

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

FORM 10-Q

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

For the quarterly period ended **June 30, 2024**

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: **001-38824**

CANOO INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

19951 Mariner Avenue, Torrance, California

(Address of Principal Executive Offices)

83-1476189

(I.R.S. Employer Identification No.)

90503

(Zip code)

(424) 271-2144

(Registrant's telephone number, including area code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common stock, \$0.0001 par value per share	GOEV	The Nasdaq Capital Market
Warrants to purchase shares of Common Stock	GOEVW	The Nasdaq Capital Market

Securities registered pursuant to Section 12(g) of the Act: None

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 Accelerated filer
 Non-accelerated filer Smaller reporting company Emerging growth company

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

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 13, 2024, there were 77,889,254 shares of the registrant's common stock, par value \$0.0001 per share, issued and outstanding.

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Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q, including, without limitation, statements under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. We have based these forward-looking statements on our current expectations and projections about future events. All statements, other than statements of present or historical fact included in this Quarterly Report on Form 10-Q are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” or the negative of such terms or other similar expressions. These forward-looking statements are subject to known and unknown risks, uncertainties and assumptions about us that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by such forward-looking statements.

These statements are subject to known and unknown risks, uncertainties and assumptions, many of which are difficult to predict and are beyond our control and could cause actual results to differ materially from those projected or otherwise implied by the forward-looking statements. Below is a summary of certain material factors that may make an investment in our common stock speculative or risky.

- We are an early stage company with a history of losses and expect to incur significant expenses and continuing losses for the foreseeable future.
- We may be unable to adequately control the costs associated with our operations.
- Our current business plans require a significant amount of capital. If we are unable to obtain sufficient funding or do not have access to capital, we will be unable to execute our business plans and our prospects, financial condition and results of operations could be materially adversely affected.
- We have not achieved positive operating cash flow and, given our projected funding needs, our ability to generate positive cash flow is uncertain.
- Our financial results may vary significantly from period to period due to fluctuations in our operating costs, product demand and other factors.
- Our limited operating history makes evaluating our business and future prospects difficult and increases the risk of your investment.
- Any changes as a result of our Employee Reorganization Plan could adversely affect and disrupt our business and results of operations.
- We have remediated the material weaknesses previously reported in our internal control over financial reporting, but if we identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business and stock price.
- If we fail to manage our growth effectively, we may not be able to design, develop, manufacture, market and launch our electric vehicles (“EVs”) successfully.
- We are highly dependent on the services of our key employees and senior management and, if we are unable to attract and retain key employees and hire qualified management, technical and EV engineering personnel, our ability to compete could be harmed.
- We face significant barriers to manufacture and bring our EVs to market, and if we cannot successfully overcome those barriers our business will be negatively impacted.
- In connection with each of our previous seven Form 10-Qs (beginning with the quarter ended March 31, 2022) and each of our previous two Form 10-Ks, our management has performed an analysis of our ability to continue as a going concern and has identified substantial doubt about our ability to continue as a going concern.
- Outstanding amounts and limited capacity under the Yorkville PPAs will make us more vulnerable to downturns in our financial condition.
- The resulting market price of our Common Stock following the Reverse Stock Split may not attract new investors, and it is not certain that the Reverse Stock Split will result in a sustained proportionate increase in the market price of our Common Stock.

- Customers who have committed to purchase significant amounts of our vehicles may purchase significantly fewer vehicles than we currently anticipate or none at all. In that case, our business, prospects, financial condition, results of operations, and cash flows could be materially and adversely affected.
- Our ability to develop and manufacture EVs of sufficient quality and appeal to customers on schedule and on a large scale is unproven and still evolving.
- We will depend initially on revenue generated from a single EV model and in the foreseeable future will be significantly dependent on a limited number of models.
- There is no guarantee that we will be able to develop our software platform, Canoo Digital Ecosystem, or that if we are able to develop it, that we will obtain the revenue and other benefits we expect from it.
- We may fail to attract new customers in sufficient numbers or at sufficient rates or at all or to retain existing customers, if any, and may face risks if we are dependent on a small number of customers for a significant portion of our revenues.
- If our EVs fail to perform as expected, our ability to develop, market and deploy our EVs could be harmed.
- Our distribution model may expose us to risk and if unsuccessful may impact our business prospects and results of operations.
- We face legal, regulatory and legislative uncertainty in how our go-to-market models will be interpreted under existing and future law, including the potential inability to protect our intellectual property rights, and we may be required to adjust our consumer business model in certain jurisdictions as a result.
- If we fail to successfully build and tool our manufacturing facilities and/or if we are unable to establish or continue a relationship with a contract manufacturer or if our manufacturing facilities become inoperable, we will be unable to produce our vehicles and our business will be harmed.
- We may not be able to realize the non-dilutive financial incentives offered by the State of Oklahoma where we will develop our own manufacturing facilities.
- We and our third-party suppliers will rely on complex machinery for production, which involves a significant degree of risk and uncertainty in terms of operational performance and costs.
- We have no experience to date in high volume manufacture of our EVs.
- We may experience significant delays in the design, production and launch of our EVs, which could harm our business, prospects, financial condition and operating results.
- Increases in costs, disruption of supply or shortage of raw materials and other components used in our vehicles, in particular lithium-ion battery cells, could harm our business.
- We are dependent on our suppliers, some of which are single or limited source suppliers, and the inability of these suppliers to deliver necessary components of our EVs at prices and volumes, performance and specifications acceptable to us, could have a material adverse effect on our business, prospects, financial condition and operating results.
- We are or may be subject to risks associated with strategic alliances or acquisitions and may not be able to identify adequate strategic relationship opportunities, or form strategic relationships, in the future.
- The automotive market is highly competitive and technological developments by our competitors may adversely affect the demand for our EVs and our competitiveness in this industry.
- If the market for EVs does not develop as we expect or develops more slowly than is expected, our business, prospects, financial condition and operating results will be adversely affected.
- We may not be able to obtain or agree on acceptable terms and conditions for all or a significant portion of the government grants, loans and other incentives for which we may apply.
- Our EVs are based on the use of complex and novel steer-by-wire technology that is unproven on a wide commercial scale.
- Our EVs rely on software and hardware that is highly technical, and if these systems contain errors, bugs or vulnerabilities, or if we are unsuccessful in addressing or mitigating technical limitations in our systems, our business could be adversely affected.
- We are subject to cybersecurity risks to our operational systems, security systems, infrastructure, integrated software in our EVs and customer data processed by us or third-party vendors.
- Our stock price has been volatile, and the market price of our Common Stock may drop below the price you pay.

- Future sales and issuances of our equity or convertible securities could result in dilution to our existing stockholders and could cause the price of our Common Stock to decline.
- Substantial blocks of our total outstanding shares may be sold into the market. If there are substantial sales or issuances of shares of our Common Stock, the price of our Common Stock could decline.
- Our failure to meet the continued listing requirements of The Nasdaq Capital Market could result in a delisting of our securities.
- Economic, regulatory, political and other events, including fluctuating interest rates, sustained inflation, slower growth or recession, issues with supply chain, shortage of labor, national and global geopolitical and economic uncertainty, may adversely affect our financial results.
- Our ability to meet the timelines we have established for production and manufacturing milestones of our EVs is uncertain.
- Other factors disclosed in this Quarterly Report on Form 10-Q or our other filings with the Securities and Exchange Commission (the “SEC”).

These statements are subject to known and unknown risks, uncertainties, and assumptions that could cause actual results to differ materially from those projected or otherwise implied by the forward-looking statements, including those described under the section "Summary of Risk Factors" and Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2023, filed with the SEC on April 1, 2024. Given such risks and uncertainties, you should not place undue reliance on forward-looking statements.

Should one or more of these risks or uncertainties described in this Quarterly Report on Form 10-Q materialize, or should underlying assumptions prove incorrect, actual results and plans could differ materially from those expressed in any forward-looking statements. Additional information concerning these and other factors that may impact the forward-looking statements discussed herein can be found in the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." 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 under applicable securities laws. These risks and others described in this Quarterly Report on Form 10-Q may not be exhaustive and the above summary is qualified in its entirety by those more complete discussions of such risks and uncertainties.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this Quarterly Report on Form 10-Q. In addition, even if our results or operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this Quarterly Report on Form 10-Q, those results or developments may not be indicative of results or developments in subsequent periods.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

CANOO INC.
Condensed Consolidated Balance Sheets
(in thousands, except par values) (unaudited)

	June 30, 2024	December 31, 2023
Assets		
Current assets		
Cash and cash equivalents	\$ 4,513	\$ 6,394
Restricted cash, current	3,983	3,905
Inventory	9,302	6,153
Prepays and other current assets	15,557	16,099
Total current assets	33,355	32,551
Property and equipment, net	380,129	377,100
Restricted cash, non-current	10,600	10,600
Operating lease right-of-use assets	34,489	36,241
Deferred warrant asset	50,175	50,175
Deferred battery supplier cost, non-current	28,900	30,000
Other non-current assets	5,674	5,338
Total assets	\$ 543,322	\$ 542,005
Liabilities and stockholders' equity		
Liabilities		
Current liabilities		
Accounts payable	\$ 73,634	\$ 65,306
Accrued expenses and other current liabilities	70,591	63,901
Convertible debt, current	47,228	51,180
Derivative liability, current	—	860
Financing liability, current	3,573	3,200
Total current liabilities	195,026	184,447
Contingent earnout shares liability	—	41
Operating lease liabilities, non-current	34,035	35,722
Derivative liability, non-current	33,242	25,919
Financing liability, non-current	28,727	28,910
Warrant liability, non-current	55,995	17,390
Total liabilities	\$ 347,025	\$ 292,429
Commitments and contingencies (Note 11)		
Redeemable preferred stock, \$0.0001 par value; 10,000 authorized, 62 and 45 shares issued and outstanding as of June 30, 2024, and December 31, 2023 respectively.	\$ 7,546	\$ 5,607
Stockholders' equity		
Common stock, \$0.0001 par value; 2,000,000 authorized as of June 30, 2024 and December 31, 2023, respectively; 72,902 and 37,591 issued and outstanding as of June 30, 2024 and December 31, 2023, respectively ⁽¹⁾	7	4
Additional paid-in capital ⁽¹⁾	1,786,235	1,725,809
Accumulated deficit	(1,597,491)	(1,481,844)
Total preferred stock and stockholders' equity	196,297	249,576
Total liabilities, preferred stock and stockholders' equity	\$ 543,322	\$ 542,005

(1) Periods presented have been adjusted to reflect the 1-for-23 reverse stock split on March 8, 2024. See Note 1- Organization and Basis of Presentation - Reverse Stock Split, for additional information.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

CANOO INC.
Condensed Consolidated Statements of Operations (in thousands, except per share values)
Three and Six Months Ended June 30, 2024 and 2023 (unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Revenue	\$ 605	\$ —	\$ 605	\$ —
Cost of revenue	1,845	—	1,845	—
Gross margin	(1,240)	—	(1,240)	—
Operating Expenses				
Research and development expenses, excluding depreciation	16,784	38,582	43,174	85,686
Selling, general and administrative expenses, excluding depreciation	21,804	30,421	54,672	60,270
Depreciation	3,364	4,562	6,753	9,137
Total operating expenses	41,952	73,565	104,599	155,093
Loss from operations	(43,192)	(73,565)	(105,839)	(155,093)
Other (expense) income				
Interest expense	(1,551)	(2,264)	(7,174)	(2,560)
Gain on fair value change in contingent earnout shares liability	15	59	41	2,564
Gain on fair value change in warrant and derivative liability	48,308	5,623	38,836	22,965
Loss on fair value change in convertible debt and other	(8,532)	—	(67,116)	—
Gain (Loss) on extinguishment of debt and other	(4)	(949)	24,462	(27,688)
Other income (expense), net	(4)	226	1,143	(1,790)
Loss before income taxes	(4,960)	(70,870)	(115,647)	(161,602)
Provision for income taxes	—	—	—	—
Net loss and comprehensive loss attributable to Canoo	\$ (4,960)	\$ (70,870)	\$ (115,647)	\$ (161,602)
Less: dividend on redeemable preferred stock	1,077	—	1,939	—
Less: additional deemed dividend on redeemable preferred stock	—	—	—	—
Net loss and comprehensive loss available to common shareholders	(6,037)	(70,870)	(117,586)	(161,602)
Per Share Data:				
Net loss per share, basic and diluted ⁽¹⁾	\$ (0.09)	\$ (3.22)	\$ (1.95)	\$ (8.04)
Weighted-average shares outstanding, basic and diluted ⁽¹⁾	69,619	21,982	60,199	20,100

(1) Periods presented have been adjusted to reflect the 1-for-23 reverse stock split on March 8, 2024. See Note 1- Organization and Basis of Presentation - Reverse Stock Split, for additional information.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

CANOO INC.

**Condensed Consolidated Statement of Redeemable Preferred Stock and Stockholders' Equity (in thousands)
Three and Six Months Ended June 30, 2024 (unaudited)**

	Redeemable Preferred Stock		Common stock ⁽¹⁾		Additional paid-in capital ⁽¹⁾	Accumulated deficit	Total preferred stock and stockholders' equity
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2023	45	\$ 5,607	37,591	\$ 4	\$ 1,725,809	\$ (1,481,844)	\$ 249,576
Issuance of shares for restricted stock units vested	—	—	1,892	—	—	—	—
Issuance of shares under employee stock purchase plan	—	—	26	—	79	—	79
Issuance of shares under the PPA	—	—	21,935	2	54,938	—	54,940
Issuance of shares under Convertible Debentures	—	—	4,672	—	22,254	—	22,254
Exchange of YA warrants	—	—	—	—	(43,416)	—	(43,416)
Issuance of shares to vendor for services	—	—	290	—	562	—	562
Accretion of preferred shares	—	862	—	—	(862)	—	—
Stock-based compensation	—	—	—	—	10,954	—	10,954
Net loss and comprehensive loss	—	—	—	—	—	(110,687)	(110,687)
Balance as of March 31, 2024	45	\$ 6,469	66,406	\$ 6	\$ 1,770,318	\$ (1,592,531)	\$ 184,262
Repurchase of unvested shares - forfeitures	—	—	—	—	—	—	—
Issuance of shares for restricted stock units vested	—	—	111	—	—	—	—
Issuance of shares under employee stock purchase plan	—	—	20	—	35	—	35
Issuance of shares under the PPA	—	—	6,291	1	15,606	—	15,607
Issuance of shares under preferred shares agreement	17	—	—	—	—	—	—
Accretion of preferred shares	—	1,077	—	—	(1,077)	—	—
Issuance of shares to vendor for services	—	—	74	—	225	—	225
Stock-based compensation	—	—	—	—	1,128	—	1,128
Net loss and comprehensive loss	—	—	—	—	—	(4,960)	(4,960)
Balance as of June 30, 2024	62	\$ 7,546	72,902	\$ 7	\$ 1,786,235	\$ (1,597,491)	\$ 196,297

(1) Periods presented have been adjusted to reflect the 1-for-23 reverse stock split on March 8, 2024. See Note 1- Organization and Basis of Presentation - Reverse Stock Split, for additional information.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

CANOO INC.

Condensed Consolidated Statement of Redeemable Preferred Stock and Stockholders' Equity (in thousands)
Three and Six Months Ended June 30, 2023 (unaudited)

	Redeemable Preferred Stock		Common stock ⁽¹⁾		Additional paid-in capital ⁽¹⁾	Accumulated deficit	Total preferred stock and stockholders' equity
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2022	—	\$ —	15,452	\$ 2	\$ 1,416,394	\$ (1,179,823)	\$ 236,573
Repurchase of unvested shares - forfeitures	—	—	(1)	—	—	—	—
Issuance of shares for restricted stock units vested	—	—	120	—	—	—	—
Issuance of shares upon exercise of vested stock options	—	—	—	—	—	—	—
Issuance of shares under employee stock purchase plan	—	—	30	—	389	—	389
Vesting of early exercised stock options and restricted stock awards	—	—	—	—	26	—	26
Issuance of shares under the PPA	—	—	2,903	—	64,389	—	64,389
Reclassification of warrant liability to additional paid-in capital	—	—	—	—	19,510	—	19,510
Issuance of shares under SPA, net of offering costs	—	—	2,174	—	10,161	—	10,161
Issuance of warrants to placement agent under SPA	—	—	—	—	1,600	—	1,600
Stock-based compensation	—	—	—	—	9,836	—	9,836
Net loss and comprehensive loss	—	—	—	—	—	(90,732)	(90,732)
Balance as of March 31, 2023	—	\$ —	20,678	\$ 2	\$ 1,522,305	\$ (1,270,555)	\$ 251,752
Repurchase of unvested shares - forfeitures	—	—	(1)	—	—	—	—
Issuance of shares for restricted stock units vested	—	—	88	—	—	—	—
Issuance of shares under employee stock purchase plan	—	—	26	—	246	—	246
Vesting of early exercised stock options and restricted stock awards	—	—	—	—	2	—	2
Proceeds from exercise of YA warrants	—	—	1,488	—	21,223	—	21,223
Issuance of shares under PIPE agreement	—	—	710	—	1,753	—	1,753
Issuance of shares under the ATM, net of offering costs	—	—	83	—	1,155	—	1,155
Issuance of shares under YA convertible debenture	—	—	1,552	—	19,021	—	19,021
Issuance of shares under 1-40 financing arrangement	—	—	101	—	1,506	—	1,506
Issuance of shares to vendor for services	—	—	9	—	250	—	250
Stock-based compensation	—	—	—	—	6,707	—	6,707
Net loss and comprehensive loss	—	—	—	—	—	(70,870)	(70,870)
Balance as of June 30, 2023	—	\$ —	24,735	\$ 2	\$ 1,574,168	\$ (1,341,425)	\$ 232,745

(1) Periods presented have been adjusted to reflect the 1-for-23 reverse stock split on March 8, 2024. See Note 1- Organization and Basis of Presentation - Reverse Stock Split, for additional information.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

CANOO INC.

Condensed Consolidated Statements of Cash Flows (in thousands)
Six Months Ended June 30, 2024 and 2023 (unaudited)

	Six months ended June 30,	
	2024	2023
Cash flows from operating activities:		
Net loss	\$ (115,647)	\$ (161,602)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	6,845	9,137
Non-cash operating lease expense	1,752	1,658
Stock-based compensation expense	12,082	16,543
Gain on fair value change of contingent earnout shares liability	(41)	(2,564)
Loss (Gain) on fair value change in warrants liability	(22,046)	(23,015)
Loss (Gain) on fair value change in derivative liability	(16,790)	50
Loss (Gain) on extinguishment of debt and other	(24,462)	27,688
Loss on fair value change in convertible debt and other	67,116	—
Non-cash debt discount	3,142	1,538
Non-cash interest expense	3,410	1,386
Financing charges incurred upon issuance of PPAs	910	800
Common shares issued to vendor for services	658	250
Changes in assets and liabilities:		
Inventory	(3,149)	(2,358)
Prepaid expenses and other current assets	543	(2,060)
Other assets	764	(2,614)
Accounts payable, accrued expenses and other current liabilities	1,494	5,619
Net cash used in operating activities	(83,419)	(129,544)
Cash flows from investing activities:		
Purchases of property and equipment	(6,923)	(33,905)
Net cash used in investing activities	(6,923)	(33,905)
Cash flows from financing activities:		
Proceeds from sale of employee retention credits	9,013	—
Payment of offering costs	—	(400)
Proceeds from exercise of YA warrants	—	21,223
Proceeds from issuance of shares under PIPEs	—	8,750
Proceeds from employee stock purchase plan	114	635
Proceeds from issuance of shares under RDO, net of issuance cost	—	50,961
Proceeds from convertible debenture	—	45,120
Payment of transaction costs	—	(25)
Payment made on financing arrangement	—	(205)
Proceeds for issuance of shares under ATM	—	1,155
Payment made on 1-40 lease	(1,428)	—
Proceeds from PPA, net of issuance costs	97,347	5,001
Repayment of PPAs	(33,007)	—
Proceeds from preferred shares transaction	16,500	—
Net cash provided by financing activities	88,539	132,215
Net decrease in cash, cash equivalents, and restricted cash	(1,803)	(31,234)
Cash, cash equivalents, and restricted cash		
Cash, cash equivalents, and restricted cash, beginning of period	20,899	50,615

	Six months ended June 30,	
	2024	2023
Cash, cash equivalents, and restricted cash, end of period	\$ 19,096	\$ 19,381
Reconciliation of cash, cash equivalents, and restricted cash to the Condensed Consolidated Balance Sheets		
Cash and cash equivalents at end of period	\$ 4,513	\$ 4,993
Restricted cash, current at end of period	3,983	3,788
Restricted cash, non-current at end of period	10,600	10,600
Total cash, cash equivalents, and restricted cash at end of period shown in the Condensed Consolidated Statements of Cash Flows	\$ 19,096	\$ 19,381
Supplemental non-cash investing and financing activities		
Acquisition of property and equipment included in current liabilities	\$ 58,411	\$ 68,050
Acquisition of property and equipment included in current liabilities during the period	\$ 2,951	\$ 58,459
Acquisition of property and equipment included in financing liabilities	\$ —	\$ 34,275
Offering costs included in current liabilities	\$ 903	\$ 903
Recognition of operating lease right-of-use asset	\$ —	\$ 272
Reclassification of warrant liability to additional paid in capital	\$ —	\$ 19,510
Issuance of shares for extinguishment of convertible debt under PPA agreement	\$ 70,547	\$ 64,389
Issuance of shares for extinguishment of convertible debt under convertible debenture	\$ 22,254	\$ 19,021
Exchange of equity classified warrants	\$ 43,416	\$ —
Accretion on preferred shares	\$ 1,939	\$ —
Recognition of warrant liability	\$ 17,236	\$ 47,942
Recognition of derivative liability	\$ 24,857	\$ 4,310
Non-cash settlement of accounts payable	\$ 125	\$ —

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

CANOO INC.
Notes to Condensed Consolidated Financial Statements
(dollars in thousands, unless otherwise stated) (unaudited)

1. Organization and Description of the Business

Canoo Inc. (“Canoo” or the “Company”) is a high tech advanced mobility technology company with a proprietary modular electric vehicle platform and connected services initially focused on commercial fleet, government and military customers. The Company has developed a breakthrough EV platform that it believes will enable it to rapidly innovate, and bring new products addressing multiple use cases to market faster than its competition and at a lower cost.

2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The Company's unaudited Condensed Consolidated Financial Statements have been prepared in accordance with the rules and regulations of the SEC and accounting principles generally accepted in the United States of America (“GAAP”) for interim reporting. Accordingly, certain notes or other information that are normally required by GAAP have been omitted if they substantially duplicate the disclosures contained in the Company's annual audited Consolidated Financial Statements. Accordingly, the unaudited Condensed Consolidated Financial Statements should be read in conjunction with the Company's audited financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023, filed with the SEC on April 1, 2024 (“Annual Report on Form 10-K”). Results of operations reported for interim periods are not necessarily indicative of results for the entire year. In the opinion of management, the Company has made all adjustments necessary to present fairly its Condensed Consolidated Financial Statements for the periods presented. Such adjustments are of a normal, recurring nature. The Company's financial statements have been prepared under the assumption that the Company will continue as a going concern, which contemplates the realization of assets and discharge of liabilities in the normal course of business for the foreseeable future.

The accompanying unaudited Condensed Consolidated Financial Statements include the results of the Company and its subsidiaries. The Company's comprehensive loss is the same as its net loss.

Except for any updates below, no material changes have occurred with respect to the Company's significant accounting policies disclosed in Note 2 of the Notes to the Consolidated Financial Statements in Part II, Item 8 of the Annual Report on Form 10-K.

