.4.

“Expected Backlog Margin” is on any day, under GAAP, the gross profit margins Borrower reasonably expects to earn on the Eligible Order Backlog.

“Financial Projections” is a financial statement of Borrower in the form attached hereto as Exhibit D, or in the form as may be agreed upon by Lender and Borrower from time to time, which shall include, at a minimum, (i) such information Lender deems necessary to verify the calculation of Recoverable Value and (ii) projections the Borrower’s ability to comply with Section 6.10 over the next two (2) Quarters.

“Fixed Assets” is on any day, under GAAP, the fixed assets on Borrower’s consolidated balance sheet.

“Foreign Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

“Funding Date” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“GAAP” means the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and

pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“General Intangibles” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“GreenLine Loan” means the Indebtedness of Borrower under that certain Credit and Security Agreement, dated as of September 28, 2018, as amended, by and between Borrower and Greenline CDF Subfund XXIII LLC.

“Governmental Approval” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Guarantor” is any Person providing a Guaranty in favor of Lender, if any.

“Guaranty” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“Hazardous Materials” means any hazardous or toxic material, substance, waste, pollutant, or contaminant as defined, prohibited, controlled or regulated under any Environmental Law, including, but not limited to, explosive or radioactive substances or wastes, hazardous or toxic substances, wastes or other pollutants, petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyl, or radon gas.

“Indebtedness” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations. Unless the context otherwise requires, each reference to Indebtedness herein shall be a reference to Borrower’s Indebtedness.

“Indemnified Person” is defined in Section 12.3.

“Initial Additional Commitment” is up to Fourteen Million Dollars (\$14,000,000).

“Initial Additional Commitment Lender Election Notice” is defined in Section 2.11.

“Initial Audit” is Lender’s inspection of Borrower’s Accounts, the Collateral, and Borrower’s Books, with results satisfactory to Lender in its sole and absolute discretion.

“Initial Commitment” is Six Million Dollars (\$6,000,000).

“Initial Credit Extension” is defined in Section 2.2(f).

“Initial Loan Request” is defined in Section 3.2(a).



“Insolvency Proceeding” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to such Person;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“Intercreditor Agreement” is defined in Section 2.11.

“Interest Expense” means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

“Inventory” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person. Unless the context otherwise requires, each reference to Investment herein shall be a reference to Borrower’s Investments.

“Investment-Grade Credit Rating” means (i) a rating of BBB- or higher from Standard & Poor’s Rating Group and a rating of Baa3 or higher from Moody’s Investors Service, Inc. or (ii) a Financial Stress Score of 3 or lower, a Paydex Score of 70 or higher and a Delinquency Rating of 2 or lower from Dun and Bradstreet Corporation.

“Key Persons” means each of the following officers of the Borrower:

- (a) Tim Reeser, Chief Executive Officer;
- (b) Rob Mulcair, Chief Financial Officer; and
- (c) Bill Kelley, Chief Technical Officer.

“Lender” is defined in the preamble hereof.

“Lender Entities” is defined in Section 12.9.

“Lender Expenses” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing this Agreement and the other Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

“Letter Agreement” means the letter agreement from Borrower to Lender dated October 10, 2019 concerning the right of first and last refusal and other matters.

“Lien” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“Loan Documents” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Warrants, the Letter Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Lender, all as amended, restated, or otherwise modified.

“Loan Maturity Date” is eight (8) years following the Effective Date.

“Loan Request” is that certain form attached hereto as Exhibit C that Borrower shall use to request Credit Extension.

“Material Adverse Change” is (a) a material impairment in the perfection or priority of Lender’s Security Interest in the Collateral or in the value of such Collateral as determined by Lender; (b) a material impairment to Borrower’s Business, or its operations or conditions (financial or otherwise); or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“Material Contract” means any agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Borrower or any of its Subsidiaries are a party or, to its knowledge, by which it is bound which may involve (i) obligations of, or payments to, the Borrower or any of its Subsidiaries in excess of One Hundred Thousand Dollars (\$100,000) or (ii) the license of any Intellectual Property.

“Maturity Date” means the Working Capital Line Maturity Date or the Term Loan Maturity Date, as applicable.

“Monthly Statements” is defined in Section 6.2(b)6.2(b).

“Net Income” means, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net profit (or loss), after provision for taxes, of Borrower and its Subsidiaries for such period taken as a single accounting period, excluding any extraordinary, non-recurring and non-cash gains or income and gains on non-ordinary course sales of assets.

“Obligations” are Borrower’s obligations to pay to Lender when due any debts, principal, interest, fees, Credit Extensions, and other amounts Borrower owes Lender now or later, whether under this Agreement, the Loan Documents (other than the Warrants), or otherwise, including, without limitation, interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Lender, and to perform Borrower’s duties under this Agreement and the other Loan Documents (other than the Warrants).

“Operating Documents” are Borrower’s formation documents, as certified by the Secretary of State (or equivalent agency) of Borrower’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if Borrower is a corporation, its bylaws in current form, (b) if Borrower is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if Borrower is a

partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“Other Current Liabilities” is on any day, under GAAP, the other current liabilities on Borrower’s consolidated balance sheet.

“Overadvance” is defined in Section 2.7.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Payment Date” is the first (1<sup>st</sup>) calendar day of each Quarter.