Reverse Stock Split

On February 29, 2024, the Company held a special meeting of its stockholders to approve an amendment to the Company's Second Amended and Restated Certificate of Incorporation to effect a reverse stock split of the Company's Common Stock at a reverse stock split ratio ranging from 1:2 to 1:30, and to authorize the Board to determine the timing of the amendment at its discretion at any time, if at all, but in any case prior to the one-year anniversary of the date on which the reverse stock split is approved by the Company's stockholders. On March 8, 2024, the Company effected a 1-for-23 reverse stock split (the “Reverse Stock Split”) of the Company's Common Stock. As a result of the Reverse Stock Split, every 23 shares of the Company's issued and outstanding Common Stock as of 8:00 a.m. (Eastern Time) on March 8, 2024 was automatically combined into one issued and outstanding share of Common Stock, with no change in par value per share. No fractional shares of Common Stock were issued as a result of the Reverse Stock Split. Any fractional shares in connection with the Reverse Stock Split were rounded down to the nearest whole share and cash payments were made to the stockholders. The Reverse Stock Split had no impact on the number of shares of Common Stock or Preferred Stock that the Company is authorized to issue pursuant to its certificate of incorporation. Proportional adjustments were made to the number of shares of Common Stock issuable upon exercise or conversion of the Company's equity awards and warrants, as well as the applicable exercise price. All share and per share information included in this Quarterly Report on Form 10-Q has been retroactively adjusted to reflect the impact of the Reverse Stock Split.

Liquidity and Capital Resources

The Company's principal sources of liquidity are its unrestricted cash balance and the Company's principal access to capital is under the July 2024 PPA (as defined in Note 18). The Company has incurred losses and negative cash flows from operating activities since inception and has a working capital deficit. The Company had negative cash flows from operating activities of \$83.4 million for the six months ended June 30, 2024. The Company expects to continue to incur net losses and negative cash flows from operating activities in accordance with its operating plan and expects that expenditures

will increase significantly in connection with its ongoing activities. These conditions and events raise substantial doubt about the Company's ability to continue as a going concern.

As an early-stage growth company, the Company's ability to access capital is critical. Although management continues to explore raising additional capital through a combination of debt financing, other non-dilutive financing and/or equity financing to supplement the Company's capitalization and liquidity, management cannot conclude as of the date of this filing that its plans are probable of being successfully implemented.

The Company believes substantial doubt exists about the Company's ability to continue as a going concern for twelve months from the date of issuance of the Company's Condensed Consolidated Financial Statements. The Condensed Consolidated Financial Statements do not include any adjustments that might result from the outcome of this uncertainty.

Macroeconomic Conditions

Current adverse macroeconomic conditions, including but not limited to heightened inflation, slower growth or recession, changes to fiscal and monetary policy, higher interest rates, currency fluctuations, challenges in the supply chain could negatively affect the Company's business.

Ultimately, the Company cannot predict the impact of current or worsening macroeconomic conditions. The Company continues to monitor macroeconomic conditions to remain flexible and to optimize and evolve its business as appropriate. To do this, the Company is working on projecting demand and infrastructure requirements and deploying its workforce and other resources accordingly.

Fair Value of Financial Instruments

The Company applies the provisions of ASC 820, *Fair Value Measurements and Disclosures*, which provides a single authoritative definition of fair value, sets out a framework for measuring fair value and expands on required disclosures about fair value measurement. Fair value represents the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Company uses the following hierarchy in measuring the fair value of the Company's assets and liabilities, focusing on the most observable inputs when available:

- Level 1 Quoted prices in active markets for identical assets or liabilities.
- Level 2 Observable inputs other than Level 1 quoted prices, such as quoted prices for similar assets and liabilities in active markets, quoted prices in markets that are not active for identical or similar assets and liabilities, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 Valuations are based on inputs that are unobservable and significant to the overall fair value measurement of the assets or liabilities. Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model.

Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The Company's financial assets and liabilities not measured at fair value on a recurring basis include cash and cash equivalents, restricted cash, accounts payable, and other current liabilities and are reflected in the financial statements at cost. Cost approximates fair value for these items due to their short-term nature.

Contingent Earnout Shares Liability

The Company has a contingent obligation to issue shares of Common Stock to certain stockholders and employees upon the achievement of certain market share price milestones within specified periods (the "Earnout Shares"). The Company determined that the right to Earnout Shares represents a contingent liability that meets the definition of a derivative and recognized it on the balance sheet at its fair value upon the grant date. The right to Earnout Shares is remeasured at fair value each period through earnings. The fair value is determined using Level 3 inputs, since estimating

the fair value of this contingent liability requires the use of significant and subjective inputs that may and are likely to change over the duration of the liability with related changes in internal and external market factors. The tranches were valued using a Monte Carlo simulation of the stock prices using an expected volatility assumption based on the historical volatility of the price of the Company's stock and implied volatility derived from the price of exchange traded options on the Company's stock. Upon the occurrence of a bankruptcy or liquidation, any unissued Earnout Shares would be fully issued regardless of whether the share price target has been met.

Convertible Debt

The Company accounts for convertible debt that does not meet the criteria for equity treatment in accordance with the guidance contained in ASU 2020-06 *Debt—Debt with Conversion and Other Options (Subtopic 470-20)* and *Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)*: Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. The Company classifies convertible debt based on the re-payment terms and conditions. Any discounts or premiums on the convertible debt and costs incurred upon issuance of the convertible debt are amortized to interest expense over the terms of the related convertible debt. Convertible debt is also analyzed for the existence of embedded derivatives, which may require bifurcation from the convertible debt and separate accounting treatment. For derivative financial instruments that are accounted for as assets or liabilities, the derivative instrument is initially recorded at its fair value and is then re-valued at each reporting date, with changes in the fair value reported in the Condensed Consolidated Statements of Operations. Refer to Note 9 for further information.

The Company has elected the fair value option to account for the YA Convertible Debentures, the Ninth Pre-Paid Advance, the Tenth Pre-Paid Advance and the June Prepaid Advance (all as defined in Note 9 and collectively "Convertible Debt") and recorded such instruments at fair value upon issuance. The Company records changes in fair value in the Condensed Consolidated Statements of Operations, with the exception of changes in fair value due to instrument-specific credit risk which, if present, will be recorded as a component of other comprehensive income. Interest expense related to the Convertible Debt is included in the changes in fair value. As a result of applying the fair value option, direct costs and fees related to the Convertible Debt were expensed as incurred.

Warrants

The Company determines the accounting classification of warrants it issues as either liability or equity classified by first assessing whether the warrants meet liability classification in accordance with ASC 480-10, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity* ("ASC 480"), then in accordance with ASC 815-40 ("ASC 815"), *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock*. Under ASC 480, warrants are considered liability classified if the warrants are mandatorily redeemable, obligate the Company to settle the warrants or the underlying shares by paying cash or other assets, or warrants that must or may require settlement by issuing variable number of shares. If warrants do not meet liability classification under ASC 480, the Company assesses the requirements under ASC 815, which states that contracts that require or may require the issuer to settle the contract for cash are liabilities recorded at fair value, irrespective of the likelihood of the transaction occurring that triggers the net cash settlement feature. If the warrants do not require liability classification under ASC 815, and in order to conclude equity classification, the Company also assesses whether the warrants are indexed to its common stock and whether the warrants are classified as equity under ASC 815 or other applicable GAAP. After all relevant assessments, the Company concludes whether the warrants are classified as liability or equity. Liability classified warrants require fair value accounting at issuance and subsequent to initial issuance with all changes in fair value after the issuance date recorded in the statements of operations. Equity classified warrants only require fair value accounting at issuance with no changes recognized subsequent to the issuance date. Refer to Note 15 for information regarding the warrants issued.

Redeemable Preferred Stock

Accounting for convertible or redeemable equity instruments in the Company's own equity requires an evaluation of the hybrid security to determine if liability classification is required under ASC 480-10. Liability classification is required for freestanding financial instruments that are not debt in legal form and are: (1) subject to an unconditional obligation requiring the issuer to redeem the instrument by transferring assets (i.e., mandatorily redeemable), (2) instruments other than equity shares that embody an obligation of the issuer to repurchase its equity shares, or (3) certain types of instruments that obligate the issuer to issue a variable number of equity shares. Securities that do not meet the scoping criteria to be classified as a liability under ASC 480 are subject to redeemable equity guidance, which prescribes securities that may be subject to redemption upon an event not solely within the control of the issuer to be classified outside permanent equity (i.e., classified in temporary equity). Securities classified in temporary equity are initially measured at the proceeds received, net of issuance costs and excluding the fair value of bifurcated embedded derivatives (if any). Subsequent measurement of the carrying value is not required unless the instrument is probable of becoming redeemable or is currently redeemable. When the instruments are currently redeemable or probable of becoming redeemable, the

Company will recognize changes in the redemption value immediately as they occur and adjust the carrying value of the security to equal the then current maximum redemption value at the end of each reporting period. Refer to Note 13 for information regarding the Redeemable Preferred Stock issued.

Stock-Based Compensation

The Company accounts for stock-based compensation awards granted to employees and directors based on the awards' estimated grant date fair value. The Company estimates the fair value of its Common Stock options using the Black-Scholes-Merton option-pricing model. For stock-based awards that vest solely based on continued service ("service-only vesting conditions"), the resulting fair value is recognized under the graded vesting method over the requisite service period, which is usually the vesting period and generally four years. The Company recognizes the fair value of stock-based awards which contain performance conditions using the graded vesting method, when it is probable the performance condition will be met. The Company recognizes the fair value of stock-based awards which contain market conditions, such as stock price milestones, by simulating a range of possible future stock prices for the Company over the performance period using a Monte-Carlo simulation model to determine the grant date fair value. The Company accounts for forfeitures as they occur. The Company classifies stock-based compensation expense in its Consolidated Statement of Operations in the same manner in which the award recipient's payroll costs are classified. For grants to non employees, an expense is recognized when the good or service is received.

The Company estimates the fair value of RSUs based on the market price of the Company's Common Stock underlying the awards on the grant date. Fair value for awards with stock price performance metrics is calculated using the Monte Carlo simulation model, which incorporates stock price correlation and other variables over the time horizons matching the performance periods. Refer to Note 14 for awards granted to employees during the period.

Cancellation of an existing equity-classified award along with a concurrent grant of a replacement award is accounted for as a modification under ASC 718. Total compensation cost to be recognized in connection with a modification and concurrent grant of a replacement award is equal to the original grant date fair value plus any incremental fair value, calculated as the excess of the fair value of the replacement award over the fair value of the original awards on the cancellation date. Any incremental compensation cost related to vested awards is recognized immediately on the modification date. Any incremental compensation cost related to unvested awards is recognized prospectively over the remaining service period, in addition to the remaining unrecognized grant date fair value.

Net loss per Share

Basic and diluted net loss per share is computed by dividing net loss by the weighted-average number of the Company's common shares outstanding during the period, without consideration for potential dilutive securities. As the Company is in a loss position for the periods presented, diluted net loss per share is the same as basic net loss per share, since the effects of potentially dilutive securities are antidilutive.

3. Recent Accounting Pronouncements

Changes to GAAP are established by the Financial Accounting Standards Board ("FASB"), in the form of ASUs, to the FASB's Accounting Standards Codification.

The Company considers the applicability and impact of all ASUs. ASUs not listed below were assessed and determined to be either not applicable or are expected to have immaterial impact on the Company's Condensed Consolidated Financial Position, Results of Operations or Cash Flows.

Recently Issued Accounting Pronouncements Adopted

In March 2023, the FASB issued ASU No. 2023-01, Leases (Topic 842): Common Control Arrangements ("ASU 2023-01"), which amends certain provisions of ASC 842 that apply to arrangements between related parties under common control. Specifically, it amends the accounting for leasehold improvements. The amendments requires a lessee in a common-control lease arrangement to amortize leasehold improvements that it owns over the improvements' useful life to the common control group, regardless of the lease term, if the lessee continues to control the use of the underlying asset through a lease. The amendments are effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted in any annual or interim period as of the beginning of the related fiscal year. The adoption of ASU 2023-01 did not have material impact on the Company's unaudited Condensed Consolidated Financial Statements.

Recently Issued Accounting Pronouncements Not Yet Adopted

In December 2023, the FASB issued ASU No. 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures (“ASU 2023-09”) to enhance the transparency and decision usefulness of income tax disclosures, primarily related to the rate reconciliation and income taxes paid. ASU 2023-09 is effective for annual periods beginning after December 15, 2024. Early adoption is permitted. The Company is currently assessing the provisions of this new pronouncement and evaluating any material impact that this guidance may have on our Consolidated Financial Statements.

In November 2023, the FASB issued ASU No. 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures (“ASU 2023-07”) to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is currently assessing the provisions of this new pronouncement and evaluating any material impact that this guidance may have on our Consolidated Financial Statements.

On October 9, 2023, the FASB issued ASU 2023-06, Disclosure Improvements: Codification Amendments in Response to the SEC’s Disclosure Update and Simplification Initiative, which amends the disclosure or presentation requirements related to various subtopics in the FASB Accounting Standards Codification (the “Codification”). The ASU was issued in response to the SEC’s August 2018 final rule that updated and simplified disclosure requirements that the SEC believed were “redundant, duplicative, overlapping, outdated, or superseded.” The new guidance is intended to align U.S. GAAP requirements with those of the SEC and to facilitate the application of U.S. GAAP for all entities. The effective date for each amendment will be the date on which the SEC’s removal of that related disclosure requirement from Regulation S-X or Regulation S-K becomes effective, with early adoption prohibited. The Company is currently assessing the provisions of this new pronouncement and evaluating any material impact that this guidance may have on our Consolidated Financial Statements.

4. Fair Value Measurements

The following table summarizes the Company’s assets and liabilities that are measured at fair value on a recurring basis as required by ASC 820, by level, within the fair value hierarchy as of June 30, 2024 and December 31, 2023 (in thousands):

	June 30, 2024			
	Fair Value	Level 1	Level 2	Level 3
Liability				
Contingent earnout shares liability	\$ —	\$ —	\$ —	\$ —
Derivative liability, current	\$ —	\$ —	\$ —	\$ —
Convertible debt, current	\$ 47,228	\$ —	\$ —	\$ 47,228
Derivative liability, non-current	\$ 33,242	\$ —	\$ —	\$ 33,242
Warrant liability, non-current	\$ 55,995	\$ —	\$ 55,995	\$ —
	December 31, 2023			
	Fair Value	Level 1	Level 2	Level 3
Liability				
Contingent earnout shares liability	\$ 41	\$ —	\$ —	\$ 41
Derivative liability, current	\$ 860	\$ —	\$ —	\$ 860
Convertible debt, current	\$ 16,052	\$ —	\$ —	\$ 16,052
Derivative liability, non-current	\$ 25,919	\$ —	\$ —	\$ 25,919
Warrant liability, non-current	\$ 17,390	\$ —	\$ 17,390	\$ —

The Company’s Contingent Earnout liability, convertible debt, derivative liabilities are considered “Level 3” fair value measurement. Refer to Note 2 for discussion of the Company’s methods for valuation.

The Company entered into the Ninth Pre-Paid Advance, Tenth Pre-Paid Advance and June Prepaid Advance as discussed in Note 9, whereby the Company elected to account transactions under the fair value option of accounting upon issuance. The Ninth Pre-Paid Advance was fully paid off as of the end of the reporting period. The Company estimated the fair value of the Tenth Pre-Paid Advance and June Prepaid Advance based on assumptions used in the Monte Carlo simulation model using the following inputs as of the end of the reporting period:

	Tenth Pre-Paid Advance	June Prepaid Advance
Stock price	\$ 2.13	\$ 2.13
Risk free interest rate	5.4 %	5.3 %
Interest rate	5.0 %	5.0 %
Expected volatility	116.7 %	144.0 %
Expected dividend yield	— %	— %
Remaining term (in years)	0.2	0.5

Following is a summary of the change in fair value of the Convertible Debt for the six months ended June 30, 2024 and June 30, 2023 (in thousands).

<i>Convertible Debt</i>	Six months ended June 30,	
	2024	2023
Beginning fair value	\$ 16,052	\$ —
Additions during the period	46,894	—
Payments in cash and common stock during the period	(57,241)	—
Change in fair value during the period	41,523	—
Ending fair value	\$ 47,228	—

As the proceeds of the freestanding instruments identified within the Ninth Pre-Paid Advance exceeded the fair value, a gain on issuance on convertible debt was recognized. As the fair value of the freestanding instruments identified within the Tenth Pre-Paid Advance and June Prepaid Advance exceeded the proceeds received, losses on issuance on convertible debt were recognized. Refer to Note 9 for further information.

The Company has a contingent obligation to issue shares of Common Stock to certain stockholders and employees upon the achievement of certain market share price milestones within specified periods. Issuances are made in three tranches of approximately 0.2 million shares, for a total of 0.7 million shares, each upon reaching share price targets within specified time frames from December 21, 2020 ("Earnout Date"). The first tranche was not issued given the share price did not reach the specified threshold as of December 21, 2022. The second tranche will be issued if the share price reaches \$575.00 within four years of the closing of the Earnout Date. The third tranche will be issued if the share price reaches \$690.00 within five years of the Earnout Date. The tranches may also be issued upon a change of control transaction that occurs within the respective timeframes and results in per share consideration exceeding the respective share price target. As of June 30, 2024, the Company has a remaining contingent obligation to issue 0.4 million shares of Common Stock.

Following is a summary of the change in fair value of the Earnout Shares liability for the six months ended June 30, 2024 and June 30, 2023 (in thousands).

<i>Earnout Shares Liability</i>	Six months ended June 30,	
	2024	2023
Beginning fair value	\$ 41	\$ 3,013
Change in fair value during the period	(41)	(2,564)
Ending fair value	\$ —	\$ 449

The Company entered into a Lease Agreement ("Lease Agreement") with I-40 OKC Partners LLC ("I-40") which contained a "Market Value Shortfall" provision that meets the definition of a derivative, valued at \$0.6 million at inception. The shortfall expired in April 2024, upon which the Company recorded a gain on the derecognition of the liability of \$1.6 million. The amount was included within Gain (Loss) on extinguishment of debt and other. The fair value of the Market Value Shortfall derivative measured as of December 31, 2023 and immediately prior to expiration was \$0.9 million and \$1.6 million, respectively, resulting in a loss of \$0.7 million during the six months ended June 30, 2024 which is included within Gain on fair value change in warrant and derivative liability.

The Company entered into the Series B Preferred Stock Purchase Agreement with the Series B Preferred Stock Purchaser whose conversion feature meets the definition of a derivative liability which requires bifurcation (refer to Note 13). The Company estimated the fair value of the conversion feature derivative embedded in the Series B Preferred Stock Purchase Agreement based on assumptions used in the Monte Carlo simulation model using the following inputs as of the end of the reporting period: the price of the Company's Common Stock of \$2.13; a risk-free interest rate of 4.4%; expected volatility of the Company's Common Stock of 117.5%; expected dividend yield of 0.0%; and remaining term of 4.28 years. The fair value of the conversion feature derivative measured as of December 31, 2023 and June 30, 2024 was \$5.9 million and \$14.7 million, respectively, resulting in a gain of \$11.2 million during the six months ended June 30, 2024 included within Consolidated Statement of Operations.

The Company entered into the Series C Preferred Stock Purchase Agreement with the Series C Preferred Stock Purchasers (as defined in Note 13) whose conversion feature meets the definition of a derivative liability which requires bifurcation. The Company estimated the fair value of the conversion feature derivative embedded in the Series C Preferred Stock Purchase Agreement based on assumptions used in the Monte Carlo simulation model using the following inputs as of the end of the reporting period: the price of the Company's Common Stock of \$2.13; a risk-free interest rate of 4.3%; expected volatility of the Company's Common Stock of 117.5%; expected dividend yield of 0.0%; and remaining term of 4.77 years. The fair value of the conversion feature derivative measured as of issuance and June 30, 2024 was \$24.9 million and \$18.5 million, respectively, resulting in a gain of \$6.4 million during the six months ended June 30, 2024 included within Consolidated Statement of Operations.

	Six months ended June 30,	
	2024	2023
Derivative liability		
Beginning fair value	\$ 26,779	\$ —
Additions during the period	24,857	—
Derecognition of liability upon expiration of agreement	(1,604)	—
Change in fair value during the period	(16,790)	4,359
Ending fair value	<u>\$ 33,242</u>	<u>\$ 4,359</u>

Refer to Note 15 for discussion related to warrants fair value measurements.

5. Prepaids and Other Current Assets

Prepaids and other current assets consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Prepaid expense	\$ 8,133	\$ 9,300
Short term deposits	5,428	6,312
Deferred battery supplier cost	1,100	—
Other current assets	896	487
Prepaids and other current assets	<u>\$ 15,557</u>	<u>\$ 16,099</u>

6. Inventory

As of June 30, 2024 and December 31, 2023, the inventory balance was \$9.3 million and \$6.2 million, respectively, which consisted primarily of raw materials related to the production of vehicles for sale. The Company writes-down inventory for any excess or obsolete inventories or when we believe that the net realizable value of inventories ("LCNRV") is less than the carrying value. No write-downs were recorded for the three and six months ended June 30, 2024 and June 30, 2023.

7. Property and Equipment, net

Property and equipment, net consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Tooling, machinery, and equipment	\$ 50,600	\$ 44,025
Computer hardware	8,925	8,921
Computer software	9,835	9,835
Vehicles	1,555	1,528
Building	28,475	28,475
Land	5,800	5,800
Furniture and fixtures	877	788
Leasehold improvements	15,575	17,470
Construction-in-progress	312,439	307,489
Total property and equipment	434,081	424,331
Less: Accumulated depreciation	(53,952)	(47,231)
Total property and equipment, net	<u>\$ 380,129</u>	<u>\$ 377,100</u>

Construction-in-progress is primarily related to the development of manufacturing lines as well as equipment and tooling necessary in the production of the Company's vehicles. Completed tooling assets are transferred to their respective asset classes and depreciation begins when an asset is ready for its intended use.

Depreciation expense for property and equipment was \$3.4 million and \$6.8 million for the three and six months ended June 30, 2024 respectively, of which a nominal amount is included in cost of revenue. Depreciation expense for property and equipment was \$4.6 million and \$9.1 million for the three and six months ended June 30, 2023, respectively.

8. Accrued Expenses and Other Current liabilities

Accrued expenses consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Accrued property and equipment purchases	\$ 29,472	\$ 29,433
Accrued research and development costs	12,505	15,913
Accrued professional fees	7,051	6,623
ERC financing liability	9,013	—
Operating lease liabilities, current portion	3,273	3,086
Other accrued expenses	9,277	8,846
Total accrued expenses and other current liabilities	<u>\$ 70,591</u>	<u>\$ 63,901</u>

The ERC financing liability represents the amount received in May 2024, in accordance with an agreement entered into with a third-party investor ("ERC Agreement") pursuant to which the investor purchased, for approximately \$9.0 million in cash, the economic interest, at a discount, in our rights to payment from the Internal Revenue Service

("IRS") with respect to the employee retention credits for the nine month period ended September 30, 2021, as filed by the Company in January 2024 under the Coronavirus Aid, Relief, and Economic Security Act. The amount received by the Company pursuant to the ERC Agreement was recorded as an accrued liability, pending final determination by and receipt of such payment from the IRS.