“Payment Processor Accounts” is defined in Section 6.9.

“Payment Schedule” is a schedule of payments for all Credit Extensions in the form attached hereto as Schedule 2.

“Perfection Certificate” is defined in Section 5.1.

“Permitted Acquisition” means any acquisition(s) by Borrower in which: (a) Borrower’s Board has approved; (b) the Person so acquired is in a similar line of business or a business reasonably related thereto; (c) the Borrower is the sole surviving legal entity; (d) (i) total cash consideration for all acquisitions does not exceed Five Million Dollars (\$5,000,000) in the aggregate in any fiscal year or (ii) total non-cash consideration for all acquisitions not to exceed Twenty Million Dollars (\$20,000,000) in the aggregate in any fiscal year; (e) (A) the acquisition is not a hostile acquisition; (B) at the time of the acquisition and after giving effect to the acquisition, there shall not exist any Event of Default under this Agreement or any of the Loan Documents; and (C) such acquisition is accretive to the Borrower’s projected earnings for the twelve (12) month period following the consummation of any such acquisition.

“Permitted Indebtedness” is:

- (a) Borrower’s Indebtedness to Lender under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date which is shown by Borrower on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder;
- (g) without duplication, Indebtedness that constitutes a Permitted Investment under clause (f) of the definition of Permitted Investments;
- (h) Other unsecured Indebtedness not to exceed One Hundred Fifty Thousand Dollars (\$150,000) in aggregate principal amount at any time; and
- (i) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (j) above, provided that the principal amount thereof is not increased or the

terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“Permitted Investments” are:

- (a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate;
- (b) Investments consisting of Cash Equivalents;
- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;
- (d) Investments consisting of Deposit Accounts (but only to the extent that Borrower is permitted to maintain such accounts pursuant to Section 6.9) in which Lender has a first priority perfected security interest;
- (e) Investments accepted in connection with Transfers permitted by Section 7.1;
- (f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (g) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (g) shall not apply to Investments of Borrower in any Subsidiary;
- (h) other Investments not otherwise permitted by Section 7.7 not exceeding Fifty Thousand Dollars (\$50,000) in the aggregate outstanding; and
- (i) Investments in entities deemed strategic and approved by the Board of Borrower, provided, that Borrower remains in compliance with the covenants set forth in Section 6.10(a) immediately following the consummation of the transactions effectuating such Investments and such investment does not cause an Event of Default to occur.

“Permitted Liens” are:

- (a) Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement or the Loan Documents;
- (b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower’s Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;
- (c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing an aggregate amount does not exceed five percent (5%) of the total aggregate outstanding principal on the Credit Extensions, or (ii) existing on Equipment when acquired by Borrower, if the Lien is confined to the property and improvements and the proceeds of the Equipment;
- (d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Borrower’s Inventory, securing liabilities in the aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business;

(g) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;

(h) Liens in favor of other financial institutions arising in connection with Borrower's Deposit and/or Securities Accounts held at such institutions, provided that (i) Lender has a first priority perfected security interest in the amounts held in such Deposit and/or Securities Accounts, to the extent required pursuant to Section 6.9 and (ii) such Accounts are permitted to be maintained pursuant to Section 6.9; and

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

"Powertrain" means the drivetrain of a vehicle including all of its auxiliary components including, without limitation, the motor, transmission, converters, chargers, batteries, wire harnesses, controller hardware and software, necessary brackets, supports and protection and electrification of all major subsystems.

"Prepaid Expenses" is on any day, under GAAP, the prepaid expenses on Borrower's consolidated balance sheet.

"Qualifying Customer" means (a) any United States Person that has an Investment-Grade Credit Rating; (b) any United States Person that does not have an Investment-Grade Credit Rating, so long as the total Eligible Accounts and the Eligible Order Backlog attributable such Persons makes up no more than fifteen percent (15%) of the Borrowing Base; and (c) any foreign Person with a market capitalization on a United States stock exchange above Two Billion Dollars (\$2,000,000,000) so long as the total Eligible Accounts and the Eligible Order Backlog attributable such Persons makes up no more than thirty percent (30%) of the Borrowing Base. In each case if the customer is a leasing company, a special purpose financing company, or a dealer who does not meet the forgoing requirements, in such case it is the credit rating of the final user that may be taken into account; in each such case, Borrower shall submit a request to Lender providing both the customer's and final user's credit rating information, which Lender must approve or decline within five (5) Business Days.

"Qualifying Order" means each of Borrower's Powertrain orders that meet the following criteria: (i) binding written order from a Qualifying Customer; (ii) delivery time within nine (9) months of order date; if order with staggered deliveries, only deliveries within nine (9) months count in Eligible Order Backlog; (iii) only orders where Borrower retains control of the Powertrain (meaning Borrower has the ability to shut off the Powertrain system if the customer does not pay) until customer has made its final payment; and (iv) order value over One Hundred Thousand Dollars (\$100,000); provided, that Lender may, at its sole discretion, waive any of the above conditions for any specific order.

"Quarter" means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31.

"Recoverable Value" means the amount equal to (i) Ending Cash plus (ii) eighty-five percent (85%) multiplied by Ending Accounts Receivable plus (iii) seventy percent (70%) of Inventory allocated to Qualifying Orders plus ten percent (10%) of the non-allocated Inventory plus (iv) twenty-five percent (25%) multiplied by Prepaid Expenses plus (v) twenty-five percent (25%) multiplied by Fixed Assets plus (vi) Expected Backlog Margin minus (vii) Accounts Payable minus (viii) Other Current Liabilities (excluding customer deposits).