9. Convertible Debt

Yorkville PPAs

Initial PPA

On July 20, 2022, the Company entered into the Pre-Paid Advance Agreement (the "Initial PPA") with YA II PN, Ltd. ("Yorkville") pursuant to which the Company could request advances of up to \$50.0 million in cash from Yorkville, with an aggregate limit of \$300.0 million (the "Pre-Paid Advance"). Amounts outstanding under Pre-Paid Advances could be offset by the issuance of shares of Common Stock to Yorkville at a price per share calculated pursuant to the Initial PPA as the lower of 120.0% of the daily volume-weighted average price ("VWAP") on Nasdaq as of the day immediately preceding the date a Pre-Paid Advance was made ("Fixed Price") or 95.0% of the VWAP on Nasdaq as of the day immediately preceding the conversion date, which in no event would be less than \$23.00 per share ("Floor Price"). The third Pre-Paid Advance (the "Third Pre-Paid Advance") amended the purchase price to be the lower of 110.0% of the VWAP on Nasdaq as of the day immediately preceding the date a Pre-Paid Advance was made ("Amended Fixed Price") or 95.0% of the VWAP on Nasdaq during the five days immediately preceding the conversion date, which in no event would be less than \$1.50 per share ("Amended Floor Price"). The Company's stockholders approved the Amended Floor Price, which was proposed and voted on at the special meeting of Company stockholders held on January 24, 2023. The Company's stockholders further approved the Second Amended Floor Price (as defined below), which was proposed and voted on at the special meeting of Company stockholders held on October 5, 2023. The issuance of the shares of Common Stock under the Initial PPA is subject to certain limitations, including that the aggregate number of shares of Common Stock issued pursuant to the Initial PPA (including the aggregation with the issuance of shares of Common Stock under Standby Equity Purchase Agreement entered into by the Company with Yorkville on May 10, 2022 (the "SEPA"), which was terminated effective August 26, 2022) cannot exceed 19.9% of the Company's outstanding shares of Common Stock as of May 10, 2022 ("PPA Exchange Cap"). The Company's stockholders approved the issuance of shares of the Company's Common Stock in excess of the PPA Exchange Cap, which was proposed and voted on at the special meeting of Company stockholders held on January 24, 2023. Interest accrues on the outstanding balance of any Pre-Paid Advance at an annual rate equal to 5.0%, subject to an increase to 15.0% upon events of default described in the Initial PPA. Each Pre-Paid Advance has a maturity date of 15 months from the Pre-Paid Advance Date. Yorkville is not entitled to participate in any earnings distributions until a Pre-Paid Advance is offset with shares of Common Stock.

Between July 2022 and October 2022, Yorkville agreed to advance amounts to the Company on account of the first and second pre-paid advances ("Previous Pre-Paid Advances") in accordance with the Initial PPA. The Previous Pre-Paid Advances were fully paid off through the issuance of shares of Common Stock to Yorkville as of December 31, 2022.

On November 10, 2022, Yorkville agreed to advance \$20.0 million to the Company on account of the Third Pre-Paid Advance in accordance with the Initial PPA. On December 31, 2022, the Company received an aggregate of \$32.0 million on account of the fourth Pre-Paid Advance in accordance with the Initial PPA (the "Fourth Pre-Paid Advance"). In accordance with the second supplemental agreement, the Fourth Pre-Paid Advance may, at the sole option of Yorkville, be increased by up to an additional \$8.5 million (the "YA PPA Option"). On January 13, 2023, Yorkville partially exercised their option, and increased their investment amount by \$5.3 million, which resulted in net proceeds of \$5.0 million, and was applied to the Fourth Pre-Paid Advance. Pursuant to the second supplemental agreement, the Fourth Pre-Paid Advance included issuances of warrants to Yorkville. Of the aggregate Fourth Pre-Paid Advance proceeds, \$14.8 million was allocated to convertible debt presented in the Consolidated Balance Sheets as of December 31, 2022, and an additional \$2.3 million was allocated to convertible debt as a result of Yorkville exercising the YA PPA Option. Refer to Note 15, Warrants, for further information on the warrants and the allocation of proceeds. During the year 2023, the Third Pre-Paid Advance and Fourth Pre-Paid Advance were each fully paid off through the issuance of 2.9 million shares of Common Stock in the aggregate to Yorkville.

On September 11, 2023, Yorkville agreed to advance \$12.5 million to the Company on account of the fifth Pre-Paid Advance in accordance with the Initial PPA (the "Fifth Pre-Paid Advance"). The net proceeds received by the Company, after giving effect to the commitment fee and the purchase price discount provided for in the Initial PPA, was \$11.8 million. Of the aggregate proceeds, \$6.0 million was allocated to derivative assets for an embedded conversion feature included in the Fifth Pre-Paid Advance. Any portion of the convertible debt settled using the Variable Price (as defined further in Note 9) will be extinguished as a share settled redemption while any settlement using the Fixed Price or the applicable floor price will be settled via conversion accounting. As of December 31, 2023, the Fifth Pre-Paid Advance was fully paid off through the issuance of 1.2 million shares of Common Stock to Yorkville.

The Company's stockholders approved an amendment to the Initial PPA with Yorkville to lower the minimum price which shares may be sold from \$1.50 per share to \$2.30 per share (the "Second Amended Floor Price"), which was proposed and voted on at the special meeting of Company stockholders held on October 5, 2023 (the "October Special Meeting").

On November 21, 2023, Yorkville agreed to advance \$21.3 million to the Company on account of the Sixth Pre-Paid Advance in accordance with the Initial PPA (the "Sixth Pre-Paid Advance"). The net proceeds received by the Company, after giving effect to the commitment fee and the purchase price discount provided for in the Initial PPA, was \$20.0 million. As of February 8, 2024, the Sixth Pre-Paid Advance was fully paid off through the issuance of 6.1 million shares of Common Stock to Yorkville. For the six months ended June 30, 2024, the loss on extinguishment of debt from repaying the Sixth Pre-Paid Advance was \$1.2 million and interest expense incurred as a result of effective interest under the Initial PPA was \$0.2 million.

On December 20, 2023, Yorkville agreed to advance \$16.0 million to the Company on account of the Seventh Pre-Paid Advance in accordance with the Initial PPA (the "Seventh Pre-Paid Advance"). The net proceeds received by the Company, after giving effect to the commitment fee and the purchase price discount provided for in the Initial PPA, was \$15.0 million. As of March 12, 2024, the Seventh Pre-Paid Advance was fully paid off through the issuance of 2.9 million shares of Common Stock to Yorkville, in addition to \$7.2 million of cash. For the six months ended June 30, 2024, the loss on extinguishment of debt from repaying the Seventh Pre-Paid Advance was \$0.5 million and interest expense incurred as a result of effective interest under the Initial PPA was \$0.4 million.

On January 11, 2024, Yorkville agreed to advance \$17.5 million to the Company on account of the Eighth Pre-Paid Advance in accordance with the Initial PPA (the "Eighth Pre-Paid Advance"). The net proceeds received by the Company, after giving effect to the commitment fee and the purchase price discount provided for in the Initial PPA, was \$16.5 million. As of March 12, 2024, the Eighth Pre-Paid Advance was fully paid off through the issuance of 4.1 million shares of Common Stock to Yorkville, in addition to \$8.3 million of cash. For the six months ended June 30, 2024, the loss on extinguishment of debt from repaying the Eighth Pre-Paid Advance was \$0.6 million and interest expense incurred as a result of effective interest under the Initial PPA was \$0.4 million.

On January 31, 2024, Yorkville agreed to advance \$20.0 million to the Company on account of the Ninth Pre-Paid Advance in accordance with the Initial PPA (the "Nine Pre-Paid Advance"). The net proceeds received by the Company, after giving effect to the commitment fee and the purchase price discount provided for in the Initial PPA, was \$18.8 million. The Company elected to account for the Ninth Pre-Paid Advance under the fair value option of accounting upon issuance. The proceeds were allocated to all freestanding instruments recorded at fair value. As of March 12, 2024, the Ninth Pre-Paid Advance was fully paid off through the issuance of 1.3 million shares of Common Stock to Yorkville, in addition to \$17.5 million of cash. For the six months ended June 30, 2024, the loss on extinguishment of debt from repaying the Ninth Pre-Paid Advance was nominal.

On March 12, 2024, Yorkville agreed to advance \$62.0 million to the Company on account of the Tenth Pre-Paid Advance. Approximately \$33.0 million of the proceeds received from the Tenth Pre-Paid Advance were used to repay the remaining outstanding amounts on the Seventh, Eighth, and Ninth Pre-Paid Advances (refer to above). The net proceeds received by the Company, after giving the effect to the repayment, financing charges of \$14.0 million provided for in the Initial PPA, were \$15.0 million. With respect to the Tenth Pre-Paid Advance, the Purchase Price (as such term is used in the Initial PPA) is equal to \$2.30 per share.

The Company elected to account for the Ninth Pre-Paid Advance and Tenth Pre-Paid Advance under the fair value option of accounting upon issuance. The proceeds were allocated to all freestanding instruments recorded at fair value. On March 12, 2024, the Ninth Pre-Paid Advance was fully paid through the issuance of the Tenth Pre-Paid Advance. During the six months ended June 30, 2024, 13.7 million shares of Common Stock converted at the Second Amended Floor Price have been issued under the Tenth Pre-Paid Advance, with a gain on extinguishment of debt of \$6.0 million recorded. As of June 30, 2024, a principal balance of \$31.0 million remains outstanding under the Tenth Pre-Paid Advance.

The Initial PPA provides that in respect of any Pre-Paid Advance, if the VWAP of shares of Common Stock is less than the Floor Price (as amended from time to time) for at least five trading days during a period of seven consecutive trading days or the Company has issued substantially all of the shares of Common Stock available under the PPA Exchange Cap, then the Company is required to make monthly cash payments of amounts outstanding under any Pre-Paid Advance beginning on the 10th calendar day and continuing on the same day of each successive calendar month until the entire amount of such Pre-Paid Advance balance has been paid or until the payment obligation ceases. Pursuant to the Initial PPA, the monthly payment obligation ceases if the PPA Exchange Cap no longer applies and the VWAP is greater than the Floor Price (as amended from time to time) for a period of five consecutive trading days, unless a subsequent triggering date occurs.

The Company, at its option, has the right, but not the obligation, to repay early in cash a portion or all amounts outstanding under any Pre-Paid Advance, provided that the VWAP of the Common Stock is less than the Fixed Price during a period of three consecutive trading days immediately prior to the date on which the Company delivers a notice to Yorkville of its intent and such notice is delivered at least ten trading days prior to the date on which the Company will make such payment. If elected, the early repayment amount is to include a 3.0% redemption premium ("Redemption Premium"). If any Pre-Paid Advances are outstanding and any event of default has occurred, the full amount outstanding under the Pre-Paid Advances plus the Redemption Premium, together with interest and other amounts owed in respect thereof, will become, at Yorkville's election, immediately due and payable in cash.

June 2024 PPA

On June 13, 2024 (the "June Effective Date"), the Company entered into a Prepaid Advance Agreement with Yorkville (the "June 2024 PPA"). In accordance with the terms of the June 2024 PPA, on the June Effective Date, Yorkville agreed to advance \$ 15.0 million to the Company (the "June Prepaid Advance"). The June Prepaid Advance will be offset upon the issuance of shares of Common Stock to Yorkville at an initial Purchase Price (when reference to the June 2024 PPA, as such term is used in the June 2024 PPA) equal to \$2.30 per share. On (i) August 26, 2024, the Purchase Price on any remaining amount of the June Prepaid Advance then outstanding at such time will be repriced to a price per share equal to 100% of the average of the daily VWAP for the ten Trading Days (as such term is used in the June 2024 PPA) immediately prior to August 26, 2024 and (ii) October 24, 2024, the Purchase Price on any remaining amount of the June Prepaid Advance then outstanding at such time will be repriced to a price per share equal to 100% of the average of the daily VWAPs for the ten Trading Days immediately prior to October 24, 2024, in each case, subject to certain equity conditions set forth in the June 2024 PPA. The June Prepaid Advance has a maturity of six months from the June Effective Date.

After giving effect to the commitment fee and the purchase price discount provided for in the June 2024 PPA, net proceeds of the June Prepaid Advance to the Company were approximately \$14.1 million. The issuance of Common Stock under the June 2024 PPA is subject to certain limitations, including, among others, that the aggregate number of shares of Common Stock issued pursuant to the June 2024 PPA cannot exceed 19.99% of the aggregate number of shares of Common Stock issued and outstanding as of June 13, 2024 (the "Current Yorkville Exchange Cap") unless the Company's stockholders have approved issuances in excess of the Current Yorkville Exchange Cap. Pursuant to the terms of the June 2024 PPA, interest accrues on the outstanding balance of the June Prepaid Advance at an annual rate equal to 5%, subject to an increase to 15% upon events of default described in the June 2024 PPA.

The Company elected to account for the June Prepaid Advance under the fair value option of accounting upon issuance. The proceeds were allocated to all freestanding instruments recorded at fair value. As of June 30, 2024, a principal balance of \$15.0 million remains outstanding under the June Prepaid Advance.

Yorkville Convertible Debentures

On April 24, 2023, the Company entered into a securities purchase agreement with Yorkville in connection with the issuance and sale of convertible debentures in an aggregate principal amount of \$48.0 million (the "April Convertible Debenture"). The net proceeds received by the Company from Yorkville included a 6.0% discount of the loan in accordance with the terms of the April Convertible Debenture. Amounts outstanding under the April Convertible Debenture could be offset by the issuance of shares of Common Stock to Yorkville. The April Convertible Debenture was paid off through the issuance of 4.1 million shares of Common Stock to Yorkville during the year 2023. The remaining outstanding balance was subsequently assumed by the August Convertible Debenture (defined below).

On June 30, 2023, the Company entered into a securities purchase agreement with Yorkville (the "July Convertible Debenture") in connection with the issuance and sale by the Company of convertible debentures in an aggregate principal amount of \$26.6 million (the "July Initial Loan"). The convertible debenture was initially recognized on the settlement date of July 3, 2023, and net proceeds received by the Company from Yorkville included a 6.0% discount of the July Initial Loan in accordance with the terms of the July Convertible Debenture. The July Convertible Debenture was paid off through the issuance of 4.4 million shares of Common Stock to Yorkville during the year 2023.

On August 2, 2023, the Company entered into a Securities Purchase Agreement with Yorkville (the "August Convertible Debenture") in connection with the issuance and sale by the Company of convertible debentures in an aggregate principal amount of \$27.9 million (the "August Initial Loan"). The net proceeds received by the Company from Yorkville includes a 6.0% discount of the Loan in accordance with the YA Convertible Debenture. Yorkville has the right and option (the "August Loan Option") to purchase additional convertible debentures in an aggregate principal amount of up to \$53.2 million. In conjunction with the August Initial Loan, the Company issued to Yorkville an initial warrant (the

“August Initial Warrant”) to purchase 2.2 million shares of Common Stock at an exercise price of \$12.42 per share. Yorkville did not exercise the August Loan Option, as a result of which, the August Loan Option and the related August Option Warrant are no longer applicable. During the year 2023, 4.2 million shares of Common Stock were previously issued to Yorkville. As of January 8, 2024, the August Convertible Debentures was fully paid off through the issuance of an additional 1.2 million shares of Common Stock to Yorkville, resulting in a loss on extinguishment of debt of \$0.3 million. During the six months ended June 30, 2024, the Company incurred nominal interest expense.

On September 26, 2023, the Company entered into a Securities Purchase Agreement with Yorkville (the “September Convertible Debenture”, together with the August Convertible Debenture, collectively, the “YA Convertible Debentures”), receiving an aggregate of \$ 15.0 million (the “September Initial Debenture”). The net proceeds received by the Company from Yorkville includes a 16.5% discount of the Loan in accordance with the September Convertible Debenture. Yorkville has the right and option (the “September Loan Option”) to purchase additional convertible debentures in an aggregate principal amount of up to \$30.0 million. In conjunction with the September Convertible Debenture, the Company issued to Yorkville an initial warrant (the “September Initial Warrant”) to purchase 1.2 million shares of Common Stock at an exercise price of \$12.42. If Yorkville exercises the September Loan Option, the Company will issue to Yorkville an additional warrant (the “September Option Warrant”) for a number of shares of Common Stock determined by dividing the principal amount so exercised (up to \$30.0 million) by \$12.42 per share. Yorkville did not exercise the September Loan Option, as a result of which, the September Loan Option and the related September Option Warrant are no longer applicable. As of January 19, 2024, the September Convertible Debentures was fully paid off through the issuance of 3.5 million shares of Common Stock to Yorkville, resulting in a loss on extinguishment of debt of \$0.8 million. During the six months ended June 30, 2024, the Company incurred \$0.1 million of interest expense.

Amounts outstanding in the YA Convertible Debentures could be offset by the issuance of shares of Common Stock to Yorkville at a price per share calculated at the lower of \$11.50 (the “Note Fixed Price”) or 95.0% of the lowest daily VWAP on Nasdaq as of the five immediately preceding the conversion date (“Variable Price”), which in no event would be less than \$2.30 per share. The issuance of the shares of Common Stock under the YA Convertible Debentures are subject to certain limitations, including that the aggregate number of shares of Common Stock issued pursuant to the YA Convertible Debenture cannot exceed 4.1 million (“Note Exchange Cap”). With respect to the August Convertible Debenture, the Company’s stockholders approved the issuance of shares of the Company’s Common Stock in excess of the Note Exchange Cap, which was proposed and voted on at the October Special Meeting.

Interest accrues on the outstanding balance of the August Convertible Debenture and the September Convertible Debenture at an annual rate equal to 3.0%, subject to an increase to 15.0% upon events of default described in their respective agreements.

The Company elected to account for the August Convertible Debenture and the September Convertible Debenture under the fair value option of accounting upon issuance. The proceeds were allocated to all freestanding instruments recorded at fair value.

The primary reason for electing the fair value option is for simplification of accounting for the YA Convertible Debentures at fair value in its entirety versus bifurcation of the embedded derivatives. The fair value was determined using a Monte Carlo valuation model.

The YA Convertible Debentures provides that if the VWAP of shares of Common Stock is less than the then-applicable floor price for at least five trading days during a period of seven consecutive trading days (“Trigger Date”) or the Company has issued substantially all of the shares of Common Stock available under the Note Exchange Cap, or the Company is unable to issue Common Stock to Yorkville which may be freely resold by Yorkville without any limitations or restrictions, including, without limitation, due to a stop order or suspension of the effectiveness of the Registration Statement, then the Company is required to make monthly cash payments of amounts outstanding under the YA Convertible Debentures beginning on the 10th Trading Day after the Trigger Date and continuing on the same day of each successive calendar month until the entire amount of the YA Convertible Debentures balance has been paid or until the payment obligation ceases. Pursuant to the YA Convertible Debenture, the monthly payment obligation ceases if the Exchange Cap no longer applies and the VWAP is greater than the Floor Price for a period of five consecutive trading days, unless a subsequent triggering date occurs.

The Company, at its option, has the right, but not the obligation, to repay early in cash a portion or all amounts outstanding under the YA Convertible Debentures, provided that the VWAP of the Common Stock is less than the Fixed Price during a period of three consecutive trading days immediately prior to the date on which the Company delivers a notice to Yorkville of its intent and such notice is delivered at least ten trading days prior to the date on which the Company will make such payment. If elected, the early repayment amount is to include a 5.0% redemption premium (“Redemption Premium”). If any event of default has occurred, the full amount outstanding under the Loan plus the

Redemption Premium, together with interest and other amounts owed in respect thereof, will become, at Yorkville's election, immediately due and payable in cash.

10. Operating leases

The Company has entered into various operating lease agreements for office and manufacturing spaces.

Justin Texas Lease

On January 31, 2023, the Company entered into a real estate lease for an approximately 8,000 square foot facility in Justin, Texas with an entity owned by Tony Aquila, Executive Chair and Chief Executive Officer ("CEO") of the Company. The initial lease term is three years, five months, commencing on November 1, 2022, and terminating on March 31, 2026, with one option to extend the term of the lease for an additional five years. Prior to execution, the contract was a month-to-month arrangement. The total minimum lease payments over the initial lease term is \$0.3 million.

Oklahoma Manufacturing Facility Lease

On November 9, 2022, the Company entered into a PSA with Terex for the purchase of approximately 630,000 square foot vehicle manufacturing facility on approximately 121 acres in Oklahoma City, Oklahoma. On April 7, 2023, pursuant to the assignment of real estate purchase agreement, the Company assigned the right to purchase the Property to I-40 Partners, a special purpose vehicle managed by entities affiliated with the CEO. The Company then entered into a lease agreement with I-40 Partners commencing April 7, 2023. The lease term is approximately ten years with a five year renewal option and the minimum aggregate lease payment over the initial term is expected to be approximately \$44.3 million, which includes equity portion of rent composed of \$1.5 million fully vested non-refundable shares. Refer to Note 15 on warrants issued in conjunction with this lease.

The lease was evaluated as a sale and leaseback of real estate because the Company was deemed to control the asset once the rights under the PSA were assigned to I-40 Partners. The Company accounted for the transaction as a financing lease since the lease agreement contains a repurchase option which precludes sale and leaseback accounting. The purchase option is exercisable between the third and fourth anniversary of the lease commencement in the greater of the fair value or a 150.0% of the amounts incurred by Landlord for the purchase price for the Property, the construction allowance, and expenses incurred with the purchase of the Property.

The lease did not qualify for sale-leaseback accounting and was accounted for as a financing obligation. Under a failed sale-leaseback transaction, the real estate assets are generally recorded on the Consolidated Balance Sheets and depreciated over their useful lives while a failed sale and leaseback financing obligation is recognized for the proceeds. As a result, the Company recorded an asset and a corresponding finance liability in the amount of the purchase price of \$34.2 million. The financing liability at inception was initially allocated to the warrants issued to I-40 valued at \$0.9 million described in Note 15 and the derivative liability valued at \$0.6 million described in Note 4.

As described above, for the failed sale and leaseback transaction, the Company reflects the real estate asset on the Balance Sheets in Property and equipment, net as if the Company was the legal owner, and continue to recognize depreciation expense over the estimated useful life. The Company does not recognize rent expense related to the lease but has recorded a liability for the failed sale and leaseback obligation and monthly interest expense. The Company could not readily determine the implicit rate in the lease, and therefore imputed an interest rate of approximately 10.0%. There have been no gains or losses recorded in connection with the transactions described above.

Future minimum payments under the failed sale leaseback are as follows (in thousands):

2024 (excluding the six months ended June 30, 2024)	\$	1,771
2025		3,635
2026		4,097
2027		4,302
2028		4,384
Thereafter		21,647
Total payments	\$	<u>39,836</u>

Lease Portfolio

The Company uses an estimated incremental borrowing rate based on information available at lease commencement to determine the present value of lease payments when the rate implicit in the lease is not readily determinable. The weighted average discount rate used was 6.7%. As of June 30, 2024, the remaining operating lease ROU asset and operating lease liability were \$34.5 million and \$37.3 million, respectively. As of December 31, 2023, the operating lease ROU asset and operating lease liability were \$36.2 million and \$38.8 million, respectively. As of June 30, 2024 and December 31, 2023, \$3.3 million and \$3.1 million, respectively, of the lease liability was determined to be short term and was included in accrued expenses and other current liabilities within the Condensed Consolidated Balance Sheets.

Related party lease expense related to the Company's leases in Justin, Texas was \$0.2 million and \$0.3 million for the three and six months ended June 30, 2024, respectively. Related party lease expense related to the Company's leases in Justin, Texas was \$0.2 million and \$0.3 million for the three and six months ended June 30, 2023, respectively.