“Registered Organization” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“Release” means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment (including ambient air, surface water, groundwater, and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Remedial Action” is defined in Section 6.10(b).

“Requirement of Law” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“Restricted License” is any material license or other similar agreement with respect to which Borrower is the licensee of Intellectual Property (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such license or other similar agreement or any other property, or (b) for which a default under or termination of could interfere with Lender’s right to sell any material Collateral.

“Review Period” is defined in Section 2.10.

“SEC” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“Securities Account” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“Security Interest” is defined in Section 4.1.

“Shell Foundation Loan” means the Indebtedness of Borrower under that certain Facility Agreement, dated as of March 3, 2015, as amended, by and between Borrower and Shell Foundation.

“Specified Affiliate” is any Person (a) more than ten percent (10.0%) of whose aggregate issued and outstanding equity or ownership securities or interests, voting, non-voting or both, are owned or held directly or indirectly, beneficially or of record, by Borrower, and/or (b) whose equity or ownership securities or interests representing more than ten percent (10.0%) of such Person’s total outstanding combined voting power are owned or held directly or indirectly, beneficially or of record, by Borrower.

“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Lender (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Lender entered into between Lender and the other creditor), on terms acceptable to Lender.

“Subsidiary” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

“Term Loan” and “Term Loans” are each defined in Section 2.2(a).

“Term Loan Maturity Date” shall be (i) for each Term Loan where the Funding Date occurs prior to twenty-four (24) months following the Effective Date, five (5) years from the Funding Date of such Term Loan; or (ii) for each Term Loan where the Funding Date occurs after twenty-four (24) months following the Effective Date, the earlier of (A) three (3) or five (5) years from the Funding Date of such Term Loan at Borrower’s election and as set forth in the Loan Request for such Term Loan or (B) the Loan Maturity Date.

“Term Loan Final Payment” is for each Term Loan, a payment (in addition to and not a substitution for the regular Quarterly payments of accrued interest) due on the earliest to occur of (a) the Term Loan Maturity Date for such Term Loan, or (b) the acceleration of such Term Loan pursuant to Section 2.2(c), equal to the original aggregate principal amount of such Term Loan plus any unpaid accrued interest for such Term Loan.

“Total Commitment” means an amount equal to the Initial Commitment plus, if applicable, the Additional Commitment funded by Lender.

“Total Equity” is on any day, under GAAP, the total assets on Borrower’s consolidated balance sheet.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“Transfer” is defined in Section 7.1.

“Warrant Units” means the limited liability company interests for which the Warrants may be exercised.

“Warrants” means collectively, the Warrant to Purchase Series C Preferred Units of the Borrower and the Warrant to Purchase either Series C Preferred Units or Common Units of the Borrower, each between the Borrower and Lender, and each dated as of the Effective Date, each as the same may be amended, modified, supplemented and/or restated from time to time.

“Working Capital Line” is a revolving credit loan (or revolving credit loans).

“Working Capital Line Final Payment” is for each Working Capital Loan, a payment (in addition to and not a substitution for the regular Quarterly payments of accrued interest) due on the earliest to occur of (a) the Working Capital Loan Maturity Date for such Working Capital Loan, or (b) the acceleration of such Working Capital Loan pursuant to Section 2.3(c), equal to the original aggregate principal amount of such Working Capital Loan plus any unpaid accrued interest for such Working Capital Loan.

“Working Capital Loan” or “Working Capital Loans” is defined in Section 2.3(a).

“Working Capital Line Maturity Date” shall be, for each Working Capital Loan, the earlier of (A) twelve (12) months from the Funding Date such Working Capital Loan, subject to Quarterly extensions upon ninety (90) days prior written notice from Borrower, or (B) the Loan Maturity Date provided, that such extensions shall not cause the Working Capital Line Maturity Date to exceed five (5) years from the Funding Date of such Working Capital Loan.

[Signature page follows.]





Schedule 1

SUMMARY OF CREDIT EXTENSIONS

Term Loans:

Funding Date	Maturity Date	Interest Rate <sup>1</sup>	Principal Amount	Series C Preferred or Common Units Exercisable under the Warrant*

<sup>1</sup> Interest rate is subject to adjustment pursuant to the Agreement.

Working Capital Loans:

Funding Date	Maturity Date	Interest Rate	Principal Amount	Series C Preferred or Common Units Exercisable under the Warrant*

\* Warrant calculations are provided for informational purposes only and subject to the terms and conditions set forth in the Warrant.

Schedule 2

AGGREGATE LOAN PAYMENT SCHEDULE

Schedule 1

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## EXHIBIT A

### COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, Deposit Accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include: (i) property subject to a Lien described in clause (c) of the definition of Permitted Liens to the extent that the terms governing such Permitted Lien prohibit a security interest in such property in favor of Lender, provided that upon the termination of such restrictions, such property shall be subject to the security interest granted herein and shall be deemed part of the Collateral; (ii) more than sixty-five percent (65%) of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter; and (iii) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Lender's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Lender, Borrower has agreed not to encumber any of its Intellectual Property without Lender's prior written consent.

**EXHIBIT B**

**FORM OF COMPLIANCE STATEMENT**

TO: Cupola Infrastructure Income Fund, L.L.P.  
 FROM: Lightning Hybrids LLC

Date: \_\_\_\_\_

Under the terms and conditions of the Loan and Security Agreement between Borrower and Lender (the "Agreement"), Borrower is (i) in complete compliance for the period ending \_\_\_\_\_ with all required covenants, (ii) there are no Events of Default; (iii) all representations and warranties in the Agreement and the other Loan Documents are true and correct on this date except that those representations and warranties expressly referring to a specific date shall be true, accurate and complete as of such date; (iv) Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower; and (v) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Lender. Attached are the required documents evidencing such compliance, setting forth calculations prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

<u>Reporting Covenants</u>	<u>Required</u>	<u>Complies</u>
Monthly Statements, Borrowing Base Statement, Financial Projections and a detailed accounts receivable ledger report	Monthly within 15 Business Days of month end	Yes No
Quarterly financial statements (unaudited)	Quarterly within 15 Business Days of Quarter end	Yes No
Annual financial statements (CPA Audited; commencing with the fiscal year ending on December 31, 2019)	FYE within 180 days	Yes No
Eligible Account Ages	Monthly within 30 days	Yes No
Borrower's Board approved financial projections	FYE within 30 days and as amended/updated	Yes No

Other Matters

Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of such amendment or changes with this Compliance Statement	Yes No
Have there been any (i) any material change in the composition of Borrower's Intellectual Property, (ii) the registration of any copyright, including any subsequent ownership right of Borrower in or to any registered copyright, patent or trademark not shown in the Perfection Certificate, and (iii) Borrower's knowledge of an event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property	Yes No

The following are the exceptions with respect to the statements above: (If no exceptions exist, state "No exceptions to note.")

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Lightning Hybrids LLC

By: \_\_\_\_\_  
Name:  
Title: Authorized Signor

EXHIBIT C

FORM OF LOAN REQUEST

Request Date:  
Borrower: Lightning Hybrids LLC  
Lender: Cupola Infrastructure Income Fund, L.L.L.P.  
Loan Type:  
Principal Amount:  
Interest Rate:  
Funding Date:  
Maturity Date:

Borrowing Base on Funding Date:  
Aggregate Credit Extensions outstanding and requested:

Lender and Borrower have entered in the Loan and Security Agreement dated October 10, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement. All Borrower's representations and warranties in the Loan Agreement are true, correct and complete in all respects on the date of this request for a Credit Extension and all the conditions set forth in Section 3.2 of the Loan Agreement shall be satisfied on and as of the Funding Date.

Borrower requests that Lender make a Credit Extension pursuant to this Request and Lender agrees to make such Credit Extension, subject to the terms and conditions of this request and the Loan Agreement.

Attached as Exhibit A to this Credit Extension request is a schedule of expected payments for the requested Credit Extension.

Attached as Exhibit B to this Credit Extension request is a Borrowing Base Statement supporting the request.

IN WITNESS WHEREOF, the undersigned, in his/her capacity as a Responsible Officer of the Borrower, has executed this certificate for and on behalf of the Borrower and has caused this certificate to be delivered this \_\_\_\_ day of \_\_\_\_\_.

Lightning Hybrids LLC

By: \_\_\_\_\_  
Name:  
Title: Authorized Signor

ACKNOWLEDGED AND AGREED:

Cupola Infrastructure Income Fund, L.L.L.P.

By: \_\_\_\_\_  
Name:  
Title:



**Borrowing Base Statement**

(to be attached in the form of Exhibit E to the Agreement)



EXHIBIT D

FORM OF FINANCIAL PROJECTIONS

Recoverable Value:

	Recovery Factor	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Comments
Ending Cash	100%							
Ending Accounts Receivable	85%							
Inventory (Used for Backlog)	70%							
Inventory (Non-Backlog)	10%							
Prepaid Expenses	25%							
Fixed Assets	25%							
Expected Backlog Margin	100%							
Less: Accounts Payable	100%	( )	( )	( )	( )	( )	( )	
Less: Other Accrued	100%	( )	( )	( )	( )	( )	( )	

Liabilities								
Recoverable Value:								

Projections:

BALANCE SHEET	Actual – Q1 2019	Actual – Q2 2019	Forecast – Q3 2019	Forecast – Q4 2019	Forecast – Q1 2020	Forecast – Q2 2020
Cash (Balance)						
Receivables						
Inventory						
Prepaid Expenses						
Net Fixed Assets						
<b>TOTAL ASSETS</b>						
Payables						
Other Current Liabilities						
Deferred Income						
Customer Deposits						
Other Current Debt						
Debt & Long Term Liabilities						

TOTAL LIABILITIES						
Capital						
Retained Earnings						
Earnings						
TOTAL EQUITY						
LIABILITIES+EQUITY						
FUNDING:						
Equity						
Notes Payable						
Other Long Term Debt						
EBITDA						
TOTAL BACKLOG						
GROSS MARGIN %						
EQUITY MONTHS						
LIQUIDITY RATIO:						