Certain lease agreements also provide the Company with the option to renew for additional periods. These renewal options are not considered in the remaining lease term unless its reasonably certain that the Company will exercise such options. The weighted average remaining lease term as of June 30, 2024, and December 31, 2023 was 8.2 years and 8.7 years, respectively.

Throughout the term of the lease agreements, the Company is responsible for paying certain operating costs, in addition to rent, such as common area maintenance, taxes, utilities, and insurance. These additional charges are considered variable lease costs and are recognized in the period in which costs are incurred.

Maturities of the Company's operating lease liabilities at June 30, 2024 were as follows (in thousands):

	Operating Lease
2024 (excluding six months ended June 30, 2024)	\$ 2,803
2025	5,728
2026	5,504
2027	5,532
2028	5,813
Thereafter	23,707
Total lease payments	49,087
Less: imputed interest ⁽¹⁾	11,779
Present value of operating lease liabilities	37,308
Current portion of operating lease liabilities ⁽²⁾	3,273
Operating lease liabilities, net of current portion	<u>\$ 34,035</u>

(1) Calculated using the incremental borrowing rate

(2) Included within Accrued expenses and other current liabilities line item on the Condensed Consolidated Balance Sheets.

11. Commitments and Contingencies

Commitments

In connection with the commencement of the Company's Bentonville, Arkansas and Michigan leases in 2022, the Company issued standby letters of credit of \$9.5 million and \$1.1 million, respectively, which are included in restricted cash within the accompanying Consolidated Balance Sheets as of June 30, 2024. The letters of credit have 5 year and 13 year terms, respectively, and will not be drawn upon unless the Company fails to make its payments.

Refer to Note 10 for information regarding the lease arrangements.

Legal Proceedings

From time to time, the Company may become subject to legal proceedings, claims and litigation arising in the ordinary course of business. Some of these claims, lawsuits and other proceedings may involve highly complex issues that are subject to substantial uncertainties, and could result in damages, fines, penalties, non-monetary sanctions or relief.

On April 2, 2021, and April 9, 2021, the Company was named as a defendant in putative class action complaints filed in California on behalf of individuals who purchased or acquired shares of the Company's stock during a specified period. Through the complaint, plaintiffs are seeking, among other things, compensatory damages. On February 28, 2023, the court granted the Company's motion to dismiss with leave to amend. On March 10, 2023, the lead plaintiff filed a second amended consolidated complaint. On April 10, 2023, the court entered a stipulated order granting the lead plaintiff leave to file a third amended consolidated complaint and relieving defendants of any obligation to respond to the second amended consolidated complaint. The lead plaintiff filed a third amended consolidated complaint on September 8, 2023, and defendants subsequently filed a motion to dismiss the third amended consolidated complaint. On January 4, 2024, the lead plaintiff filed his opposition to the defendants' motion to dismiss. On February 1, 2024, the defendants filed their reply in support of the motion to dismiss. On May 10, 2024, the court entered an order placing the motion to dismiss under submission and taking the hearing on the motion off calendar. The final determinations of liability arising from these litigation matters will only be made following comprehensive investigations and litigation processes.

In March 2022, the Company received demand letters on behalf of shareholders of the Company identifying purchases and sales of the Company's securities within a period of less than six months by DD Global Holdings Ltd. ("DDG") that resulted in profits in violation of Section 16(b) of the Exchange Act. On May 9, 2022, the Company brought an action against DDG in the Southern District of New York seeking the disgorgement of the Section 16(b) profits obtained by DDG from such purchases and sales. In the action, the Company seeks to recover an estimated \$61.1 million of Section 16(b) profits. In September 2022, the Company filed an amended complaint and DDG filed a motion to dismiss the amended complaint. On September 21, 2023, the court issued a decision denying DDG's motion to dismiss. DDG's answer to the complaint was filed on October 19, 2023. An initial pretrial conference was held on January 12, 2024, and the court entered the case management order that day. The fact discovery deadline for the case is January 24, 2025.

On January 16, 2024, the Company was named as a defendant in an action for damages and injunctive relief filed in the Southern District of New York by an affiliated party to DD Global Holdings Ltd., Champ Key Limited ("Champ Key"). The complaint alleges that the Company breached a registration rights agreement and violated Delaware law (6 Del. C. Section 8-401) when the Company refused in November 2022 to remove the restrictive legends on 17.2 million shares of Common Stock owned by Champ Key, thereby preventing Champ Key from selling the shares of Common Stock. The complaint alleges claims for breach of contract, violation of Delaware law, and seeks injunctive relief, compensatory damages in excess of \$23.0 million and punitive damages, interests, costs of suit and attorneys' fees. On March 1, 2024, the Company filed an answer and affirmative defenses to the complaint. An initial pretrial conference was held on May 14, 2024 and the court entered a case management schedule that day. Fact discovery is ongoing. The final determinations of liability arising from this litigation matter will only be made following comprehensive investigations and litigation processes.

On July 8, 2024, the Company, Canoo Sales, LLC and Canoo Technologies Inc. were each named as defendants, as well as additional employee staffing company defendants, in a putative class action complaint filed in Los Angeles Superior Court on behalf of individuals who are alleged to be employees of the defendants. Plaintiffs' counsel alleges violations under certain California state employment related claims on behalf of the putative class, including, among other things, unpaid compensation, failure to provide employees meal and rest periods, unpaid minimum and overtime wages and unreimbursed business expenses. The Company has retained counsel and has entered into a joint defense agreement with employee staffing company defendants. The defendants are currently reviewing the merits of the complaint. The final

determinations of liability arising from this litigation matter will only be made following comprehensive investigations and litigation processes.

Indemnifications

In the ordinary course of business, the Company may provide indemnifications of varying scope and terms to vendors, lessors, investors, directors, officers, employees and other parties with respect to certain matters, including, but not limited to, losses arising out of the Company's breach of such agreements, services to be provided by the Company, or from intellectual property infringement claims made by third-parties. These indemnifications may survive termination of the underlying agreement and the maximum potential amount of future payments the Company could be required to make under these indemnification provisions may not be subject to maximum loss clauses. The Company provided indemnifications to certain of its officers and employees with respect to claims filed by a former employee.

12. Related Party Transactions

On November 25, 2020, Canoo Holdings Ltd., prior to the Company's merger with HCAC ("Legacy Canoo") entered into an agreement, which remains in effect, with the CEO of the Company to reimburse Mr. Aquila for certain air travel expenses based on certain agreed upon criteria ("aircraft reimbursement"). The total aircraft reimbursement to Mr. Aquila for the use of an aircraft owned by Aquila Family Ventures, LLC ("AFV"), an entity controlled by Mr. Aquila, for the purposes related to the business of the Company was \$0.3 million and \$0.5 million for the three and six months ended June 30, 2024, respectively. The reimbursement was approximately \$0.9 million and \$1.4 million for the three and six months ended June 30, 2023, respectively. In addition, certain AFV staff provided the Company with shared services support in its Justin, Texas corporate office facility. For the three and six months ended June 30, 2024, the Company paid AFV approximately \$0.2 million and \$0.4 million, respectively, for these services. For the three and six months ended June 30, 2023, the Company paid AFV approximately \$0.5 million and \$1.0 million, respectively, for these services.

On June 22, 2023, the Company entered into a Common Stock and Common Warrant Subscription Agreement with certain special purpose vehicles managed by entities affiliated with Mr. Aquila ("June 2023 PIPE"). The Subscription Agreement provides for the sale and issuance by the Company of 0.7 million shares of the Company's Common Stock, together with warrants to purchase up to 0.7 million shares of Common Stock at a combined purchase price of \$12.42 per share and accompanying warrants. The total net proceeds from the transaction was \$8.8 million. The warrant issued is further discussed in Note 15.

On August 4, 2023, the Company entered into a Common Stock and Common Warrant Subscription Agreement with certain special purpose vehicles managed by entities affiliated with Mr. Aquila ("August 2023 PIPE") and together with the June 2023 PIPE, collectively, the "PIPEs"). The Subscription Agreement provides for the sale and issuance by the Company of 0.2 million shares of the Company's Common Stock, together with warrants to purchase up to 0.2 million shares of Common Stock at a combined purchase price of \$12.42 per share and accompanying warrants. The total net proceeds from the transaction was \$3.0 million. The warrant issued is further discussed in Note 15.

On April 9, 2024, the Company entered into the Series C Preferred Stock Purchase Agreement (defined in Note 13) with certain special purpose vehicles managed by entities affiliated with Mr. Aquila (collectively, the "the Series C Preferred Stock Purchasers"). Pursuant to the terms of the Series C Preferred Stock Purchase Agreement (including the Additional Investment Right (as defined in Note 13), the Company sold, and the Series C Preferred Stock Purchasers purchased, 16,500 shares of the Company's Series C Preferred Stock in the aggregate, together with aggregate warrants to purchase up to 7.4 million shares of Common Stock at a combined purchase price of \$1,000.00 per share. The total proceeds from the transaction was \$16.5 million. The Company paid \$0.2 million of legal fees on behalf of the purchasers. The arrangement is further discussed in Note 13 and warrants issued are further discussed in Note 15.

13. Equity

At-The-Market Offering Program

On August 8, 2022, the Company entered into an Equity Distribution Agreement (as supplemented by side letters entered into on August 8, 2022 and on October 5, 2022, the "ATM Sales Agreement") with Evercore Group L.L.C. ("Evercore") and H.C. Wainwright & Co., LLC (collectively, the "agents"), to sell shares of Common Stock having an aggregate sales price of up to \$200.0 million, from time to time, through an "at-the-market offering" program under which the agents act as sales agents (the "ATM Offering"). The sales are made by any method permitted by law deemed to be an "at-the-market offering" as defined in Rule 415 promulgated under the Securities Act of 1933, as amended. The Company

is not obligated to sell any shares of Common Stock under the ATM Sales Agreement and may at any time suspend solicitation and offers thereunder.

On October 5, 2022, the Company entered into a Side Letter to the ATM Sales Agreement, pursuant to which, notwithstanding the existence of outstanding balances under the PPA (refer to Note 9) as of October 5, 2022, but only for so long as any portion of such balance is outstanding, the agents agreed to allow the Company to submit orders to sell Common Stock of the Company under the ATM Sales Agreement beginning on October 5, 2022. In addition, pursuant to the Side Letter to the ATM Sales Agreement, during the period from October 5, 2022 until the beginning of the third business day after the Company files its Annual Report on Form 10-K for the fiscal year ended December 31, 2022: (i) only H.C. Wainwright may be designated as a Designated Manager under the ATM Sales Agreement and receive the entire compensation payable thereunder (equal to 3.0% of the gross proceeds of the shares of Common Stock sold), and (ii) for so long as H.C. Wainwright acts as the sole Designated Manager, H.C. Wainwright agreed to waive the additional fee of 1.5% of the gross proceeds from any sales under the ATM Sales Agreement. On February 28, 2023, Evercore delivered to us a notice to terminate the ATM Sales Agreement with respect to itself, which termination became effective on February 28, 2023.

Other Issuances of Equity

On February 5, 2023, the Company entered into a securities purchase agreement ("RDO SPA") with certain investors. The RDO SPA provides for the sale and issuance by the Company of 2.2 million shares of the Company's Common Stock, together with warrants to purchase up to 2.2 million shares of Common Stock (the "RDO SPA Warrants") at a combined purchase price of \$24.15 per share and accompanying warrants. The total net proceeds from the transaction was \$49.4 million.

On February 5, 2023, the Company also issued warrants to purchase 0.1 million shares of our Common Stock (the "Placement Agent Warrants") to our placement agent as part of the compensation payable for acting as our exclusive placement agent in connection with the RDO SPA. The Placement Agent Warrants had the same terms as the warrants issued under the RDO SPA. These warrants are equity classified and were measured at fair value on the issuance date for a total of \$1.6 million.

The Company entered into other equity agreements including the Yorkville PPAs and YA Convertible Debentures discussed in Note 9, the PIPEs discussed in Note 12, and warrants issued to various parties discussed in Note 15.

Authorized Shares Amendment

On October 5, 2023, at the October Special Meeting, the Company's stockholders approved an amendment to Paragraph A of Article IV of the Company's Second Amended and Restated Certificate of Incorporation to increase the Company's number of shares of authorized Common Stock from 1.0 billion shares to 2.0 billion shares and the corresponding increase in the total number of authorized share of capital stock the Company may issue from 1.0 billion to 2.0 billion shares.

Series B Preferred Stock Purchase Agreement

On September 29, 2023, the Company entered into a securities purchase agreement (the "Series B Preferred Stock Purchase Agreement") with an institutional investor (the "Series B Preferred Stock Purchaser") in connection with the issuance, sale and delivery by the Company of an aggregate of 45,000 shares (the "Series B Preferred Shares") of the Company's 7.5% Series B Cumulative Perpetual Redeemable Preferred Stock, par value \$0.0001 per share (the "Series B Preferred Stock") and a stated value of \$1,000.00 per share, which is convertible into shares of the Company's Common Stock, and pursuant to which the Company issued warrants to purchase approximately 1.0 million shares of Common Stock (the "Series B Preferred Warrants"), for a total purchase price of \$45.0 million. On October 12, 2023, the Company closed the sale of the Series B Preferred Shares and the Series B Preferred Warrants to the Series B Preferred Stock Purchaser and filed the certificate of designation for the Series B Preferred Stock (the "Certificate of Designation"). The transaction is initially recognized on the settlement date of October 12, 2023. Refer to Note 15, Warrants, for further information on the Series B Preferred Warrants.

The Series B Preferred Stock is convertible into shares of Common Stock at an initial conversion price of approximately \$2.88 per common share ("Series B Conversion Price"), which is equal to 120.0% of the average Common Stock price of the Company for the ten consecutive trading days immediately preceding the closing of the transaction. The Series B Conversion Price is subject to customary anti-dilution and price protective adjustments. The holders have the ability to exercise the conversion rights at any time, or upon a Change of Control event (as defined in the Series B

Certificate of Designation). The Series B Preferred Stock does not provide the holder with any voting rights. As of June 30, 2024, no conversion of the Series B Preferred Stock has occurred.

Upon the occurrence of certain contingent events, the Company may, at its option, redeem the Series B Preferred Stock for cash at a redemption price equal to 103.0% of the Liquidation Preference, plus any accumulated and unpaid dividends. Additionally, on or after October 12, 2028 ("Series B First Reset Date"), the Company may, at its option, redeem the Series B Preferred Stock at any time for cash at a redemption price equal to 103.0% of the Liquidation Preference plus any accumulated and unpaid dividends. Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, the Series B Preferred Stock Purchaser will be entitled to payment out of the assets of the Company, prior and in preference to holders of Common Stock of the Company, in an amount per share equal to \$1,000.00 (the "Liquidation Preference") plus any accumulated and unpaid dividends thereon. As of June 30, 2024, the Liquidation Preference of the Series B Preferred Stock was \$47.2 million.

Dividends on the Series B Preferred Stock can be paid in either cash or in kind in the form of additional shares of Series B Preferred Stock, at the option of the Series B Preferred Stock Purchasers, subject to certain exceptions. The Company will pay dividends whether in cash or in kind at a rate of 7.5% per annum ("Series B Dividend Rate"), subject to certain adjustments and exceptions. On and after the Series B First Reset Date, the Series B Dividend Rate on the Series B Preferred Stock will increase by 1.5% per Payment Period. As of June 30, 2024, the accumulated but not declared or paid dividends on the Series B Preferred Stock were \$2.2 million.

Series C Preferred Stock

On April 9, 2024, the Company entered into a securities purchase agreement (the "Series C Preferred Stock Purchase Agreement") with the Series C Preferred Stock Purchasers in connection with the issuance, sale and delivery by the Company of 10,000 shares (the "Series C Preferred Shares") of the Company's 7.5% Series C Cumulative Perpetual Redeemable Preferred Stock, par value \$0.0001 per share (the "Series C Preferred Stock"), and a stated value of \$1,000.00 per share, which is convertible into shares of the Company's Common Stock, and pursuant to which the Company issued warrants to purchase approximately 4.5 million shares of Common Stock (the "Series C Preferred Warrants"), for a total purchase price of \$10.0 million.

Pursuant to the Series C Preferred Stock Purchase Agreement, on or prior to the date that is 20 business days after April 9, 2024, the Series C Preferred Stock Purchasers or affiliated entities had the right to purchase up to an additional \$15.0 million of Series C Preferred Shares and Series C Preferred Warrants on substantially identical terms (the "Additional Investment Right"). During the 20 business day period, the Series C Preferred Stock Purchasers and affiliated entities through separate securities purchase agreements agreed to purchase an additional 6,500 shares of Series C Preferred Stock and Series C Preferred Warrants to purchase up to 2.9 million shares of Common Stock for a total purchase price of \$6.5 million. On May 3, 2024, the Company closed the sale of the Series C Preferred Shares and Series C Preferred Warrants to the Series C Preferred Stock Purchasers and filed the certificate of designation for the Series C Preferred Stock (the "Series C Certificate of Designation"). Refer to Note 15 Warrants for further information on the Series C Preferred Warrants.

The Series C Preferred Stock is convertible into shares of Common Stock by the Series C Preferred Stock Purchasers at their option at a conversion price equal to the lesser of (i) 120.0% of the average Common Stock price of the Company for the ten consecutive trading days prior to conversion date, subject to a floor price of \$2.00, and (ii) \$2.24 (the "Series C Conversion Price"). The Series C Conversion Price is subject to customary anti-dilution and price protective adjustments. The holders have the ability to exercise the conversion rights at any time or upon a Change of Control (as defined in the Series C Certificate of Designation). Holders of the Series C Preferred Stock are entitled to vote as a single class with the holders of Common Stock. Each share of Series C Preferred Stock is entitled to a number of votes equal to the number of shares of Common Stock it is convertible into on the record date, subject to certain reductions and adjustments. As of June 30, 2024, no conversion of the Series C Preferred Stock has occurred.

Upon the occurrence of certain contingent events, the Company may, at its option, redeem the Series C Preferred Stock for cash at a redemption price equal to 103.0% of the Liquidation Preference, plus any accumulated and unpaid dividends. Additionally, on or after May 3, 2029 ("Series C First Reset Date"), the Company may, at its option, redeem the Series C Preferred Stock at any time for cash at a redemption price equal to 103.0% of the Liquidation Preference plus any accumulated and unpaid dividends. Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, the Series C Preferred Stock Purchaser will be entitled to payment out of the assets of the Company, prior and in preference to holders of Common Stock of the Company, in an amount per share equal to \$1,000.00 (the "Liquidation Preference") plus any accumulated and unpaid dividends thereon. As of June 30, 2024, the Liquidation Preference of the Series C Preferred Stock was \$16.7 million. Refer to Note 4 Fair Value for further information on the conversion feature which meets the definition of a derivative liability.

As the value of the liabilities required to be subsequently measured at fair value exceeded the proceeds received, the Company recognized the excess of the fair value over the proceeds received as a loss upon issuance of preferred stock of \$25.6 million within Loss on fair value change in convertible debt and other.

Dividends on the Series C Preferred Stock can be paid in either cash or in kind in the form of additional shares of Series C Preferred Stock, at the option of the Series C Preferred Stock Purchasers, subject to certain exceptions. The Company will pay dividends whether in cash or in kind at a rate of 7.5% per annum ("Series C Dividend Rate"), subject to certain adjustments and exceptions. On and after the Series C First Reset Date, the Series C Dividend Rate on the Series C Preferred Stock will increase by 1.5% per Payment Period. As of June 30, 2024, the accumulated but not declared or paid dividends on the Series C Preferred Stock were \$0.2 million.

Based on an evaluation of the terms, the Company determined that the Series B Preferred Stock and Series C Preferred Stock are not eligible for permanent equity classification. Under GAAP, the Company is required to assume cash-settlement of the Series B Preferred Stock and Series C Preferred Stock in a conversion scenario that requires delivery of shares in excess of their respective share issuance exchange cap pursuant to Nasdaq Rule 5635. Accordingly, the Company presents the Series B Preferred Stock and Series C Preferred Stock outside of permanent equity (i.e., the Series B Preferred Stock and Series C Preferred Stock are presented in mezzanine equity).

The Company determined that cash settlement or redemption of the Series B Preferred Stock and Series C Preferred Stock is unlikely; therefore, the Series B Preferred Stock and Series C Preferred Stock are not currently redeemable or probable of becoming redeemable. As a result of the increasing rate dividend described above, the Company uses the interest method to accrete the carrying value of the Series B Preferred Stock and Series C Preferred Stock from the initial recognized value to its expected settlement value on the expected redemption date.

14. Stock-based Compensation

2024 CEO Equity Awards

On February 29, 2024, the Company held a special meeting of its stockholders to approve the issuance of a performance-vesting restricted stock unit award (the "CEO PSUs") representing the right to receive 1.7 million shares of the Company's Common Stock, 50.0% of which may vest based on the achievement of certain cumulative Company revenue milestones for the twelve months ended December 31, 2024 and for the twenty-four months ended December 31, 2025, and 50% of which may vest based on certain thresholds relating to the volume weighted average trading price of the Company's Common Stock any time during the twelve months ended December 31, 2024 and the twenty-four months ended December 31, 2025, subject to continuous services requirements through the applicable service vesting date. Additionally, the approval also included the issuance of a restricted stock unit award (the "CEO RSUs" and, together with the "CEO PSUs", the "CEO Equity Awards") representing the right to receive 3.4 million shares of the Company's Common Stock, the initial 50.0% of which vested immediately and the latter 50.0% of which will vest in equal increments on January 1, 2025 and January 1, 2026.

In connection with the issuance of the CEO Equity Awards, previously granted restricted stock units were automatically cancelled and forfeited. The cancellation of prior awards and issuance of the CEO Equity Awards was determined to be a modification. At the modification date, the vesting conditions for all awards besides a tranche of CEO PSUs that vest upon achievement of revenue milestones were expected to be satisfied. The incremental stock-based compensation expense recognized as a result of the modification of the awards during the three and six ended June 30, 2024 was \$1.1 million and \$4.9 million, respectively.

Restricted Stock Units

The Company granted stock to compensate existing employees and attract top talent, primarily through various forms of equity, including restricted stock unit awards ("RSU"). Each RSU represents a contingent right to receive one share of Common Stock. During the three and six months ended June 30, 2024, 0.1 million and 3.8 million RSUs, inclusive of the CEO RSUs, were granted subject to time-based vesting, respectively. During the three and six months ended June 30, 2023, 0.3 million and 0.4 million RSUs, inclusive of the CEO RSUs, were granted subject to time-based vesting, respectively.

The total fair value of restricted stock units granted during the three and six months ended June 30, 2024, were \$0.3 million and \$8.7 million, respectively. The total fair value of restricted stock units granted during the three and six months ended June 30, 2023 were \$5.5 million and \$6.7 million, respectively.

Performance-Based Restricted Stock Units

Performance stock unit awards (“PSU”) represent the right to receive a share of Common Stock if service, performance, and market conditions, or a combination thereof, are met over a defined period. PSUs that contain a market condition, such as stock price milestones, are subject to a Monte Carlo simulation model to determine the grant date fair value by simulating a range of possible future stock prices for the Company over the performance period. The grant date fair value of the market condition PSUs is recognized as compensation expense over the greater of the Monte Carlo simulation model’s derived service period and the arrangement’s explicit service period, assuming both conditions must be met.