AMG Term Loan						
AMG Working Capital Line of Credit						
Total AMG Debt						
Ending Cash						
Ending Accounts Receivable						
Recoverable Inventory (37.5%)						
Recoverable Prepaid (25%)						
Sale of Fixed Assets (25%)						
Margin on Ending Backlog						
Less: Accounts Payable						
Less: Other Current Liabilities						
Total						
AMG Debt						

Surplus or Deficit						
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EXHIBIT E

FORM OF BORROWING BASE STATEMENT

Reference is made to the Loan and Security Agreement dated as of October 10, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") by and between Lightning Hybrids LLC ("Borrower") and Cupola Infrastructure Income Fund, L.L.P. Each capitalized term used but not defined herein has the meaning given to it in the Loan Agreement. Pursuant to the Loan Agreement, the undersigned, in his/her capacity as a Responsible Officer of the Borrower, certifies, as of the close of business for the fiscal month ended [ ], 20[ ], as follows:

1. The Borrowing Base was \$[ ]. Exhibit A attached hereto sets forth a true and accurate calculation of such Borrowing Base.
2. Attached hereto as Exhibit B is the Eligible Order Backlog.
3. Attached hereto as Exhibit C is a detail ledger of Eligible Accounts.
4. Attached hereto as Exhibit D are the Financial Projections.

IN WITNESS WHEREOF, the undersigned, in his/her capacity as a Responsible Officer of the Borrower, has executed this certificate for and on behalf of the Borrower and has caused this certificate to be delivered this \_\_\_\_ day of \_\_\_\_\_.

Lightning Hybrids LLC

By: \_\_\_\_\_  
Name:  
Title: Authorized Signor

EXHIBIT A TO  
BORROWING BASE CERTIFICATE

CALCULATION OF THE BORROWING BASE

1.	Eligible Order Backlog (see <u>Exhibit B</u> hereto)	\$ _____
2.	<u>Item 1</u> divided by 2.5 (or 2.0*)	\$ _____
3.	Eligible Accounts (see <u>Exhibit C</u> hereto)	\$ _____
4.	<u>Item 3</u> divided by 2 (or 1.5*)	\$ _____
5.	Recoverable Value (see <u>Exhibit D</u> hereto)	\$ _____
6.	Sum of <u>Item 2</u> plus <u>Item 4</u>	\$ _____
7.	Borrowing Base: Lesser of <u>Item 5</u> or <u>Item 6</u>	\$ _____

\* For calculations in any Quarter after Borrower's EBITDA is positive for three consecutive fiscal year Quarters.

EXHIBIT B TO  
BORROWING BASE CERTIFICATE

Eligible Order Backlog Spreadsheet

End Customer / Ultimate Customer	Address	Order Date	Credit Rating: D&B	Total Order Amount to be Shipped in Next 9 Months	Deposit Received	State Incentives	Prepayments	Net Customer Payment	Non – Qualifying Order Amount *	Qualifying Order Amount**
			S&P: Moody's: D&B: - Paydex Score: - Viability Score: - Delinquency Predictor: QUALIFY:							
			S&P: Moody's: D&B: - Paydex Score: - Viability Score: - Delinquency Predictor:							



			QUALIFY:							
Total:										

\*The Non-Qualifying Order Amount plus the Non-Qualifying Account Amount set forth on Exhibit C is capped at 15% of the Borrowing Base.

\*\* State Incentives to be included at Lender's discretion.

Eligible Accounts Spreadsheet

End Customer / Ultimate Customer	Address	Delivery Date	Credit Rating: D&B	Delinquency Status (> 90 Days)	Total Order Amount	Prior Payments Received	Net Customer Payment	Non – Qualifying Account Amount*	Qualifying Account Amount
			S&P:  Moody's:  D&B:  - Paydex Score:  - Viability Score:  - Delinquency Predictor:  QUALIFY:						
			S&P:  Moody's:  D&B:  - Paydex Score:  - Viability Score:  - Delinquency Predictor:						

			QUALIFY:						
Total:									

\*The Non-Qualifying Account Amount plus the Non-Qualifying Order Amount set forth on Exhibit B is capped at 15% of the Borrowing Base

EXHIBIT D TO  
BORROWING BASE CERTIFICATE

Financial Projections

(to be attached in the form of Exhibit D to the Agreement)

EXHIBIT F

## FORM OF PERFECTION CERTIFICATE

[ \_\_\_\_\_ ], 2019

Reference is hereby made to that certain Loan and Security Agreement, dated as of October 10, 2019 (the "Loan and Security Agreement"), between Cupola Infrastructure Income Fund, L.L.L.P. ("Lender") and Lightning Hybrids, LLC ("Borrower"). Capitalized terms used but not defined herein have the meanings assigned in the Loan and Security Agreement, as applicable, unless otherwise noted herein.

As used herein, the term "Company" means Borrower.

The undersigned hereby certifies to the Lender as follows:

1. Name.

(a) The exact legal name of the Company, as such name appears in its certificate of formation or any other organizational document, is set forth in Schedule 1(a). The Company is (i) the type of entity disclosed next to its name in Schedule 1(a) and (ii) a registered organization within the meaning of the UCC except to the extent disclosed in Schedule 1(a). Also set forth in Schedule 1(a) is the organizational identification number, if any, of the Company, the Federal Taxpayer Identification Number of the Company, and the jurisdiction of formation of the Company.

(b) Set forth in Schedule 1(b) is a list of any other corporate or organizational names the Company has had in the past five years, together with the date of the relevant change.