PSUs subject to performance conditions, such as operational milestones, are measured on the grant date, the total fair value of which is calculated as the product of the number of PSUs and the grant date stock price. Compensation expense for PSUs with a performance condition is recorded each period based upon a probability assessment of the expected outcome of the performance metric with a final adjustment upon measurement at the end of the performance period. The PSUs vest based on the Company’s achievement of certain specified operational milestones by various dates through December 2025. The Company granted zero PSUs to employees during the three and six months ended June 30, 2024 and 2023, except as noted below as it relates to the CEO. As of June 30, 2024, the Company’s analysis determined that these operational milestone events are probable of achievement and as such, compensation expense, excluding the impact of forfeitures, of \$0.1 million and \$0.3 million has been recognized for the previously awarded PSUs to employees during the three and six months ended June 30, 2024, respectively. The compensation expense recognized during the three and six months ended June 30, 2023 was \$1.1 million and \$2.3 million, respectively.

There were zero and 1.7 million PSUs granted to the CEO during the three and six months ended June 30, 2024, respectively with a grant date fair value of \$0.0 million and \$3.2 million, respectively. There were zero PSUs granted to the CEO during the three and six months ended June 30, 2023. The compensation expense recognized for PSUs to the CEO was \$0.5 million and \$2.1 million for the three and six months ended June 30, 2024, respectively. The compensation expense recognized for PSUs to the CEO was \$0.6 million and \$7.1 million, for the three and six months ended June 30, 2023, respectively.

The following table summarizes the Company’s stock-based compensation expense by line item for the three and six months ended June 30, 2024 and 2023 (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Research and development	\$ (680)	\$ 209	\$ (50)	\$ 4,344
Selling, general and administrative	1,808	6,498	12,132	12,199
Total	\$ 1,128	\$ 6,707	\$ 12,082	\$ 16,543

The credit amount of stock-based compensation recorded within research and development for the three and six months ended June 30, 2024 was the result of forfeitures due to terminations. The Company’s total unrecognized compensation cost as of June 30, 2024, was \$11.3 million.

2020 Employee Stock Purchase Plan

The 2020 Employee Stock Purchase Plan (the “2020 ESPP”) was adopted by the board of directors on September 18, 2020, approved by the stockholders on December 18, 2020, and became effective on December 21, 2020, with the merger between HCAC and Legacy Canoo. On December 21, 2020, the board of directors delegated its authority to administer the 2020 ESPP to the Compensation Committee. The Compensation Committee determined that it is in the best interests of the Company and its stockholders to implement successive three-month purchase periods. The 2020 ESPP provides participating employees with the opportunity to purchase up to a maximum number of shares of Common Stock of 0.2 million, plus the number of shares of Common Stock that are automatically added on January 1st of each year for a

period of ten years, in an amount equal to the lesser of (i) 1.0% of the total number of shares of Common Stock outstanding on December 31st of the preceding calendar year, and (ii) 0.4 million shares of Common Stock.

During the three and six months ended June 30, 2024, total employee withholding contributions for the 2020 ESPP was a nominal amount and \$0.1 million, respectively. During the three and six months ended June 30, 2023, total employee withholding contributions for the 2020 ESPP was \$0.2 million and \$0.6 million, respectively. A nominal amount and \$0.1 million of stock-based compensation expense was recognized for the 2020 ESPP during the three and six months ended June 30, 2024, respectively, and \$0.1 million and \$0.3 million of stock-based compensation expense was recognized for the 2020 ESPP during the three and six months ended June 30, 2023, respectively.

15. Warrants

Public Warrants

As of June 30, 2024, the Company had approximately 1.0 million public warrants outstanding. Each public warrant entitles the registered holder to purchase 23 shares of Common Stock at a price of \$264.50 per share, subject to adjustment. The public warrants will expire on December 21, 2025, or earlier upon redemption or liquidation.

There were no public warrants exercised for the three and six months ended June 30, 2024 and 2023.

VDL Nedcar Warrants

In February 2022, the Company and a company related to VDL Nedcar entered into an investment agreement, under which the VDL Nedcar-related company agreed to purchase shares of Common Stock for an aggregate value of \$8.4 million, at the market price of Common Stock as of December 14, 2021. As a result, the Company issued 42.3 thousand shares of Common Stock upon execution of the agreement. The Company also issued a warrant to purchase an aggregate 42,271 shares of Common Stock to VDL Nedcar at exercise prices ranging from \$414.00 to \$920.00 per share, which are classified as equity. The exercise period is from November 1, 2022, to November 1, 2025 ("Exercise Period"). The warrant can be exercised in whole or in part during the Exercise Period but can only be exercised in three equal tranches and after the stock price per Common Stock has reached at least the relevant exercise price. None of the warrants have been exercised as of June 30, 2024.

Walmart Warrants

On July 11, 2022, Canoo Sales, LLC, a wholly-owned subsidiary of the Company, entered into an Electric Vehicle Fleet Purchase Agreement (the "Walmart EV Fleet Purchase Agreement") with Walmart. Pursuant to the Walmart EV Fleet Purchase Agreement, subject to certain acceptance and performance criteria, Walmart agreed to purchase at least 4,500 EVs, with an option to purchase up to an additional 5,500 EVs, for an agreed upon capped price per unit determined based on the EV model. The Walmart EV Fleet Purchase Agreement (excluding any work order or purchase order as a part thereof) has a five-year term, unless earlier terminated.

In connection with the Walmart EV Fleet Purchase Agreement, the Company entered into a Warrant Issuance Agreement with Walmart pursuant to which the Company issued to Walmart a Warrant to purchase an aggregate of 2.7 million shares of Common Stock, subject to certain anti-dilutive adjustments, at an exercise price of \$9.45 per share, which represented approximately 20.0% ownership in the Company on a fully diluted basis as of the issuance date. As a result of the anti-dilution adjustments, as of June 30, 2024, the Warrant is exercisable for an aggregate of 2.9 million shares of Common Stock at a per share exercise price of \$44.87. The Warrant has a term of 10 years and is vested with respect to 0.7 million shares of Common Stock. The Warrant will vest quarterly in amounts proportionate with the net revenue realized by the Company from transactions with Walmart or its affiliates under the Walmart EV Fleet Purchase Agreement or enabled by any other agreement between the Company and Walmart, and any net revenue attributable to any products or services offered by Walmart or its affiliates related to the Company, until such net revenue equals \$300.0 million, at which time the Warrant will have vested fully.

Since the counterparty is also a customer, the issuance of the Warrant was determined to be consideration payable to a customer within the scope of ASC 606, *Revenue from Contracts with Customers*, and was measured at fair value on the Warrant's issuance date. Warrants that vested immediately resulted in a corresponding deferred warrant asset presented on the Condensed Consolidated Balance Sheets under ASC 606 and amortized on a pro-rata basis, commencing upon initial performance, over the term of the Walmart EV Fleet Purchase Agreement.

The fair value of the Warrants at the issuance date was measured using the Black-Scholes-Merton option pricing model. The key inputs used in the valuation were as follows:

Expected term (years)		10.0
Risk free interest rate		3.0 %
Expected volatility		91.3 %
Dividend yield		— %
Exercise price	\$	49.45
Stock price	\$	83.49

Estimates were determined as follows: (i) expected term based on the warrant’s contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and not yet presently expect to pay dividends.

As of June 30, 2024, a total of 0.7 million warrants have vested, of which none have been exercised.

Yorkville Warrants

In connection with the YA Convertible Debentures discussed in Note 9, as well as a previously paid off convertible debenture issued with a warrant to purchase 2.1 million shares, the Company issued warrants to Yorkville to purchase an aggregate of 5.5 million shares of Common Stock, with an exercise price of \$12.42 per share (collectively, the “Yorkville Debenture Warrants”). The Yorkville Debenture Warrants are immediately exercisable and will expire five years from the issuance date.

The warrants were liability classified and subject to periodic remeasurement. The fair value of the warrants at the issuance date was measured using the Black-Scholes option pricing model. The warrants were reclassified to equity as a result of the special meeting the Company stockholders held on October 5, 2023. The Company elected to value the YA Convertible Debentures at fair value therefore the total proceeds from the transaction were allocated among the freestanding financial instruments. Refer to Note 9 for additional discussion. The total fair value of the warrants measured at issuance was \$61.5 million. As of October 5, 2023, the warrants were reclassified to equity and the fair value of the warrants was \$43.4 million.

In connection with the Yorkville PPA discussed in Note 9, on December 31, 2022, the Company issued warrants to Yorkville to purchase an aggregate of 1.3 million shares of Common Stock, with an exercise price of \$26.45 per share and expiration date of December 31, 2023. On January 13, 2023, Yorkville partially exercised its option to increase its investment and the Company issued warrants to Yorkville to purchase an additional 0.2 million shares of Common Stock. Upon the expiration of the option on January 31, 2023, a \$0.3 million gain was recognized as a result of remeasuring the warrant liability and \$19.5 million was reclassified from liability to additional paid in capital. The exercise price of the warrants was adjusted to \$24.15 per share on February 9, 2023 and subsequently adjusted to \$14.26 per share on April 24, 2023.

On January 31, 2024, the Company and Yorkville entered into a Warrant Cancellation and Exchange Agreement (the “January WC&E Agreement”). Pursuant to the January WC&E Agreement, Yorkville surrendered to the Company and the Company cancelled all outstanding Yorkville Debenture Warrants, which outstanding Yorkville Debenture Warrants represented the right to purchase an aggregate of 5.5 million shares of Common Stock, and in exchange, the Company issued to Yorkville (i) a warrant to purchase 4.8 million shares of Common Stock at an exercise price of \$4.14, exercisable beginning on July 31, 2024 and with an expiration date of February 1, 2029 (the “January First Warrant”) and (ii) a warrant to purchase 5.5 million shares of Common Stock at an exercise price of \$4.14, exercisable beginning on July 31, 2024 and with an expiration date of February 1, 2029 (the “January Second Warrant”) and together with the January First Warrant, collectively, the “January Yorkville Warrants”).

On March 12, 2024, the Company and Yorkville entered into a Warrant Cancellation and Exchange Agreement (the “March WC&E Agreement”). Pursuant to the March WC&E Agreement, on March 12, 2024, Yorkville surrendered to the Company and the Company cancelled all of the outstanding January Yorkville Warrants, and in exchange, the Company issued to Yorkville (i) a warrant to purchase 10.4 million shares of Common Stock at an exercise price of \$1.37,

exercisable beginning on September 12, 2024 and with an expiration date of March 13, 2029 and (ii) a warrant to purchase 10.9 million shares of Common Stock at an exercise price of \$1.37, exercisable beginning on September 12, 2024 and with an expiration date of March 13, 2029 (the warrants set forth in clauses (i) and (ii), collectively, the "March Yorkville Warrants").

The warrants are classified as liabilities and subject to periodic remeasurement. The fair value of the warrants was measured using the Black-Scholes-Merton option pricing model. The key inputs used in the valuation were as follows:

Expected term (year)		4.7
Expected volatility		117.5 %
Dividend yield		— %
Risk free rate		4.3 %
Estimated fair value per warrant	\$	1.82
Exercise price	\$	1.37
Stock price	\$	2.13

Estimates were determined as follows: (i) expected term based on the warrant's contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and do not presently expect to pay dividends.

The fair value as of June 30, 2024 was \$38.8 million resulting in a gain of \$31.4 million and \$4.6 million for the three and six months ended June 30, 2024, respectively. The warrants were previously equity classified with a carrying value of \$43.4 million prior to the January WC&E Agreement, at which point in time the warrants became liability classified. None of the warrants have been exercised as of June 30, 2024.

RDO SPA Warrants

On February 5, 2023, the Company received net proceeds of \$49.4 million in connection with the RDO SPA. The Company issued the RDO SPA Warrants to multiple parties to purchase an aggregate of 2.2 million shares of Common Stock, with an exercise price of \$29.90 per share and will be initially exercisable beginning six months following the date of issuance and will expire five years from the initial exercise date.

The warrants are liability classified and subject to periodic remeasurement. The fair value of the warrants was measured using the Black-Scholes-Merton option pricing model. The key inputs used in the valuation were as follows:

Expected term (years)		4.1
Expected volatility		117.5 %
Expected dividend rate		— %
Risk free rate		4.4 %
Estimated fair value per warrant	\$	0.87
Exercise price	\$	29.90
Stock price	\$	2.13

Estimates were determined as follows: (i) expected term based on the warrant's contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and do not yet presently expect to pay dividends.

As the common stock and warrants were issued in a single transaction, the total proceeds from the transaction were allocated among the freestanding instruments. The fair value of the warrants measured at issuance was \$40.0 million, with the remaining proceeds allocated to the common stock, which is included in additional paid-in capital presented in the Consolidated Balance Sheets. The fair value as of June 30, 2024 was \$1.9 million resulting in a gain of \$2.9 million and

\$6.3 million for the three and six months ended June 30, 2024, respectively. None of the warrants have been exercised as of June 30, 2024.

June 2023 PIPE

On June 22, 2023, the Company received an aggregate of \$8.8 million in connection with the Common Stock and Common Warrant Subscription Agreement. The Company issued warrants to multiple parties to purchase an aggregate of 0.7 million shares of Common Stock, with an exercise price of \$15.41 per share and will be initially exercisable beginning six months following the date of issuance and will expire five years from the initial exercise date.

The warrants are liability classified and subject to periodic remeasurement. The fair value of the warrants was measured using the Black-Scholes option pricing model. The key inputs used in the valuation were as follows:

Expected term (years)	4.5
Expected volatility	117.5 %
Expected dividend rate	— %
Risk free rate	4.3 %
Estimated fair value per warrant	\$1.18
Exercise price	\$15.41
Stock price	\$2.13

Estimates were determined as follows: (i) expected term based on the warrant’s contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and not yet presently expect to pay dividends.

The fair value of the warrants measured at issuance was \$7.0 million, with the remaining proceeds allocated to the common stock, which is included in additional paid-in capital presented in the Consolidated Balance Sheets. As of June 30, 2024, the fair value of the warrants was \$0.8 million resulting in a gain of \$1.0 million and \$2.3 million for the three and six months ended June 30, 2024, respectively. None of the warrants have been exercised as of June 30, 2024.

I-40 Warrants

In connection with the lease agreement entered into with I-40 Partners discussed in Note 10, the Company issued warrants to I-40 Partners to purchase an aggregate of 0.1 million shares of Common Stock, with an exercise price of \$14.93 per share and expiration date of October 7, 2028.

The warrants are liability classified and subject to periodic remeasurement. The fair value of the warrants was measured using the Black-Scholes option pricing model. The key inputs used in the valuation were as follows:

Expected term (years)	4.3
Expected volatility	117.5 %
Expected dividend rate	— %
Risk free rate	4.4 %
Estimated fair value per warrant	\$1.14
Exercise Price	\$14.93
Stock Price	\$2.13

Estimates were determined as follows: (i) expected term based on the warrant’s contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and not yet presently expect to pay dividends.

The fair value of the warrants measured at issuance was \$0.9 million with the remaining proceeds allocated to the Common Stock, which is included in additional paid-in capital presented in the Consolidated Balance Sheets. As of

June 30, 2024, the fair value of the warrants was \$0.1 million, resulting in a gain of \$0.1 million and \$0.3 million for the three and six months ended June 30, 2024, respectively. None of the warrants have been exercised as of June 30, 2024.

August 2023 PIPE

On August 4, 2023, the Company received an aggregate of \$3.0 million in connection with the Common Stock and Common Warrant Subscription Agreement. The Company issued warrants to multiple parties to purchase an aggregate of 0.2 million shares of Common Stock, with an exercise price of \$15.41 per share and will be initially exercisable beginning six months following the date of issuance and will expire five years from the initial exercise date.

The warrants are liability classified and subject to periodic remeasurement. The fair value of the warrants was measured using the Black-Scholes option pricing model. The key inputs used in the valuation were as follows:

Expected term (years)		4.6
Expected volatility		117.5 %
Expected dividend rate		— %
Risk free rate		4.3 %
Estimated fair value per warrant	\$	1.20
Exercise price	\$	15.41
Stock price	\$	2.13

Estimates were determined as follows: (i) expected term based on the warrant’s contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and not yet presently expect to pay dividends.

As the common stock and warrants were issued in a single transaction, the total proceeds from the transaction were allocated among the freestanding instruments. The fair value of the warrants at issuance was \$3.0 million, with the remaining proceeds allocated to the common stock, which is included in additional paid-in capital presented in the Consolidated Balance Sheets. As of June 30, 2024, the fair value of the warrants was \$0.3 million resulting in a gain of \$0.3 million and \$0.8 million for the three and six months ended June 30, 2024, respectively. None of the warrants have been exercised as of June 30, 2024.

Series B Preferred Stock Warrants

On September 29, 2023, the Company entered into the Series B Preferred Stock Purchase Agreement with the Series B Preferred Stock Purchaser in connection with the issuance, sale and delivery by the Company of an aggregate of 45,000 Series B Preferred Shares of the Series B Preferred Stock, which is convertible into shares of the Company’s Common Stock, and pursuant to which the Company issued the Series B Preferred Warrants to purchase approximately 1.0 million shares of Common Stock, with an exercise price of \$12.91 per share and expiration date of October 12, 2028.

The warrants are liability classified and subject to periodic remeasurement. The fair value of the warrants was measured using the Black-Scholes-Merton option pricing model. The key inputs used in the valuation were as follows:

Expected term (years)		4.3
Expected volatility		117.5 %
Expected dividend rate		— %
Risk free rate		4.4 %
Estimated fair value per warrant	\$	1.19
Exercise price	\$	12.91
Stock price	\$	2.13

Estimates were determined as follows: (i) expected term based on the warrant's contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and not yet presently expect to pay dividends.

The total fair value of the warrants measured at issuance was \$5.9 million. As of June 30, 2024, the fair value of the warrants was \$1.2 million resulting in a gain of \$1.4 million and \$3.3 million for the three and six months ended June 30, 2024, respectively. None of the warrants have been exercised as of June 30, 2024.

Series C Preferred Stock Warrants

Pursuant to the Series C Preferred Stock Purchase Agreement, the Company issued to the Series C Preferred Stock Purchasers the Series C Preferred Warrants to purchase approximately 4.5 million shares of Common Stock, as well as during the Additional Investment Right period, the Company issued additional Series C Preferred Warrants to purchase approximately 2.9 million shares of Common Stock to the Series C Preferred Stock Purchasers. The Series C Preferred Warrants have an exercise price of \$2.24 per share and expiration date of May 3, 2029.

The warrants are liability classified and subject to periodic remeasurement. The fair value of the warrants was measured using the Black-Scholes-Merton option pricing model. The key inputs used in the valuation were as follows:

Expected term (years)		4.8
Expected volatility		117.5 %
Expected dividend rate		— %
Risk free rate		4.3 %
Estimated fair value per warrant	\$	1.74
Exercise price	\$	2.24
Stock price	\$	2.13

Estimates were determined as follows: (i) expected term based on the warrant's contractual term, (ii) based on the blended volatilities of historical and implied market volatility of the Company, (iii) risk-free interest rates based on US Treasury yield for the expected term, and (iv) an expected dividend yield of zero percent was used since we did not yet and not yet presently expect to pay dividends.

The total fair value of the warrants measured at issuance was \$17.2 million. As of June 30, 2024, the fair value of the warrants was \$12.8 million resulting in a gain of \$4.4 million for the three and six months ended June 30, 2024. None of the warrants have been exercised as of June 30, 2024.

16. Net Loss per Share

The table below presents a reconciliation of the basic and diluted net loss per share that were computed for the following periods:

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Numerator:				
Net loss attributable to Canoo	\$ (4,960)	\$ (70,870)	\$ (115,647)	\$ (161,602)
Less: dividend on redeemable preferred stock	1,077	—	1,939	—
Less: additional deemed dividend on redeemable preferred stock	—	—	—	—
Net loss available to common shareholders	\$ (6,037)	\$ (70,870)	\$ (117,586)	\$ (161,602)
Denominator:				
Weighted-average common shares outstanding:				
Basic and diluted	69,619	21,982	60,199	20,100
Net loss per common share:				
Basic & diluted	\$ (0.09)	\$ (3.22)	\$ (1.95)	\$ (8.04)

For all periods presented, the shares included in computing basic net loss per share exclude restricted shares and shares issued upon the early exercise of share options where the vesting conditions have not been satisfied.

Diluted net income per share adjusts basic net income per share for the impact of potential Common Stock shares. As the Company has reported net losses for all periods presented, all potential Common Stock shares are antidilutive, and accordingly, basic net loss per share equals diluted net loss per share.

The following table presents the outstanding potentially dilutive shares that have been excluded from the computation of diluted net loss per share, because including them would have an anti-dilutive effect (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Convertible debt (Note 9)	20,000	2,598	20,000	2,598
Restricted and performance stock units	3,719	1,429	3,719	1,429
Warrants to purchase common stock (Note 15)	34,649	—	34,649	—
Early exercise of unvested stock options	—	11	—	11
Options to purchase common stock	3	5	3	5

17. Income Taxes

As the Company has not generated any taxable income since inception, the cumulative deferred tax assets remain fully offset by a valuation allowance, and no benefit from federal or state income taxes has been included in the Condensed Consolidated Financial Statements.

18. Subsequent Events

July 2024 PPA

On July 19, 2024 (the "July Effective Date"), the Company entered into a Prepaid Advance Agreement with Yorkville (the "July 2024 PPA," and together with the Initial PPA and the June 2024 PPA, collectively, the "Yorkville PPAs"). In accordance with the terms of the July 2024 PPA, the Company may request advances of up to \$15,000,000 in

cash from Yorkville (or such greater amount that the parties may mutually agree) (each, a “Prepaid Advance”), including an initial Prepaid Advance of \$5,000,000 (the “Initial July Prepaid Advance”) requested by the Company in connection with entering the July 2024 PPA and from time to time thereafter, with an aggregate limitation on the Prepaid Advances of \$100,000,000. A Prepaid Advance will be offset upon the issuance of shares of our Common Stock to Yorkville.

The Initial July Prepaid Advance will be offset upon the issuances of shares of Common Stock at an initial Purchase Price (when reference to the July 2024 PPA, as such term is used in the July 2024 PPA) equal to \$2.70 per share. On any date that is the 60th day after the July Effective Date, the Purchase Price on any remaining amount of the Initial July Prepaid Advance then outstanding at such time will be the lower of (i) \$2.70 per share and (ii) 95% of the lowest daily VWAP of the Common Stock during five trading days immediately preceding the date on which Yorkville provides the purchase notice to the Company (the “July PPA Variable Price”); however, in no event shall the Purchase Price under the July 2024 PPA be less than \$1.00 per share (the “Current Floor Price”). As of the date hereof, a principal balance of \$15.0 million remains outstanding under the Initial July Prepaid Advance.

With respect to a Prepaid Advance other than the Initial July Prepaid Advance, such Prepaid Advance will be offset upon the issuances of shares of Common Stock at a Purchase Price equal to the lower of (i) 120% of the daily VWAP of the Common Stock on Nasdaq as of the trading day immediately prior to the date of the disbursement of such Prepaid Advance and (ii) the July PPA Variable Price; however, in no event shall the Purchase Price be lower than the Current Floor Price.

After giving effect to the commitment fee and the purchase price discount provided for in the July 2024 PPA, net proceeds of the Initial July Prepaid Advance to the Company were approximately \$14.1 million. The issuance of Common Stock under the July 2024 PPA is subject to certain limitations, including, among others, that the aggregate number of shares (including share issuances under the June 2024 PPA) of Common Stock issued pursuant to the July 2024 PPA cannot exceed the Current Yorkville Exchange Cap unless the Company’s stockholders have approved issuances in excess of the Current Yorkville Exchange Cap. Pursuant to the terms of the July 2024 PPA, interest accrues on the outstanding balance of a Prepaid Advance at an annual rate equal to 5%, subject to an increase to 15% upon events of default described in the July 2024 PPA.