(c) Set forth in Schedule 1(c) is a list of all other names used by the Company, or any other business or organization to which the Company became the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise, in the past five years. Except as set forth in Schedule 1(c), the Company has not changed its jurisdiction of organization at any time during the past five years.

2. Beneficial Ownership. Attached hereto as Schedule 2 is a true and correct list of each of all of the authorized, and the issued and outstanding stock, partnership interests, limited liability company membership interests or other equity interests of the Company and its Subsidiaries and the record and beneficial owners of such stock, partnership interests, membership interests or other equity interests setting forth the percentage of such equity interests pledged under the Loan and Security Agreement or any other form of agreement.

3. Current Locations. The chief executive office and places of business of the Company are located at the addresses set forth in Schedule 3.

4. Extraordinary Transactions. Except for those purchases, acquisitions, and other transactions described in Schedule 1(c) or Schedule 4, in the past five years, all Collateral has been originated by the Company in the ordinary course of business or consists of goods that have been acquired by the Company in the ordinary course of business.

5. Schedule of Filings. Attached hereto as Schedule 5 is a schedule of (i) the appropriate filing offices for filings set forth in Schedule 6 and (ii) the appropriate filing offices for the filings described in Schedule 9(c).

6. Permitted Liens. Attached hereto as Schedule 6 is a true and correct list of all Liens existing on the Effective Date.

7. Permitted Indebtedness. Attached hereto as Schedule 7 is a true and correct list of all Indebtedness existing on the Effective Date.

8. Permitted Investments. Attached hereto as Schedule 8 is a true and correct list of all Investments existing on the Effective Date.

9. Intellectual Property.

(a) Attached hereto as Schedule 9(a) is a schedule setting forth all of the Company's United States Patents and Trademarks (each as defined in the Loan and Security Agreement) applied for or registered with the United States Patent and Trademark Office in the name of the Company, including the name of the registered owner or applicant and the registration, application or publication number, as applicable, of each registered or applied for United States Patent or Trademark owned by the Company.

(b) Attached hereto as Schedule 9(b) is a schedule setting forth all of the Company's United States Copyrights (each as defined in the Loan and Security Agreement), applied for or registered with the United States Copyright Office, including the name of the registered owner and the registration number of each registered or applied for United States Copyright owned by the Company.

(c) Attached hereto as Schedule 9(c) is a schedule setting forth all Restricted Licenses in which the Company is listed as a licensee.

10. Commercial Tort Claims. Attached hereto as Schedule 10 is a true and correct list of all commercial tort claims held by the Company, including a brief description thereof.

11. Collateral Accounts. Attached hereto as Schedule 11 is a true and correct list of all collateral accounts maintained by the Company, including the name and address of the bank or financial institution, the type of account, and the account number.

12. Deposit Accounts. Attached hereto as Schedule 12 is a true and correct list of all deposit accounts maintained by the Company, including the name and address of the bank or financial institution, the type of account, and the account number.

13. Subordination and Intercreditor Agreements. Attached hereto as Schedule 13 is a true and correct list of any and all subordination agreements, intercreditor agreements or other similar agreements by the Company.

[The Remainder of this Page has been intentionally left blank]

IN WITNESS WHEREOF, we have hereunto signed this Perfection Certificate as of the date first written above.

LIGHTNING HYBRIDS, LLC

By: \_\_\_\_\_  
Name:  
Title:

Schedule 1(a)

Legal Names, Etc.

Legal Name	Type of Entity	Organizational Number	Federal Taxpayer Identification Number	State of Formation



Schedule 1(b)

Prior Organizational Names

Company	Prior Name	Date of Change

Schedule 1(c)

Changes in Corporate Identity; Other Names

Company	Action	Date of Action	State of Formation	List of All Other Names Used During the Past Five Years

Schedule 2

Beneficial Ownership

<b>Current Legal Entities Owned</b>	<b>Record Owner</b>	<b>Certificate No.</b>	<b>No. Shares/Interest</b>	<b>Percent Pledged</b>

Schedule 3

Chief Executive Office and Places of Business

Company	Address	County	State

Schedule 4

Transactions Other Than in the Ordinary Course of Business

Schedule 5

Filings/Filing Offices

Type of Filing	Entity	Applicable Collateral Document	Filing Office

Schedule 6

Permitted Liens

Schedule 7

Permitted Indebtedness

1. Promissory Notes:

<b>Entity</b>	<b>Principal Amount</b>	<b>Date of Issuance</b>	<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Pledged [Yes/No]</b>

2. Chattel Paper:

<b>Description</b>	<b>Pledged [Yes/No]</b>

3. Other:

<b>Description</b>	<b>Pledged [Yes/No]</b>



Schedule 8

Permitted Investments

Schedule 9(a)

Patents and Trademarks

UNITED STATES PATENTS:

Registrations:

Applications:

OTHER PATENTS:

Registrations:

Applications:

UNITED STATES TRADEMARKS:

Registrations:

Applications:

Schedule 9(b)

Copyrights

UNITED STATES COPYRIGHTS

Registrations:

Applications:

Schedule 9(c)

Restricted Licenses

Patent Licenses:

Trademark Licenses:

Copyright Licenses:

Schedule 10

Commercial Tort Claims

Schedule 11

Collateral Accounts

Bank	Account #	Account Owner

Schedule 12

Deposit Accounts

Bank	Account #	Account Owner

Schedule 13

Subordination Agreements and Intercreditor Agreements







**FIRST AMENDMENT TO  
LOAN AND SECURITY  
AGREEMENT**

**THIS FIRST AMENDMENT** (“*Amendment*”) to the Loan and Security Agreement dated October 10, 2019 (“*Loan Agreement*”) is entered into November 15, 2021, between Lightning eMotors, Inc. (formerly, Lightning Hybrids, LLC), a Delaware corporation (“*Borrower*”), and Cupola Infrastructure Income Fund, L.L.L.P., a Colorado limited liability limited partnership (“*Lender*”). Unless otherwise defined in this Amendment, capitalized terms herein shall have the meanings given them in the Loan Agreement.

**RECITALS**

- A. Borrower and Lender entered into the Loan Agreement on October 10, 2019, under which Lender has extended working capital and term loans to Borrower.
- B. Under Section 6.2 of the Loan Agreement, Borrower is required to submit to Lender (i) certain financial reports on a monthly, quarterly and annual basis and (ii) other material reports as required or requested (the “*Reporting Covenants*”).
- C. As of May 7, 2021, Borrower became subject to public reporting requirements under the Exchange Act.
- D. Borrower and Lender desire to modify the Reporting Covenants as provided herein in consideration of Borrower’s reporting requirements under the Exchange Act.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree to amend the Loan Agreement as follows:

1. Financial Reporting Covenants. Section 6.2 is hereby amended and replaced in its entirety with the following:

**6.2 Financial Statements, Reports.** Submit to Lender:

(a) On a monthly basis, no later than fifteen (15) Business Days after the last day of each month, a duly completed and executed Compliance Statement, confirming that, as of the end of such month, Borrower was in full compliance in all material respects with all of the terms and conditions of this Agreement, and setting forth such other information as Lender may reasonably request.

(b) Upon Lender’s request, no later than forty-five (45) days after the end of each Quarter, a consolidated balance sheet, statement of cash flows and income statement covering Borrower’s consolidated operations for such Quarter.

(c) The following reports on an annual basis:







(i) commencing with Borrower's fiscal year ending on December 31, 2019, annual, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Lender, no later than one hundred eighty (180) days after the last day of Borrower's fiscal year; and

(ii) upon Lender's request, Borrower's annual operating budgets (broken out by month) for the upcoming fiscal year and quarterly Financial Projections for the upcoming fiscal year together with any related business forecasts used in preparation of such Financial Projections, in each case approved by Borrower's Board, no later than thirty (30) Business Days after the end of each fiscal year of Borrower.

(d) Prompt written notice of and additional documentation, as required, regarding any of the following:

(i) any changes to the beneficial ownership information set out in Section 2 of the Perfection Certificate. Borrower understands and acknowledges that Lender relies on such true, accurate and up-to-date beneficial ownership information to meet Lender's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(ii) copies of all statements, reports and notices made available to Borrower's equity holders or to any holders of Subordinated Debt within five (5) Business Days of delivery;

(iii) any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries;

(iv) any breach in any material respect under any Material Contract or any agreement to any amendment, modification or other change to or waiver of its rights under any Material Contract if such amendment, modification, change or waiver would be adverse in any material respect to Lender;

(v) any amendment to or termination of any Collateral Access Agreement or if Borrower enters into a new Collateral Access Agreement; and

(vi) such other information regarding Borrower or compliance with the terms of this Agreement or any Loan Documents as reasonably requested by Lender from time to time, including without limitation, (x) a Borrowing Base Statement in the form attached as Exhibit E and (y) a six









(6) month forecast of Borrower's Financial Projections.

Any submission by Borrower of a Compliance Statement, a Borrowing Base Statement or any other financial statement submitted to the Lender pursuant to this Section 6.2 shall be deemed to be a representation by Borrower that (i) as of the date of such Compliance Statement, a Borrowing Base Statement or other financial statement, the information and calculations set forth therein are true, accurate and correct in all material respects, (ii) as of the end of the compliance period set forth in such submission, Borrower is in complete compliance with all required covenants except as noted in such Compliance Statement, a Borrowing Base Statement or other financial statement, as applicable, (iii) as of the date of such submission, no Events of Default have occurred and are continuing, (iv) all representations and warranties other than any representations or warranties that are made as of a specific date in Section 5 remain true and correct in all material respects as of the date of such submission except as noted in such Compliance Statement, a Borrowing Base Statement or other financial statement, as applicable, (v) as of the date of such submission, Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9, and (vi) as of the date of such submission, no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Lender.

2. Compliance Statement. Exhibit B is amended in its entirety and shall be replaced with the attached Exhibit B.
3. No Other Modification. Except as modified herein, all of the terms, covenants, provisions, warranties and conditions of the Loan Agreement shall remain in full force and effect and enforceable in accordance with their terms.
4. Survivor and Assigns. This Amendment shall be binding upon the successors and assigns of Borrower and Lender.
5. Partial Invalidity Not to Effect Remainder. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of the Loan Agreement or this Amendment, and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.
6. Integration. This Amendment embodies the final and entire agreement between the parties, and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, with respect to the terms of this Amendment.

*[Signature page follows]*








IN WITNESS WHEREOF, this Amendment is executed effective as of the date first written above.

**Borrower:**

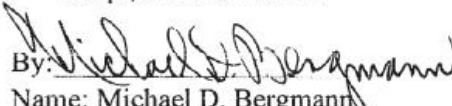
Lightning eMotors, Inc.

By:   
Name: Teresa Covington  
Title: CFO

**Lender:**

Cupola Infrastructure Income Fund, LLLP

By: Asset Management Group Investment  
Corp., General Partner

By:   
Name: Michael D. Bergmann  
Title: Vice President







## AMENDMENT NO. 2 TO LOAN AND SECURITY AGREEMENT

THIS AMENDMENT NO. 2 TO LOAN AND SECURITY AGREEMENT (this “Second Amendment”) dated August 10, 2023 is entered into by and between CUPOLA INFRASTRUCTURE INCOME FUND, L.L.L.P., a Colorado limited liability limited partnership (the “Lender”), and LIGHTNING SYSTEMS, INC., a Delaware corporation formerly known as Lightning Hybrids, LLC (the “Borrower”).

### RECITALS

WHEREAS, the Borrower is currently indebted to the Lender pursuant to the terms and conditions of that certain Loan and Security Agreement, dated as of October 10, 2019, as amended from time to time (the “Loan Agreement”);

WHEREAS, Section 6.10 of the Loan Agreement sets forth certain affirmative financial covenants that the Borrower must comply with (the “Financial Covenants”);

WHEREAS, the Lender and the Borrower agree to modify the Financial Covenants in exchange for an increase in the interest rate on Working Capital Loans; and

WHEREAS, the Lender and the Borrower desire to amend the Loan Agreement as provided herein to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend the Loan Agreement as follows:

1. Amendment to Section 2.4. Section 2.4(a)(i) is hereby amended and restated in its entirety to read as follows:

“(i) Working Capital Loans. The principal amount outstanding under each Working Capital Loan shall accrue interest at a per annum rate equal to eighteen percent (18.00%), which interest shall be payable Quarterly in accordance with Section 2.4(c).”

2. Amendment to Section 6.10. Section 6.10(a)(iii) is hereby amended and restated in its entirety to read as follows:

“(iii) Commencing with the Quarter ended September 30, 2023 and each Quarter thereafter, Total Equity plus expected EBITDA at the end of the next Quarter and the following Quarter greater than Zero Dollars (\$0).”

3. Full Force and Effect. Except as specifically provided herein, all terms and conditions of the Loan Agreement remain in full force and effect, without waiver or modification. All terms defined in the Loan Agreement shall have the same meaning when used in this Second Amendment.

4. Reaffirmation of Representations and Warranties. Immediately after giving effect to this Second Amendment on the date hereof, each of the representations and warranties contained in the Loan Agreement is and shall be true and correct in all material respects (except to the extent any such representation or warranty is already qualified as to materiality or the occurrence of a Material Adverse Change, in which case each such representation or warranty so qualified shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date).

5. Counterparts. This Amendment may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Amendment to produce or account for more than one such counterpart.

6. Continuation of Prior Agreements. It is the intention of the parties hereto that all Loan Documents (as defined in the Loan Agreement) previously executed by and between the parties shall remain in full force and effect except to the extent they are inconsistent with this Second Amendment. This Second Amendment and the Loan Agreement shall be read together, as one document. All references to the Loan Agreement in the Loan Documents shall be deemed to refer to the Loan Agreement as amended by this Second Amendment, as hereafter amended or modified from time to time.

***[Signature Page Follows]***

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Second Amendment to be effective as of the effective date set forth above.

CUPOLA INFRASTRUCTURE INCOME FUND, L.L.L.P.

By: Asset Management Group Investment Corp., General Partner

By: \_\_\_\_\_

Name:

Title:

LIGHTNING SYSTEMS, INC.

By:  \_\_\_\_\_

Name: David Agalston

Title: Chief Financial Officer









## CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, David Agatston, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Lightning eMotors, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principle
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2023

By: /s/ David Agatston  
Name: David Agatston  
Title: Chief Financial Officer (Principal Financial Officer)

**Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350,**

**As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the quarterly report of Lightning eMotors, Inc. on Form 10-Q for the period ended June 30, 2023, as filed with the Securities and Exchange Commission on the date hereof, I, Timothy Reeser, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

- (1) The quarterly report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the quarterly report fairly presents, in all material respects, the financial condition and results of operations of Lightning eMotors, Inc.

In connection with the quarterly report of Lightning eMotors, Inc. on Form 10-Q for the period ended June 30, 2023, as filed with the Securities and Exchange Commission on the date hereof, I, David Agatston, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

- (1) The quarterly report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the quarterly report fairly presents, in all material respects, the financial condition and results of operations of Lightning eMotors, Inc.

Date: August 14, 2023

By: /s/ Timothy Reeser  
Name: Timothy Reeser  
Title: Chief Executive Officer (Principal Executive Officer)

Date: August 14, 2023

By: /s/ David Agatston  
Name: David Agatston  
Title: Chief Financial Officer (Principal Financial Officer)

The foregoing certification is being furnished pursuant to 18 U.S.C. Section 1350. It is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and it is not to be incorporated by reference into any filing of Lightning eMotors, Inc., regardless of any general incorporation language in such filing.