Furthermore, on the July Effective Date, in connection with the Initial July Prepaid Advance, the Company issued to Yorkville a warrant to purchase approximately 2.8 million shares of Common Stock each at an exercise price of \$2.70 per share, exercisable beginning on January 19, 2025 and with an expiration date of July 19, 2029 (the “July YA Warrants”). The July YA Warrants include customary adjustment provisions for stock splits, combinations and similar events.

Torrance CA Facility Employee Reorganization Plan

On August 14, 2024, the Company implemented an employee reorganization plan (the “Employee Reorganization Plan”), which Employee Reorganization Plan includes permanently reducing the number of employees at our facility in Torrance, California (the “Torrance Facility”). As such, we have issued a Worker Adjustment and Retraining Notification Act notice under both California state and federal law to all employees at our Torrance Facility and are offering to relocate a majority of employees currently located at the Torrance Facility to the Company’s facilities in either Oklahoma or Texas. The first employment separations related to this reduction of employees who have not been offered and accepted employment in either our Oklahoma or Texas facilities are expected to occur on October 15, 2024. We intend to offer relocation to approximately 137 employees out of the 194 employees located at the Torrance Facility.

In connection with the Employee Reorganization Plan, the Company currently estimates that it will record an aggregate charge related to one-time relocation benefits and severance payments in the range of approximately up to \$3.0 million. The majority of these charges will result in one-time cash expenditures that are expected to be incurred during our fourth quarter of 2024.

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

The following discussion and analysis provides information that our management believes is relevant to an assessment and understanding of our results of operations and financial condition. This discussion and analysis should be read in conjunction with our Condensed Consolidated Interim Financial Statements and the related notes contained elsewhere in this Quarterly Report on Form 10-Q. The statements in this discussion regarding expected and other production timelines, development of our own manufacturing facilities, industry trends, our expectations regarding our future performance, liquidity and capital resources and other non-historical statements are forward-looking statements. These forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, the risks and uncertainties described in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2023 filed with the SEC on April 1, 2024 (the “Annual Report on Form 10-K”), Part II, Item 1A. “Risk Factors” in this Quarterly Report on Form 10-Q and “Cautionary Note Regarding Forward-Looking Statements.” Our actual results may differ materially from those contained in or implied by any forward-looking statements.

Certain figures included in this section have been rounded for ease of presentation. Percentage figures included in this section have not in all cases been calculated on the basis of such rounded figures but on the basis of such amounts prior to rounding. For this reason, percentage amounts in this section may vary slightly from those obtained by performing the same calculations using the figures in our financial statements or in the associated text. Certain other amounts that appear in this section may similarly not sum due to rounding.

Overview

Canoo Inc. (“Canoo” or the “Company”) is a high tech advanced mobility technology company with a proprietary modular electric vehicle platform and connected services initially focused on commercial fleet, government and military customers. The Company has developed a breakthrough EV platform that it believes will enable it to rapidly innovate, iterate and bring new products, addressing multiple use cases, to market faster than our competition and at lower cost. Our vehicle architecture and design philosophy are aimed at driving productivity and returning capital to our customers, and we believe the software and technology capabilities we are developing, packaged around a modular, customizable product, have the potential to empower the customer experience across a vehicle’s lifecycle. We have commercialized our first production vehicles and are delivering them to customers. We remain committed to the environment and to delivering sustainable mobility to our customers to support them in meeting their net zero emissions goals. We are proudly manufacturing our fully electric vehicles in Oklahoma and are committed to building a diverse workforce that will draw heavily upon the local communities of Native Americans and Veterans.

We believe we are one of the first automotive manufacturers focused on monetizing value across the entirety of the vehicle lifecycle, across multiple owners. Our platform and data architecture is purpose-built to be durable and serve as the foundation for the vehicles we intend to offer, unlocking a highly differentiated, multi-layer business model. The foundational layer is our Multi-Purpose Platform (“MPP-1” or “platform”) architecture, which serves as the base of our vehicles. Our first production vehicles are the Lifestyle Delivery Vehicle, including the Lifestyle Delivery Vehicle 130 and Lifestyle Delivery Vehicle 190. Future models will include the Lifestyle Vehicle (“LV”) in its Base, Premium, and Adventure trims; the Multi-Purpose Delivery Vehicle (“MPDV”) and the Pickup. The next layer is cybersecurity which is embedded in our vehicle to ensure the privacy and protection of vehicle data. Our top hats, or cabins, are modular and purpose-built to provide tailored solutions for our customers. This intentional design enables us to efficiently use resources to produce only what is necessary, underscoring our focus on sustainability and returning capital to customers. The remaining layers, connected accessories and digital customer ecosystem, present high-margin opportunities that extend beyond the initial vehicle sale, across multiple owners. In addition, there are opportunities for software sales throughout the vehicle life, including predictive maintenance and service software or advanced driver assistance systems (“ADAS”) upgrades.

Our platform architecture is a self-contained, fully functional rolling chassis that directly houses the most critical components for operation of an EV, including our in-house designed proprietary electric drivetrain, battery systems, advanced vehicle control electronics and software and other critical components, which all have been optimized for functional integration. Both our true steer-by-wire system, believed to be the first such system applied to a production-intent vehicle, and our transverse composite leaf-spring suspension system are core components of our platform’s differentiated functionality, enabling the development of a broad range of vehicle types and use cases due to the chassis’ flat profile and fully variable steering positions. All of our announced EVs, including the Lifestyle Delivery Vehicle 130, the Lifestyle Delivery Vehicle 190, the LV, the MPDV and the Pickup, will share a common platform architecture paired with different top hats to create a range of uniquely customized and use case optimized purpose-built mobility solutions targeting multiple segments of the rapidly expanding EV marketplace.

In addition to our vehicle technology, we are developing an in-house designed and proprietary software platform that aggregates car data from both Canoo and non-Canoo vehicles and delivers valuable insights to our customers. Collected over-the-air for connected vehicles or via an on-board diagnostics (“OBD”) device for non-connected vehicles, we believe car data is critical to powering the customer journey and maximizing utility and value from the vehicle ownership experience. Leveraging our data aggregation platform, we aim to create the Canoo Digital Ecosystem, an application store that centralizes all vehicle information for customers and provides key tools across Security & Safety, Household Vehicle Management, Fleet Management, Lifecycle Management and Vehicle Asset Management. Through our software offering, we believe we can provide substantial value to customers by staying connected throughout the vehicle lifecycle, across multiple owners.

As a Technology Equipment Manufacturer (TEM), Canoo is dedicated to developing vehicles that prioritize high performance, design excellence and seamless integration of purpose-built hardware and proprietary software. The core of Canoo’s technology is in its Multi-Purpose Platform (MPP) architecture which has been meticulously engineered for durability and versatility, enabling a wide range of use cases. Our integrated software delivers user-centric features and functions that enable the generation of valuable data-driven insights for both fleet operators and consumers. Ultimately, Canoo strives to provide a connected, safe, and personalized driving experience by harnessing advanced vehicle technology.

Core to our values is delivering high quality products while empowering local communities, which drove our decision to build in America and source a majority of our parts from America and allied nations. We believe vertical integration across our manufacturing and assembly process will enable us to achieve in-house scale production with less supply chain risk and provide us better oversight of our vehicle manufacturing. We are building production facilities in states and communities that are investing in high-tech manufacturing alongside us, creating American jobs and driving innovation.

We have made strategic investments in our technology and products that position us to capture three large and growing markets - commercial and passenger vehicles, upfitting and accessories, and telematics data.

We continue to innovate and develop every aspect of our business, from capturing opportunities beyond the traditional business model to our built in America, highly utilitarian vehicles optimized to return capital to our customers. We believe being forward-thinking across these areas has set the foundation for us to develop into a scalable business that is differentiated from our peers across the automotive original equipment manufacturer (“OEM”) landscape.

Recent Developments

Refer to Note 18 for information regarding subsequent events.

Key Factors Affecting Operating Results

We believe that our performance and future success depend on several factors that present significant opportunities for us but also pose risks and challenges, including those discussed below.

Availability of Financing Sources and Commercialization of Our EVs

We expect to derive future revenue from our first vehicle offerings. In order to reach commercialization, we must purchase and integrate related property and equipment, as well as achieve several research and development milestones.

Our capital and operating expenditures have increased significantly in connection with our ongoing activities and we expect they will continue to increase, as we:

- continue to invest in our technology, research and development efforts;
- compensate existing personnel;
- invest in manufacturing capacity, via our owned facilities;
- increase our investment in marketing, advertising, sales and distribution infrastructure for our EVs and services;

- obtain, maintain and improve our operational, financial and management information systems;
- hire additional personnel;
- commercialize our EVs;
- obtain, maintain, expand and protect our intellectual property portfolio; and
- continue to operate as a public company.

We require substantial additional capital to develop our EVs and services and fund our operations for the foreseeable future. We will also require capital to identify and commit resources to investigate new areas of demand. Until we can generate sufficient revenue from vehicle sales, we are financing our operations through access to private and public equity offerings and debt financings. Management believes substantial doubt exists about the Company's ability to continue as a going concern for twelve months from the date of issuance of the financial statements included in this Quarterly Report on Form 10-Q.

Macroeconomic Conditions

Current adverse macroeconomic conditions, including but not limited to heightened inflation, slower growth or recession, changes to fiscal and monetary policy, higher interest rates, currency fluctuations and challenges in the supply chain could negatively affect our business.

Increased demand for semiconductor chips in 2020, due in part to increased demand for consumer electronics that use these chips, resulted in a global shortage of chips in 2021 that has continued into 2024. As a result, our ability to source semiconductor chips used in our vehicles may be adversely affected. This shortage may result in increased chip delivery lead times, delays in the production of our vehicles, and increased costs to source available semiconductor chips.

Although we have made our best estimates based upon current information, actual results could materially differ from the estimates and assumptions developed by management. Accordingly, it is reasonably possible that the estimates made in the financial statements have been, or will be, materially and adversely impacted in the near term as a result of these conditions, and if so, we may be subject to future impairment losses related to long-lived assets as well as changes to valuations.

Key Components of Statements of Operations

Basis of Presentation

Currently, we conduct business through one operating segment. We are an early stage-growth company with limited commercial activities to date, which are primarily conducted in the United States. For more information about our basis of presentation, refer to Note 2, Basis of Presentation and Summary of Significant Accounting Policies, of the notes to the Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q.

Revenue

Our revenue is primarily derived from vehicle revenues resulting from the delivery of our vehicles. Other revenue includes the sale of battery modules and engineering services.

Cost of Revenue

Cost of revenue primarily relates to the costs for vehicle components, parts, labor costs, and depreciation and amortization of tooling and other capitalized costs involved in producing and assembling our EVs.

Research and Development Expenses, excluding Depreciation

Research and development expenses, excluding depreciation consist of salaries, employee benefits and expenses for design and engineering, stock-based compensation, as well as materials and supplies used in research and development

activities. In addition, research and development expenses include fees for consulting and engineering services from third party vendors.

Selling, General and Administrative Expenses, excluding Depreciation

The principal components of our selling, general and administrative expenses, excluding depreciation are salaries, wages, benefits and bonuses paid to our employees; stock-based compensation; travel and other business expenses; and professional services fees including legal, audit and tax services.

Depreciation Expense

Depreciation is provided on property and equipment over the estimated useful lives on a straight-line basis. Upon retirement or disposal, the cost of the asset disposed of and the related accumulated depreciation are removed from the accounts and any gain or loss is reflected in the loss from operations. No depreciation expense is allocated to research and development, cost of revenue and selling, general and administrative expenses.

Interest Expense

Interest expense consists primarily of interest expense and amortization of debt discount and issuance costs.

Gain on Fair Value Change in Contingent Earnout Shares Liability

The gain on fair value change in the contingent earnout shares liability is due to the change in fair value of the corresponding contingent earnout shares liability.

Gain on Fair Value Change in Warrant Liability and Derivative Liability

The gain on fair value change in the warrant liability and derivative liability is primarily due to the change in fair value of the corresponding warrant and derivative liability described in Note 4, Fair Value Measurements, and Note 15, Warrants, of the notes to our accompanying financial statements.

Loss on Fair Value Change in Convertible Debt

The loss on fair value change in convertible debt is due to the change in fair value of the convertible debentures further described in Note 9, Convertible Debt, of the notes to our accompanying financial statements.

Gain (Loss) on Extinguishment of Debt

The gain (loss) on extinguishment of debt arose from the redemption of our convertible debt with Yorkville into Common Stock, as discussed in Note 9, Convertible Debt, of the notes to our accompanying financial statements..

Other income (expense), net

Other income (expense), net is due to financing expenses related to the RDO SPA Warrants, as discussed in Note 15, Warrants, of the notes to our accompanying financial statements.

Results of Operations

Comparison of the Three and Six Months Ended June 30, 2024, and 2023

The following table sets forth our historical operating results for the periods indicated:

(in thousands)	Three Months Ended June 30,		\$ Change	% Change	Six Months Ended June 30,		\$ Change	% Change
	2024	2023			2024	2023		
Revenue	\$ 605	\$ —	\$ 605	NM	\$ 605	\$ —	\$ 605	NM
Cost of revenue	1,845	—	1,845	NM	1,845	—	1,845	NM
Gross margin	(1,240)	—	(1,240)	NM	(1,240)	—	(1,240)	NM
Operating Expenses								
Research and development expenses, excluding depreciation	16,784	38,582	(21,798)	(56)%	43,174	85,686	(42,512)	(50)%
Selling, general and administrative expenses, excluding depreciation	21,804	30,421	(8,617)	(28)%	54,672	60,270	(5,598)	(9)%
Depreciation	3,364	4,562	(1,198)	(26)%	6,753	9,137	(2,384)	(26)%
Total costs and operating expenses	41,952	73,565	(31,613)	(43)%	104,599	155,093	(50,494)	(33)%
Loss from operations	(43,192)	(73,565)	30,373	(41)%	(105,839)	(155,093)	49,254	(32)%
Interest expense	(1,551)	(2,264)	713	(31)%	(7,174)	(2,560)	(4,614)	180%
Gain on fair value change in contingent earnout shares liability	15	59	(44)	(75)%	41	2,564	(2,523)	(98)%
Gain on fair value change in warrant and derivative liability	48,308	5,623	42,685	759%	38,836	22,965	15,871	69%
Loss on fair value change in convertible debt and other	(8,532)	—	(8,532)	NM	(67,116)	—	(67,116)	NM
Gain (Loss) on extinguishment of debt and other	(4)	(949)	945	(100)%	24,462	(27,688)	52,150	(188)%
Other income (expense), net	(4)	226	(230)	(102)%	1,143	(1,790)	2,933	(164)%
Loss before income taxes	(4,960)	(70,870)	65,910	(93)%	(115,647)	(161,602)	45,955	(28)%
Provision for income taxes	—	—	—	NM	—	—	—	NM
Net loss and comprehensive loss	\$ (4,960)	\$ (70,870)	\$ 65,910	(93)%	\$ (115,647)	\$ (161,602)	\$ 45,955	(28)%

“NM” means not meaningful.

Revenue and Cost of Revenues

Revenue included vehicle revenues resulting from the delivery of our vehicles to our customers as well as revenues derived from other activities including sales of battery modules and providing engineering services to our customers. We generated total revenue of \$0.6 million during three and six months ended June 30, 2024.

Cost of revenue primarily included costs to produce vehicles, including direct parts, material and labor costs, machinery and tooling depreciation, and shipping and logistics costs. Cost of revenue also included materials, labor and other direct costs related to the development of battery modules and providing of engineering services. We incurred \$1.8 million in cost of revenues during the three and six months ended June 30, 2024.

As our cost of revenue was greater than our revenues, it resulted in a negative gross margin of \$1.2 million for the three and six months ended June 30, 2024. Negative gross margin was primarily due to the custom-built, low-volume initial vehicle deliveries. We expect negative gross margin to improve on a per-vehicle basis as we increase overall production levels and achieve commercial cost savings on material and labor costs.

Research and Development Expenses, excluding Depreciation

Research and development expenses, excluding depreciation, were \$16.8 million for the three months ended June 30, 2024, compared to \$38.6 million for the three months ended June 30, 2023. The decrease of \$21.8 million, or 56% was primarily due to decreases in salary and related benefit expense of \$10.7 million, and research and development costs of \$9.4 million. Other factors affecting research and development expenses were individually immaterial.

Research and development expenses, excluding depreciation, were \$43.2 million for the six months ended June 30, 2024, compared to \$85.7 million for the six months ended June 30, 2023. The decrease of \$42.5 million, or 50% was primarily due to decreases in salary and related benefit expense of \$19.1 million, research and development costs of \$13.9 million, stock based compensation expense of \$4.3 million, and shipping and postage expense of \$2.3 million. Other factors affecting research and development expenses were individually immaterial.

Salary and related benefit expense decreased by \$10.7 million, or 42%, to \$14.6 million in the three months ended June 30, 2024, compared to \$25.3 million in the three months ended June 30, 2023. Salary and related benefit expense decreased by \$19.1 million, or 36%, to \$33.6 million in the six months ended June 30, 2024, compared to \$52.7 million in the six months ended June 30, 2023. The decrease in salary and related expense, was primarily due to changes in headcount mix from engineering to manufacturing, turnover of employees and a decrease in temporary employees driven by the Company's focus on essential activities.

Research and development costs decreased by \$9.4 million, or 96%, to \$0.4 million in the three months ended June 30, 2024, compared to \$9.8 million for the three months ended June 30, 2023. Research and development costs decreased by \$13.9 million, or 77%, to \$4.2 million in the six months ended June 30, 2024, compared to \$18.1 million in the six months ended June 30, 2023. The decreases in research and development cost was primarily due to reduced spending related to engineering and design, gamma parts, and prototype tooling resulting from the transition to initiatives related to commencing low-volume production.

Stock based compensation expense decreased by \$4.3 million, or 100%, in the six months ended June 30, 2024, compared to \$4.3 million in the six months ended June 30, 2023. The decrease in stock based compensation expense, was primarily due to forfeiture of restricted stock resulting from headcount reductions. See further discussion in Note 14, Stock-based Compensation, of the notes to our accompanying financial statements.

Shipping and postage expense decreased by \$2.3 million, or 61%, to \$1.5 million in the six months ended June 30, 2024, compared to \$3.8 million in the six months ended June 30, 2023. The decrease in shipping and postage expense, was primarily due to decreased shipping activity and related costs as well as general office expenses.

Selling, General and Administrative Expenses, excluding Depreciation

Selling, general and administrative expenses, were \$21.8 million for the three months ended June 30, 2024, compared to \$30.4 million for the three months ended June 30, 2023. The decrease of \$8.6 million or 28% was primarily due to the decrease in stock based compensation expense of \$4.7 million, salary and benefits expense of \$2.4 million and professional fees of \$1.3 million. Other factors affecting selling, general and administrative expenses were individually immaterial.

Selling, general and administrative expenses, were \$54.7 million for the six months ended June 30, 2024, compared to \$60.3 million for the six months ended June 30, 2023. The decrease of \$5.6 million or 9% was primarily due to the decrease in salary and benefits expense of \$4.3 million and information technology expense of \$2.0 million. Other factors affecting selling, general and administrative expenses were individually immaterial.

Stock based compensation expense decreased by \$4.7 million, or 72%, to \$1.8 million in the three months ended June 30, 2024, compared to \$6.5 million in the three months ended June 30, 2023. The decrease in stock based compensation was primarily due to forfeiture of restricted stock resulting from headcount reductions, and graded vesting of stock-based compensation expense. See further discussion in Note 14, Stock-based Compensation, of the notes to our accompanying financial statements.

Salary and related benefit expense decreased by \$2.4 million, or 30%, to \$5.5 million in the three months ended June 30, 2024, compared to \$7.9 million in the three months ended June 30, 2023. Salary and related benefit expense decreased by \$4.3 million, or 26%, to \$12.0 million in the six months ended June 30, 2024, compared to \$16.3 million in the six months ended June 30, 2023. The decrease in salary and related expense, was primarily due to changes in headcount driven by reductions in non-essential functions.

Professional fees expense decreased by \$1.3 million, or 22%, to \$4.5 million in the three months ended June 30, 2024, compared to \$5.8 million in the three months ended June 30, 2023. The decrease in professional fees expense, was primarily due to a reduction in legal, partially offset by increases in consulting and recruiting fees.

Information technology expense decreased by \$2.0 million, or 24%, to \$6.3 million in the six months ended June 30, 2024, compared to \$8.3 million in the six months ended June 30, 2023. The decrease in information technology expense was primarily due to initiatives to provide cost effective solutions aligned with current need.

Depreciation Expense

Depreciation expense decreased by \$1.2 million, or 26%, to \$3.4 million in the three months ended June 30, 2024, compared to \$4.6 million in the three months ended June 30, 2023. Depreciation expense decreased \$2.3 million, or 26%, to \$6.8 million in the six months ended June 30, 2024, compared to \$9.1 million in the six months ended June 30, 2023. The decrease was primarily due to certain assets being fully depreciated.

Interest Expense

Interest expense decreased by \$0.7 million, or 31%, to \$1.6 million in the three months ended June 30, 2024, compared to \$2.3 million in the three months ended June 30, 2023. Interest expense increased by \$4.6 million, or 180%, to \$7.2 million in the six months ended June 30, 2024, compared to \$2.6 million in the six months ended June 30, 2023. The increase was primarily due to higher levels of convertible debt described in Note 9, Convertible Debt, of the notes to our accompanying financial statements.

Gain on Fair Value Change in Contingent Earnout Shares Liability

Gain on fair value change in contingent earnout shares liability was nominal for the three months ended June 30, 2024, compared to \$0.1 million for the three months ended June 30, 2023, and nominal for the six months ended June 30, 2024, compared to \$2.6 million for the six months ended June 30, 2023. The decrease was a result of the periodic remeasurement of the fair value of our contingent earnout shares liability, primarily driven by the declining stock price.

Gain on Fair Value Change in Warrant and Derivative Liability

Gain on fair value change in warrant and derivative liability increased by \$42.7 million, or 759%, to \$48.3 million in the three months ended June 30, 2024, compared to \$5.6 million in the three months ended June 30, 2023. Gain on fair value change in warrant and derivative liability increased by \$15.8 million, or 69%, to \$38.8 million in the six months ended June 30, 2024, compared to \$23.0 million in the six months ended June 30, 2023. The changes were primarily due to the fair value change of the corresponding warrant liability related to warrants discussed in Note 15. The number of outstanding warrants increased as a result of the March WC&E Agreement and Series C Preferred Stock Purchase Agreement. The Company recognized a gain related to derivative liabilities the three months ended and six months ended June 30, 2024, due to changes in fair value of the derivatives identified within Series B Preferred Stock Purchase Agreement and Series C Preferred Stock Purchase Agreement.

Gain (Loss) on Extinguishment of Debt and other

Loss on extinguishment of debt was nominal for the three months ended June 30, 2024, compared to loss of \$0.9 million for the three months ended June 30, 2023, and gain of \$24.5 million for the six months ended June 30, 2024, compared to loss of \$27.7 million for the six months ended June 30, 2023. The changes were due to repayments and extinguishments of the Yorkville PPAs and Convertible Debentures discussed in Note 9, Convertible Debt, of the notes to our accompanying financial statements.

Loss on Fair Value Change in Convertible Debt and other

Loss on fair value change of convertible debt was \$8.5 million for the three months ended June 30, 2024, as compared to \$0.0 million for the three months ended June 30, 2023, and \$67.1 million for the six months ended June 30, 2024, compared to \$0.0 million for the six months ended June 30, 2023. The changes were primarily due to the Company electing the fair value option for debt instruments issued during the six months ended June 30, 2024, discussed in Note 9, Convertible Debt, of the notes to our accompanying financial statements.

Other Income (Expense), Net

Other expense, net was nominal for the three months ended June 30, 2024, compared to \$0.2 million of other income, net for the three months ended June 30, 2023, and \$1.1 million of other income, net for the six months ended

June 30, 2024, compared to \$1.8 million of other expense, net for the six months ended June 30, 2023. Factors affecting Other income (expense), net were related to miscellaneous incentive and other income, all individually immaterial.

Non-GAAP Financial Measures

In addition to our results determined in accordance with GAAP, we believe the following non-GAAP measures are useful in evaluating our operational performance. We use the following non-GAAP measures 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.

EBITDA, Adjusted EBITDA, Adjusted Net Loss and Adjusted Earnings Per Share ("EPS")

"EBITDA" is defined as net loss before interest expense, income tax expense or benefit, and depreciation and amortization. "Adjusted EBITDA" is defined as EBITDA adjusted for stock-based compensation, restructuring charges, asset impairments, non-routine legal fees, and other costs associated with exit and disposal activities, acquisition and related costs, changes to the fair value of contingent earnout shares liability, changes to the fair value of warrant and derivative liability, changes to the fair value of the derivative asset, changes to the fair value of convertible debt, loss on extinguishment of debt, and any other one-time non-recurring transaction amounts impacting the statement of operations during the year. "Adjusted Net Loss" is defined as net loss adjusted for stock-based compensation, restructuring charges, asset impairments, non-routine legal fees, and other costs associated with exit and disposal activities, acquisition and related costs, changes to the fair value of contingent earnout shares liability, changes to the fair value of warrants and derivative liability, changes to the fair value of the derivative asset, changes to the fair value of convertible debt, loss on extinguishment of debt, and any other one-time non-recurring transaction amounts impacting the statement of operations during the year. "Adjusted EPS" is defined as Adjusted Net Loss on a per share basis using the weighted average shares outstanding.

EBITDA, Adjusted EBITDA, Adjusted Net Loss, and Adjusted EPS are intended as a supplemental measure of our performance that is neither required by, nor presented in accordance with, GAAP. We believe EBITDA, Adjusted EBITDA, Adjusted Net Loss, and Adjusted EPS when combined with net loss and net loss per share are beneficial to an investor's complete understanding of our operating performance. We believe that the use of EBITDA, Adjusted EBITDA, Adjusted Net Loss, and Adjusted EPS provides an additional tool for investors to use in evaluating ongoing operating results and trends and in 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, Adjusted EBITDA, Adjusted Net Loss, and Adjusted EPS 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, Adjusted EBITDA, Adjusted Net Loss, and Adjusted EPS may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate EBITDA, Adjusted EBITDA, Adjusted Net Loss, and Adjusted EPS in the same fashion.

Because of these limitations, EBITDA, Adjusted EBITDA Adjusted Net Loss, and Adjusted EPS should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. We manage our business utilizing EBITDA, Adjusted EBITDA, Adjusted Net Loss, and Adjusted EPS as supplemental performance measures.

These non-GAAP financial measures, when presented, are reconciled to the most closely comparable U.S. GAAP measure as disclosed below for the three and six months ended June 30, 2024 and 2023, respectively (in thousands):

	Three Months Ended June 30,					
	2024			2023		
	EBITDA	Adjusted EBITDA	Adjusted Net Loss	EBITDA	Adjusted EBITDA	Adjusted Net Loss
Net loss	\$ (4,960)	\$ (4,960)	\$ (4,960)	\$ (70,870)	\$ (70,870)	\$ (70,870)
Interest expense (a)	641	641	—	2,264	2,264	—
Provision for income taxes	—	—	—	—	—	—
Depreciation (b)	3,456	3,456	—	4,562	4,562	—
Gain on fair value change in contingent earnout shares liability	—	(15)	(15)	—	(59)	(59)
Gain on fair value change in warrant and derivative liability	—	(48,308)	(48,308)	—	(5,623)	(5,623)
Gain (Loss) on extinguishment of debt and other	—	4	4	—	949	949
Loss on fair value change in convertible debt and other	—	8,532	8,532	—	—	—
Financing charges incurred upon issuance of PPAs	—	910	910	—	—	—
Other (income) expense, net	—	4	4	—	(226)	(226)
Stock-based compensation	—	1,128	1,128	—	6,707	6,707
Adjusted Non-GAAP amount	\$ (863)	\$ (38,608)	\$ (42,705)	\$ (64,044)	\$ (62,296)	\$ (69,122)

(a) Excluding \$910 in non-recurring financing charges incurred upon issuance of PPAs shown separately above, as applicable.

(b) Includes \$92 recorded in cost of revenue.

US GAAP net loss per share

Basic	N/A	N/A	(0.09)	N/A	N/A	(3.22)
Diluted	N/A	N/A	(0.09)	N/A	N/A	(3.22)

Adjusted Non-GAAP net loss per share (Adjusted EPS):

Basic	N/A	N/A	(0.61)	N/A	N/A	(3.14)
Diluted	N/A	N/A	(0.61)	N/A	N/A	(3.14)

Weighted-average common shares outstanding:

Basic	N/A	N/A	69,619	N/A	N/A	21,982
Diluted	N/A	N/A	69,619	N/A	N/A	21,982

	Six Months Ended June 30,					
	2024			2023		
	EBITDA	Adjusted EBITDA	Adjusted Net Loss	EBITDA	Adjusted EBITDA	Adjusted Net Loss
Net loss	\$ (115,647)	\$ (115,647)	\$ (115,647)	\$ (161,602)	\$ (161,602)	\$ (161,602)
Interest expense (a)	6,264	6,264	—	2,560	2,560	—
Provision for income taxes	—	—	—	—	—	—
Depreciation (b)	6,845	6,845	—	9,137	9,137	—
Gain on fair value change in contingent earnout shares liability	—	(41)	(41)	—	(2,564)	(2,564)
Gain on fair value change in warrant and derivative liability	—	(38,836)	(38,836)	—	(22,965)	(22,965)
Loss on fair value change in convertible debt and other	—	67,116	67,116	—	—	—
(Gain) Loss on extinguishment of debt and other	—	(24,462)	(24,462)	—	27,688	27,688
Financing charges incurred upon issuance of PPAs	—	910	910	—	—	—
Other (income) expense, net	—	(1,143)	(1,143)	—	1,790	1,790
Stock-based compensation	—	12,082	12,082	—	16,543	16,543
Adjusted Non-GAAP amount	\$ (102,538)	\$ (86,912)	\$ (100,021)	\$ (149,905)	\$ (129,413)	\$ (141,110)

(a) Excluding \$910 in non-recurring financing charges incurred upon issuance of PPAs shown separately above, as applicable.

(b) Includes \$92 recorded in cost of revenue.

US GAAP net loss per share						
Basic	N/A	N/A	(1.95)	N/A	N/A	(8.04)
Diluted	N/A	N/A	(1.95)	N/A	N/A	(8.04)
Adjusted Non-GAAP net loss per share (Adjusted EPS):						
Basic	N/A	N/A	(1.66)	N/A	N/A	(7.02)
Diluted	N/A	N/A	(1.66)	N/A	N/A	(7.02)
Weighted-average common shares outstanding:						
Basic	N/A	N/A	60,199	N/A	N/A	20,100
Diluted	N/A	N/A	60,199	N/A	N/A	20,100

Liquidity and Capital Resources

As of June 30, 2024, we had unrestricted cash and cash equivalents in the amount of \$4.5 million, which were primarily invested in money market funds that consist of liquid debt securities issued by the U.S. government. In assessing our liquidity requirements and cash needs, we also consider contractual obligations to which we are a party. Additionally, see discussion related to the operating lease maturity schedule and any new leases entered into in Note 10 of the notes to our accompanying financial statements.

We have incurred and expect to incur, net losses which have resulted in an accumulated deficit of \$1.6 billion as of June 30, 2024. Management continues to explore raising additional capital through a combination of debt financing, other non-dilutive financing and/or equity financing to supplement the Company's capitalization and liquidity. If and as we raise additional funds by incurring loans or by issuing debt securities or preferred stock, these forms of financing have rights, preferences, and privileges senior to those of holders of our Common Stock. The availability and the terms under which we are able to raise additional capital could be disadvantageous, and the terms of debt financing or other non-dilutive financing involve restrictive covenants and dilutive financing instruments, which could place significant restrictions on our operations. Macroeconomic conditions and credit markets are also impacting the availability and cost of potential future debt financing. As we raise capital through the issuance of additional equity, such sales and issuance has and will continue to dilute the ownership interests of the existing holders of Common Stock. There can be no assurances that any additional debt, other non-dilutive and/or equity financing would be available to us on favorable terms or at all. We expect to continue to incur net losses, comprehensive losses, and negative cash flows from operating activities in accordance with our operating plan as we continue to expand our research and development activities to complete the development of our EVs, establish our go-to-market model and scale our operations to meet anticipated demand. We expect that both our capital and operating expenditures will increase significantly in connection with our ongoing activities, as we:

- continue to invest in our technology, research and development efforts;

- compensate existing personnel;
- invest in manufacturing capacity, via our owned facilities;
- increase our investment in marketing, advertising, sales and distribution infrastructure for our EVs and services;
- obtain, maintain and improve our operational, financial and management information systems;
- hire additional personnel;
- commercialize our EVs;
- obtain, maintain, expand and protect our intellectual property portfolio; and
- operate as a public company.

As of the date of this report, we believe that our existing cash resources and additional sources of liquidity are not sufficient to support planned operations for the next 12 months. Our financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The accompanying Condensed Consolidated Financial Statements do not include any adjustments related to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty related to the Company's ability to continue as a going concern.

Cash Flows Summary

Presented below is a summary of our operating, investing and financing cash flows (in thousands):

Consolidated Cash Flow Statements Data	Six Months Ended June 30,	
	2024	2023
Net cash used in operating activities	\$ (83,419)	\$ (129,544)
Net cash used in investing activities	(6,923)	(33,905)
Net cash provided by financing activities	88,539	132,215

Cash Flows from Operating Activities

Our cash flows from operating activities are significantly affected by the growth of our business primarily related to our investment in research and development as well as selling, general, and administrative activities. Our operating cash flow is also affected by our working capital needs to support growth in personnel-related expenditures and fluctuations in accounts payable and other current assets and liabilities.

Our cash outflow from operating activities primarily consist of payments related to our research and development and selling, general and administration expenses. Total expenditure as it relates to research and development excluding depreciation was \$43.2 million during the six months ended June 30, 2024, of which a nominal amount related to stock-compensation expenses. We also incurred selling, general and administration expenses of \$54.7 million for the six months ended June 30, 2024, of which \$12.1 million related to stock-compensation expenses. The expenses include salaries and benefits paid to employees as primarily all salaries and benefits were paid in cash during the six months ended June 30, 2024.

Cash Flows from Investing Activities

We generally expect to experience negative cash flows from investing activities as we expand our business and continue to build our infrastructure. Cash flows from investing activities primarily relate to capital expenditures to support our growth.

Net cash used in investing activities was approximately \$6.9 million for the six months ended June 30, 2024, related to purchases of production tooling, machinery, and equipment to support manufacturing activities.

Cash Flows from Financing Activities

Net cash provided by financing activities was \$88.5 million for the six months ended June 30, 2024, which primarily consisted of proceeds from issuance of convertible debt of \$97.3 million and issuance of Series C Preferred Stock of \$16.5 million, offset by repayment of convertible debt of \$33.0 million.

Critical Accounting Estimates

Our Condensed Consolidated Financial Statements have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the financial statements, as well as the reported expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

There have been no material changes to our critical accounting estimates described in our Annual Report on Form 10-K for the year ended December 31, 2023. For a discussion of our critical accounting estimates, see the section titled "Critical Accounting Policies and Estimates" included in "Management's Discussion and Analysis of Financial Condition and Results of Operations, each included in our Annual Report on Form 10-K.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We have not, to date, been exposed to material market risks given our early stage of operations. Upon commencing commercial operations, we may be exposed to material market risks. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our current market risk exposure is primarily the result of fluctuations in interest rates.

Interest Rate Risk

We are exposed to market risk for changes in interest rates applicable to our cash and cash equivalents. We had cash and cash equivalents totaling \$4.5 million as of June 30, 2024. Our cash and cash equivalents were invested primarily in money market funds and are not invested for trading or speculative purposes. However, due to the short-term nature and the low-risk profile of the money market funds, we do not believe a sudden increase or decrease in market interest rates would have a material effect on the fair market value of our portfolio.

Inflation Risk

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. Inflationary factors such as increases in material costs (e.g., semiconductor chips) or overhead costs may adversely affect our business, financial condition, and operating costs upon commencing commercial operations.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Executive Chair and CEO and Chief Financial Officer ("CFO"), has evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2024. We have established and currently maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act, designed to provide reasonable assurance that information required to be disclosed in our reports filed under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure. In

designing and evaluating disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on an evaluation of our disclosure controls and procedures, our CEO and CFO concluded that our disclosure controls and procedures were effective at a reasonable assurance level as of June 30, 2024.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as that term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three and six months ended June 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

For a description of any material pending legal proceedings, please see Note 11, Commitments and Contingencies, of the notes to the Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q.

Item 1A. Risk Factors

Except as set forth below, there have been no material changes to our risk factors as previously disclosed in our Annual Report on Form 10-K. Any of the risk factors included in the Annual Report on Form 10-K could result in a significant or material adverse effect on our results of operations, financial condition or cash flows. Additional risk factors not presently known to us or that we currently deem immaterial may also impair our business or results of operations. We may disclose changes to such risk factors or disclose additional risk factors from time to time in our future filings with the SEC.

Any changes as a result of our Employee Reorganization Plan could adversely affect and disrupt our business and results of operations.

On August 14, 2024, the Company implemented an employee reorganization plan (the “Employee Reorganization Plan”), which Employee Reorganization Plan includes permanently reducing the number of employees at our facility in Torrance, California (the “Torrance Facility”), and have issued a Worker Adjustment and Retraining Notification Act notice under both California state and federal law to all employees at the Torrance Facility. Although we currently intend to offer to relocate a majority of employees currently located at the Torrance Facility to the Company’s facilities in either Oklahoma or Texas, any personnel transition that may result could be difficult and inherently cause some loss of institutional knowledge and skills. In addition, we cannot guarantee that we will be able to retain the services of most or any of the personnel being offered relocation, which may disrupt our ability to execute our business strategies that may be adversely affected by the uncertainty associated with these personnel transitions. Further, we may also incur additional costs not currently contemplated due to events that may occur as a result of, or that are associated with, our Employee Reorganization Plan. As a result, our business, prospects, financial condition and results of operations could be negatively affected.

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

Unregistered Sales of Equity Securities

During the three months ended June 30, 2024, the Company issued 73,649 shares of Common Stock in the aggregate to certain consultants pursuant to their respective contractual arrangements with the Company. Each issuance of shares was exempt from registration pursuant to Section 4(a)(2) of the Securities Act. Furthermore, each consultant represented to the Company that it is an “accredited investor” as defined in Rule 501 of the Securities Act.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Executive Chairman Agreement

On August 12, 2024, the Company entered into a new Executive Chairman Agreement with Mr. Aquila (the “New Chairman Agreement”), pursuant to his continued service as the Executive Chairman of the Board. Mr. Aquila has served as the Executive Chairman of the Board since December of 2020, and the New Chairman Agreement is intended to replace that certain Executive Chairman Agreement, dated November 25, 2020, by and between the Company and Mr. Aquila (the “Initial Chairman Agreement”), which expired on December 31, 2023. From January 1, 2024 until the date of signing of the New Chairman Agreement, the parties have operated under the terms and provisions set forth in the Initial Chairman Agreement, including, without limitation, for purposes of reimbursement of business expenses.

The term of the New Chairman Agreement commenced on August 12, 2024, and will end on December 31, 2026, or, if earlier, upon his voluntary resignation from the Board upon at least thirty days’ notice, his failure to be re-elected to the Board by the Company’s stockholders at the Company’s 2026 annual stockholder meeting or a vote of no-confidence by a majority of the Board.

Mr. Aquila will be paid a \$500,000 annual fee in equal quarterly installments and will be entitled to any benefits and perquisites generally available to members of the Board. He will be reimbursed for business expenses, including air travel expenses for either, at the option of the Company, first class airfare or a fixed rate per hour, as set forth in the New Chairman Agreement, for the business use of his private jet and business expenses associated with the office of the Executive Chairman.

The foregoing description of the New Chairman Agreement is qualified in its entirety by reference to the New Chairman Agreement, which is filed hereto as Exhibit 10.6 and which is incorporated herein by reference.

Torrance CA Facility Employee Reorganization Plan

On August 14, 2024, the Company implemented an employee reorganization plan (the “Employee Reorganization Plan”), which Employee Reorganization Plan includes permanently reducing the number of employees at our facility in Torrance, California (the “Torrance Facility”). As such, we have issued a Worker Adjustment and Retraining Notification Act notice under both California state and federal law to all employees at our Torrance Facility and are offering to relocate a majority of employees currently located at the Torrance Facility to the Company’s facilities in either Oklahoma or Texas. The first employment separations related to this reduction of employees who have not been offered and accepted employment in either our Oklahoma or Texas facilities are expected to occur on October 15, 2024. We intend to offer relocation to approximately 137 employees out of the 194 employees located at the Torrance Facility.

In connection with the Employee Reorganization Plan, the Company currently estimates that it will record an aggregate charge related to one-time relocation benefits and severance payments in the range of approximately up to \$3.0 million. The majority of these charges will result in one-time cash expenditures that are expected to be incurred during our fourth quarter of 2024.

Rule 10b5-1

During the quarter ended June 30, 2024, no director or officer adopted, modified, or terminated any Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement, as each term is defined in Item 408(a) of Regulation S-K.

Item 6. Exhibits

Exhibit No.	Description
3.1	Second Amended and Restated Certificate of Incorporation of the Company, dated December 21, 2020 (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed with the SEC on December 22, 2020).
3.2	Amended and Restated Bylaws of the Company, dated December 21, 2020 (incorporated by reference to Exhibit 3.2 to the Company’s Current Report on Form 8-K filed with the SEC on December 22, 2020).
3.3	Certificate of Amendment, dated January 25, 2023, to the Second Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed with the SEC on January 25, 2023).
3.4	Certificate of Amendment, dated October 6, 2023, to the Second Amended and Restated Certificate of Incorporation of Canoo Inc. (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed with the SEC on October 6, 2023)

3.5	Certificate of Designation of the Company for the 7.5% Series B Cumulative Perpetual Redeemable Preferred Stock, dated October 12, 2023 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on October 12, 2023)
3.6	Certificate of Amendment, dated March 7, 2024, to the Second Amended and Restated Certificate of Incorporation of Canoo Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on March 8, 2024)
3.7	Certificate of Designation of the Company for the Series C Cumulative Perpetual Redeemable Preferred Stock, dated May 3, 2024 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on May 6, 2024)
4.1	Form of Warrant (incorporated by reference to Exhibit A to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on April 1, 2024)
4.2	Form of Warrant (incorporated by reference to Exhibit B of Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on July 22, 2024)
10.1	Securities Purchase Agreement, dated April 9, 2024, by and among the Company, AFV Partners SPV-11 LLC and AFV Partners SPV-11/A LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on April 1, 2024)
10.2	Securities Purchase Agreement, dated April 26, 2024, by and between the Company and AFV Partners SPV-11/B LLC
10.3	Securities Purchase Agreement, dated May 3, 2024, by and between the Company and AFV Partners SPV-11/A LLC
10.4	Pre-Paid Advance Agreement, dated June 13, 2024, by and between the Company and YA II PN, Ltd. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on June 13, 2024)
10.5	Prepaid Advance Agreement, dated July 19, 2024, by and between the Company and YA II PN, Ltd. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on July 22, 2024)
10.6	Executive Chairman Agreement, dated August 12, 2024, by and between the Company and Anthony Aquila
31.1*	Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002.
31.2*	Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002.
32.1**	Certification of Principal Executive Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act of 2002.
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes Oxley Act of 2002.
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension 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 as Inline XBRL and contained in Exhibit 101)

† Certain confidential portions of this exhibit have been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K. The omitted information is (i) not material and (ii) would likely cause the Company competitive harm if publicly disclosed. The Company agrees to furnish an unredacted copy to the SEC upon request.

* Filed herewith.

** The certifications attached as Exhibit 32.1 and Exhibit 32.2 that accompany this Quarterly Report on Form 10-Q are deemed furnished and not filed with the SEC and are not to be incorporated by reference into any filing of the Company under the Securities Act or the Exchange Act, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is made as of April 26, 2024 (the "Effective Date"), by and between Canoo Inc., a Delaware corporation (the "Company"), and the purchaser(s) listed on the signature page(s) hereto (each a "Purchaser," and together the "Purchasers").

WHEREAS, the Company desires to issue, sell and deliver an aggregate of 1,500 shares of the Company's Series C Cumulative Perpetual Redeemable Preferred Stock, par value \$0.0001 per share (the "Preferred Stock"), and warrants (the "Warrants") to purchase 670,991 shares of the Company's Common Stock, par value \$0.0001 per share (the "Common Stock") to certain purchasers;

WHEREAS, the Warrants shall be issued in the form of **Exhibit A** attached hereto;

WHEREAS, each Purchaser hereunder wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement the Preferred Shares (as defined herein) and the Warrants to purchase a certain number of shares of Common Stock; and

WHEREAS, the Company and each Purchaser are executing and delivering this Agreement and the Company is executing and delivering a Warrant to each Purchaser in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Issuance of Securities.

Effective as of the Closing Date, the Company will issue and sell to the Purchasers (i) an aggregate of 1,500 shares (the "Preferred Shares") of the Company's Preferred Stock and (ii) a Warrant to purchase 670,991 shares of Common Stock (such shares of Common Stock, the "Warrant Shares," and together with the Warrants, the Preferred Shares and the Underlying Shares (as defined below) the "Securities"). Each Purchaser will purchase the Preferred Shares and the applicable Warrants set forth on its signature page hereto at the aggregate price set forth on the signature page hereto. The total purchase price payable by the Purchasers for the Securities is \$1,500,000 (the "Purchase Price").

2. Closing and Delivery.

(a) Closing. Subject to the satisfaction of the closing conditions set forth in Section 6, the closing (the "Closing") of the transactions contemplated hereby shall occur as promptly as practicable following the date of this Agreement (such date, the "Closing Date"). The Closing shall take place via the electronic exchange of documents and signature pages, or at such other time and place as the Company and the Purchasers mutually agree upon.

(b) Delivery. On the Closing Date, to effect the purchase and sale of the Preferred Shares and the Warrants, (i) each Purchaser shall pay its respective aggregate Purchase Price to the Company by wire transfer of immediately available funds in accordance with the Company's written wire instructions, and (ii) the Company shall issue in book entry form, registered in the name of each Purchaser, such aggregate number of Preferred Shares and the Warrants set forth on such Purchaser's signature page hereto to the Purchaser's address as set forth on the signature page hereto (or as otherwise set forth in such Purchaser's delivery instructions).

(c) Purchaser Cap. Notwithstanding anything to the contrary set forth herein, no Purchaser shall be permitted to effect any conversion of shares of Preferred Stock, receive Underlying Shares hereunder, receive Dividend Shares or exercise Warrants to the extent that after giving effect to such conversion or receipt of such Underlying Shares, receipt of Dividend Shares or receipt of Warrant Shares the Purchaser, in the aggregate and together with any affiliate of such Purchaser, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or receipt of shares, except and to the extent as waived or consented to in writing by such Purchaser.

(d) Authorized Shares. The Company covenants that during the period each of the Preferred Stock and the Warrants are outstanding, it will maintain reserved, from its authorized and unissued shares of the Common Stock and, free of preemptive rights and other similar contractual rights of stockholders, a number of its authorized but unissued shares of Common Stock equal to (i) the aggregate number of shares of Common Stock necessary to effect the conversion of the Preferred Stock based on clause (ii) of the Conversion Price (as defined in the Certificate of Designation) (which initial reserve shall be 670,991 shares) then in effect and exercise of the Warrants (the "Underlying Reserved Shares") pursuant to the Certificate of Designation of Series C Cumulative Perpetual Redeemable Preferred Stock Par Value \$0.0001 Per Share, Of Canoo Inc. to be filed promptly after the Closing by the Company with the Secretary of State of the State of Delaware, in the form of Exhibit B attached hereto (the "Certificate of Designation"), in the case of the Preferred Stock, and the form of Warrant in the form of Exhibit A attached hereto, in the case of the Warrants. Upon (i) the conversion of the Preferred Shares in accordance with their terms, (ii) payment of dividends on the Preferred Stock pursuant to the Certificate of Designation, at the option of the Purchaser, in shares of Common Stock (the "Dividend Shares") and together with the Underlying Reserved Shares, the "Underlying Shares") and (iii) the exercise of the Warrants, as applicable, the Company shall issue Underlying Shares in book entry form in accordance with the Certificate of Designation, in the case of the Preferred Shares and the Dividend Shares, and in accordance with the form of Warrant, in the case of the Warrants.

3. Company Representations. The Company represents and warrants to each Purchaser, as of the date hereof and as of the Closing Date, as follows:

(a) Organization and Standing. Each of the Company and its "Subsidiaries" (which for purposes of this Agreement means any significant subsidiary as defined in Rule 405 of the Securities Act is duly incorporated, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated. The Company has all requisite power and authority to own and operate its properties and assets and to carry on its business as presently conducted and

as proposed to be conducted. Each of the Company and its Subsidiaries is qualified to do business as a foreign entity in every jurisdiction in which the failure to be so qualified would have, or would reasonably be expected to have, a material adverse effect, individually or in the aggregate, upon the business, properties, tangible and intangible assets, liabilities, operations, prospects, financial condition or results of operation of the Company and its Subsidiaries taken as whole or the ability of the Company to perform its obligations under the Transaction Documents (a “Material Adverse Effect”).

(b) Power. The Company has all requisite corporate power and authority to execute and deliver this Agreement, the schedules and exhibits attached hereto, the Certificate of Designation, the Warrants and any other documents or agreements explicitly contemplated hereunder (collectively, the “Transaction Documents”), and to sell and issue the Preferred Shares and the Warrant hereunder, and to carry out and perform its obligations under the terms of the Transaction Documents.

(c) Authorization. The execution, delivery, and performance of each Transaction Document by the Company has been duly authorized by all requisite action on the part of the Company and its officers, directors and stockholders (other than the Requisite Shareholder Approval (as defined in the Certificate of Designation)) and each Transaction Document constitutes the legal, valid, and binding obligation of the Company enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors’ rights generally, and (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies (the “Enforceability Exceptions”).

(d) Consents and Approvals. Except for any Current Report on Form 8-K, any required filing or notification with the applicable rules and regulations of the Nasdaq Stock Market LLC or any successor entity (the “Nasdaq Stock Market”) and the filing of the Registration Statement (as defined in Section 8 hereof) as required under Section 8 hereof, neither the Company nor any of its Subsidiaries is required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by the Transaction Documents. Assuming the accuracy of the representations of the Purchasers in Section 4, no consent, approval, authorization or other order of, or registration, qualification or filing with, any court, regulatory body, administrative agency, self-regulatory organization, stock exchange or market (including the Nasdaq Stock Market), or other governmental body is required for the execution and delivery of the Transaction Documents, the valid issuance, sale and delivery of the Preferred Shares and the Warrant to be sold pursuant to the Transaction Documents other than such as have been or will be made or obtained, or for any securities filings required to be made under federal or state securities laws applicable to the offering of the Securities, other than the filing of the Certificate of Designation with the State of Delaware. The Company and its Subsidiaries are unaware of any facts or circumstances that might prevent the Company from obtaining or effecting any of the registration, notification or filings pursuant to this Section 3(d).

(e) Non-Contravention. The execution and delivery of the Transaction Documents, the issuance, sale and delivery of the Preferred Shares and the Warrants to be sold by the Company under the Transaction Documents, the issuance and delivery of the Underlying

Shares upon conversion of the Preferred Shares or upon exercise of the Warrants or as may be issued as Dividend Shares (subject as to the Underlying Shares only to any Requisite Shareholder Approval), the performance by the Company of its obligations under the Transaction Documents and the consummation of the transactions contemplated hereby or thereby do not and will not (a) conflict with, result in the breach or violation of, or constitute (with or without the giving of notice or the passage of time or both) a violation of, or default under, (i) any bond, debenture note or other evidence of indebtedness, or under any lease, license, franchise, permit, indenture, mortgage, deed of trust, loan agreement, joint venture or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which it or its properties may be bound or affected, (ii) the Company's amended and restated certificate of incorporation, as amended and as in effect on the date hereof (the "Certificate of Incorporation"), the Company's amended and restated bylaws, as amended and as in effect on the date hereof (the "Bylaws"), or the equivalent document with respect to any of the Company's Subsidiaries, as amended and as in effect on the date hereof, or (iii) subject to the receipt of the Requisite Shareholder Approval, any statute or law, judgment, decree, rule, regulation, ordinance or order of any court or governmental or regulatory body (including the Nasdaq Stock Market), governmental agency, arbitration panel or authority applicable to the Company, any of its subsidiaries or their respective properties, except in the case of clauses (i) and (iii) for such conflicts, breaches, violations or defaults that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect, or (b) result in the creation or imposition of any lien, encumbrance, claim, security interest or restriction whatsoever upon any of the material properties or assets of the Company or any of its Subsidiaries or an acceleration of indebtedness pursuant to any obligation, agreement or condition contained in any material bond, debenture, note or any other evidence of indebtedness or any material indenture, mortgage, deed of trust or any other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company is subject.

(f) Issuance of Securities. The Preferred Shares are duly authorized and when issued and paid for pursuant to the terms of the Transaction Documents will be validly issued, fully paid, and nonassessable, and will be free of any liens or encumbrances with respect to the issuance thereof; provided, however, that the Preferred Shares shall be subject to restrictions on transfer under state or federal securities laws as set forth in the Transaction Documents, or as otherwise may be required under state or federal securities laws as set forth in the Transaction Documents at the time a transfer is proposed. When paid for and issued in accordance with this Agreement, the Warrants will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by the Enforceability Exceptions; provided, however, that the Warrants shall be subject to restrictions on transfer under state or federal securities laws as set forth in the Transaction Documents, or as otherwise may be required under state or federal securities laws as set forth in the Transaction Documents at the time a transfer is proposed. Except as disclosed in reports, schedules, forms, proxy statements, statements and other documents filed by the Company with the Securities and Exchange Commission (the "SEC") pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") during the twelve (12) calendar months prior to the date hereof (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC Documents"), the issuance and delivery of the Preferred Shares and the Warrants will not be

Documents), the issuance and delivery of the Preferred Shares and the warrants will not be

subject to preemptive, co-sale, right of first refusal or any other similar rights of any stockholder of the Company or any other person, or any liens or encumbrances or result in the triggering of any anti-dilution or other similar rights under any outstanding securities of the Company. The Underlying Shares issuable upon conversion of the Preferred Stock, payment of the Preferred Stock dividend in Dividend Shares, and the exercise of the Warrants, will be duly authorized and, when paid for and issued in accordance with the terms of this Agreement, the Certificate of Designation and the Warrants, as applicable, will be validly issued, fully paid, and nonassessable, and will be free of any liens or encumbrances with respect to the issuance thereof; provided, however, that the Underlying Shares shall be subject to restrictions on transfer under state or federal securities laws as set forth in the Transaction Documents, or as otherwise may be required under state or federal securities laws as set forth in the Transaction Documents at the time a transfer is proposed. Except as disclosed in the SEC Documents, the issuance and delivery of the Underlying Shares will not be subject to preemptive, co-sale, right of first refusal or any other similar rights of any stockholder of the Company or any other person, or any liens or encumbrances or result in the triggering of any anti-dilution or other similar rights under any outstanding securities of the Company. The Company has initially reserved 1,500 shares of Preferred Stock for issuance hereunder, 670,991 shares of Common Stock for issuance upon conversion of the Preferred Stock, 670,991 shares of Common Stock for issuance upon exercise of the Warrants and 75,000 shares of Common Stock for possible issuance as payment of future dividends on the Preferred Stock.

(g) No Bad Actors. None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the placement, any beneficial owner of 20% or more of the Company's outstanding voting securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) of the Securities Act.

(h) No Registration. Assuming the accuracy of each of the representations and warranties of the Purchasers in Section 4 hereof, the issuance by the Company of the Securities is exempt from registration under the Securities Act.

(i) SEC Documents; Financial Statements. During the twelve (12) calendar months prior to the date hereof, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act. As of their respective filing dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective filing dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently

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applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(j) Absence of Certain Changes. Since December 31, 2022, there has been no material adverse change to, and no material adverse development in, the business, properties, operations, condition (financial or otherwise), results of operations or prospects of the Company or its Subsidiaries. Since December 31, 2022, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) had capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead any such creditor to do so.

(k) Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under its Certificate of Incorporation, any certificate of designations of any outstanding series of preferred stock of the Company or the Bylaws or their organizational charter or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except for possible violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect. Without limiting the generality of the foregoing, except as disclosed in the SEC Documents, the Company is not in violation of any of the rules, regulations or requirements of the Nasdaq Stock Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock by the Nasdaq Stock Market in the foreseeable future. Since December 31, 2022, (i) the Common Stock has been included for listing on the Nasdaq Stock Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Nasdaq Stock Market and (iii) except as disclosed in the SEC Documents, the Company has received no communication, written or oral, from the SEC or the Nasdaq Stock Market regarding the suspension or delisting of the Common Stock from the Nasdaq Stock Market. The Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses as currently conducted, except where the failure to possess such certificates, authorizations or permits would not reasonably be expected to have, individually or in the aggregate, a material adverse effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(l) Foreign Corrupt Practices. None of the Company, the Company's Subsidiaries or any director or officer of the Company, or, to the Company's knowledge, any agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its, his or her actions for, or on behalf of, the Company or any of its Subsidiaries (i) used



any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(m) Sarbanes-Oxley Act. The Company is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof.

(n) Equity Capitalization. As of the Effective Date, the authorized capital of the Company consists of 2,010,000,000 shares of capital stock, of which 2,000,000,000 shares are Common Stock, and 10,000,000 shares are preferred stock, of which 45,000 shares are designated Series B Preferred Stock, 25,000 shares will be designated Series C Preferred Stock and, after filing of the Certificate of Designation, 9,930,000 shares will be undesignated Preferred Stock. As of April 26, 2024, the Company had 64,505,217 shares of Common Stock outstanding, 45,000 shares of Series B Preferred Stock outstanding and no shares of Series C Preferred Stock outstanding. All of such outstanding shares have been, or upon issuance will be, validly issued and are fully paid and nonassessable. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents that have not been effectively waived as of the Closing Date. Except as set forth in the SEC Documents or as a result of the purchase and sale of the Preferred Shares and the Warrants: (i) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries; (iii) there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing material Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound; (iv) there are no financing statements securing obligations in any material amounts, either singly or in the aggregate, filed in connection with the Company or any of its Subsidiaries; (v) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act (except for the registration rights granted pursuant to Section 8 hereof); (vi) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (vii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (viii) the Company and its Subsidiaries have no liabilities or

by the issuance of the securities, and (viii) the Company and its Subsidiaries have no liabilities of

obligations required to be disclosed in the SEC Documents but not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or would not reasonably be expected to have a Material Adverse Effect. The Company has furnished to the Purchasers, or filed as exhibits to the SEC Documents, true, correct and complete copies of the Company's Certificate of Incorporation, the Company's Bylaws, and the terms of all securities convertible into, or exercisable or exchangeable for, shares of Common Stock and the material rights of the holders thereof in respect thereto.

(o) Absence of Litigation. Except as disclosed in the SEC Documents, there is no material action, suit, proceeding, inquiry or investigation before or by the Nasdaq Stock Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's Subsidiaries or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise. No court, administrative body or arbitral body has issued any order, judgment, decree or injunction restricting the operation of the business of the Company or any of its Subsidiaries.

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

(q) Title. The Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries. Any real property and facilities held under lease by the Company and any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(r) Intellectual Property Rights. The Company owns, possesses or can acquire on reasonable terms sufficient trademarks, service marks, trade names, patents, copyrights (including registrations and applications for any of the foregoing), domain names, licenses, approvals, trade secrets, know how, inventions, technology and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct its business as now conducted and as proposed to be conducted as set forth in the SEC Documents. To the Company's knowledge, the operation of the business of the Company, as now conducted or as proposed to be conducted in the SEC Documents, together with the Company's use of the Company's Intellectual Property Rights, does not conflict with, infringe, misappropriate or otherwise violate the Intellectual Property Rights of any third party. Except as disclosed in the SEC Documents, no actions, suits,

claims or proceedings have been asserted, or, to the Company's knowledge, threatened against the Company alleging any of the foregoing or seeking to challenge, deny or restrict the operation of the business of the Company and the Company is unaware of any facts which would form a reasonable basis for any such claim. Except as disclosed in the SEC Documents, the Company has not received any notice of a claim of infringement, misappropriation or conflict with Intellectual Property Rights of others, except for such claims that would not, individually or the in aggregate, be reasonably expected to have a Material Adverse Effect.

Except as disclosed in the SEC Documents, the Intellectual Property Rights owned by the Company and, to the knowledge of the Company, any Intellectual Property Rights licensed to the Company have not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the Company's knowledge, threatened material action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such challenge, except for such actions, suits, proceedings, or claims that would not, individually or the in aggregate, be reasonably expected to have a Material Adverse Effect. Except as otherwise disclosed in the SEC Documents, the Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be set forth in the SEC Documents. None of the technology or intellectual property used by the Company in its business has been obtained or is being used by the Company in violation of any contractual obligation binding on the Company or, to the Company's knowledge, any of its officers, directors or employees or otherwise in violation of the rights of any persons.

The Company has duly and properly filed or caused to be filed with the U.S. Patent and Trademark Office (the "PTO"), foreign patent authorities and/or international patent authorities all patent applications disclosed in the SEC Documents as owned by the Company (the "Company Patent Applications"). The Company has complied with the PTO's duty of candor and disclosure for the Company Patent Applications and has made no material misrepresentation during prosecution of the Company Patent Applications. To the Company's knowledge, the Company Patent Applications disclose patentable subject matters, correctly name the inventors of the claimed subject matter and the Company has not been notified of any inventorship challenges nor has any interference been declared or provoked. In addition, no material fact is known by the Company that would preclude the issuance of patents with respect to the Company Patent Applications, or that would render such patents, if issued, invalid or unenforceable.

The Company has used its commercially reasonable efforts, but in no event less than those efforts which would accord with normal industry practice, to maintain the confidentiality of the trade secrets and other confidential Intellectual Property Rights used in connection with the Company's business. Except as would not reasonably be expected to have a Material Adverse Effect, all material trade secrets used in connection with the Company's business are valid and protectable. Furthermore, (i) there has been no misappropriation of any material trade secrets or other material confidential Intellectual Property Rights used in connection with the business of the Company by any person; (ii) no employee, independent contractor or agent of the Company has misappropriated any trade secrets of any other person in the course of performance as an employee, independent contractor or agent of the Company; (iii) no third party is using or has been granted any rights to use any trade secret or other confidential Intellectual Property Rights material to the business of the Company; and (iv) no employee, independent contractor or agent

of the Company is in default or breach of any term of any employment agreement, nondisclosure agreement, assignment of invention agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of Intellectual Property Rights, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

(t) Internal Accounting and Disclosure Controls. Except as set forth in the SEC Documents, the Company maintains a system of internal controls over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in the SEC Documents, the Company maintains disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company’s management, including its principal executive officer and its principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

(u) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an “investment company,” a company controlled by an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for,



an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended.

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

(w) Taxes. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges, fines or penalties that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its financial statements provision reasonably adequate for the payment of all material tax liability of which has not been finally determined and all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary have no actual knowledge of a basis for any such claim.

(x) Transactions with Affiliates and Employees. Except as disclosed in the SEC Documents, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company or a Subsidiary and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

4. Purchasers’ Representations. In connection with the receipt of the Securities pursuant to this Agreement, each Purchaser, severally and not jointly, represents to the Company as of the date hereof and as of the Closing Date as follows:

(a) No Conflicts. The execution, delivery and performance by such Purchaser of this Agreement do not and will not contravene or constitute a default under, or violation of, or be subject to penalties under, (i) any agreement (or require the consent of any party under any such agreement that has not been made or obtained) to which such Purchaser is a party, or (ii) any judgment, injunction, order, decree or other instrument binding upon such Purchaser, except where such contravention, default, violation or failure to obtain a consent, individually or in the



aggregate, would not reasonably be expected to impair Purchaser's ability to perform fully any obligation which Purchaser has or will have under this Agreement.

(b) Accredited Investor Status. Such Purchaser understands the definition of the term "accredited investor" within the meaning of Rule 501(a) of Regulation D, promulgated by the SEC under the Securities Act, and such Purchaser qualifies as an accredited investor.

(c) No Public Sale or Distribution. Such Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Such Purchaser is acquiring the Securities for investment for its own account only and not with a view to, or for resale in connection with, any public sale or "distribution" thereof within the meaning of the Securities Act or under any applicable provision of state law in violation of the Securities Act or such applicable provision of state law. Such Purchaser does not have any present intention to transfer the Securities to any other person or entity in such a "distribution;" provided, however, that by making the representations herein, such Purchaser (i) does not agree to hold any of the Securities it acquires for any minimum or other specific term and (ii) reserves the right to dispose of any or all the Securities it acquires at any time in accordance with or pursuant to a registration statement or a registration exemption under the Securities Act and pursuant to the applicable terms of this Agreement.

(d) Reliance on Exemptions. Such Purchaser understands that the Securities have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of such Purchaser's investment intent as expressed herein. Such Purchaser understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, such Purchaser must hold the Securities indefinitely unless they are registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Such Purchaser acknowledges that the Company has no obligation to register or qualify the Securities for resale except for the registration rights granted pursuant to Section 8 hereof.

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

(f) No Governmental Review. Such Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the



investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Purchaser understands that except for the registration rights granted pursuant to Section 8 hereof: (i) the Securities have not been and are not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Purchaser shall have delivered to the Company an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Purchaser provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 promulgated under the Securities Act, as amended, (“Rule 144”) (or a successor rule thereto); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(h) Legends. Such Purchaser understands that the book entry statements representing the Preferred Shares and, until such time as the resale of the Underlying Shares has been registered under the Securities Act as contemplated by Section 8 hereof, the book entry statements representing the Securities, except as set forth below, shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such Securities):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN] [THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL, IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT.

The legend set forth above shall be removed and the Company shall issue a book entry statement without such legend to the holder of the Securities upon which it is stamped, if, unless otherwise required by state securities laws, (i) such Securities are registered for resale under the Securities Act and such holder has requested legend removal in connection with a bona fide registered sale, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with

an opinion of a law firm reasonably acceptable to the Company, in a form reasonably acceptable to the Company, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the Securities Act and such Securities are no longer required to bear a restrictive legend, or (iii) such Securities have been validly sold, assigned or transferred pursuant to Rule 144 and such holder has furnished the Company with customary documentation to effect such legend removal.

(i) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Purchaser and shall constitute the legal, valid and binding obligations of such Purchaser enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by Enforceability Exceptions.

5. Covenants.

(a) Reasonable Best Efforts. Each party shall use its reasonable best efforts timely to satisfy each of the covenants and conditions to be satisfied by it as provided in Sections 5 and 6 of this Agreement.

(b) Reporting Status. Until the earliest of (i) the date on which the Purchasers shall have sold all the Underlying Shares, (ii) the date on which all the Underlying Shares may be resold pursuant to Rule 144 without (x) the requirement for the Company to be in compliance with the current public information requirement under Rule 144 as to such securities and (y) volume or manner-of-sale restrictions, or (iii) the date which is two (2) years from the Effective Date (the "Reporting Period"), the Company shall timely file all reports required to be filed with the SEC pursuant to the Exchange Act, and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would otherwise permit such termination.

(c) Listing of Shares. The Company hereby agrees to use commercially reasonable best efforts to maintain the listing or quotation of the shares of Common Stock on the Nasdaq Stock Market, and in the time and manner as required by the Nasdaq Stock Market, the Company shall prepare and file with the Nasdaq Stock Market an additional shares listing notification covering all of the shares of Common Stock issuable upon conversion of the Preferred Shares and the exercise of the Warrants. The Company further agrees, if the Company applies to have the Common Stock traded on any other trading market, it will then include in such application all of the Common Shares and Warrant Shares, and will take such other action as is necessary to cause all of the Common Shares and Warrant Shares to be listed or quoted on such other trading market as promptly as possible. The Company will then take all commercially reasonable actions to continue the listing and trading of the Common Stock on the Nasdaq Stock Market and will comply in all material respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Nasdaq Stock Market. The Company agrees to use commercially reasonable efforts to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.



(d) Fees. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by any Purchaser) relating to or arising out of the transactions contemplated hereby. Except as otherwise set forth in this Agreement, each party to this Agreement shall bear its own expenses in connection with the sale of the Preferred Shares and the Warrants to the Purchasers.

(e) Use of Proceeds. The Company shall use the net proceeds from the sale of the Warrant Shares and Preferred Shares for working capital purposes and general corporate purposes, including the purchase of any pending or future acquisitions, and shall not use such proceeds: (i) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and repayment of obligations outstanding as of the date of this Agreement consistent with prior practices or prepayment of obligations outstanding as of the date of this Agreement), (ii) for the redemption of any Common Stock or equivalents thereof, (iii) for the settlement of any outstanding litigation or (iv) in violation of the Foreign Corrupt Practices Act of 1977, as amended, or regulations administered by the Office of Foreign Assets Control of the U.S. Treasury Department or similar applicable regulations.

6. Closing Conditions

(a) The obligations of the Company to deliver the Preferred Shares and the Warrants to each Purchaser on the Closing Date is subject to the satisfaction of each of the following conditions:

(i) The representations and warranties of such Purchaser contained in this Agreement shall be true and correct on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate as of such specified date). Such Purchaser shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by it at or prior to the Closing Date.

(ii) The Company shall have obtained all governmental, regulatory or third party consents, permits, approvals, registrations, waivers and any other required approvals that are necessary for consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing, all of which shall be and remain so long as necessary in full force and effect. For the avoidance of doubt, any required approvals that are not necessary for the consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing shall not be required by this clause (ii).

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

(b) The obligations of each Purchaser to purchase its Preferred Shares and the Warrants on the Closing Date is subject to the satisfaction of each of the following conditions:



(i) The representations and warranties of the Company contained in this Agreement shall be true and correct on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate as of such specified date). The Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(ii) Since the date of execution of this Agreement, (i) no event or series of events shall have occurred that would reasonably be expected to result in a Material Adverse Effect, (ii) the Company shall not have commenced a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law and (iii) there shall not have occurred the commencement against the Company of an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated bankrupt or insolvent.

(iii) The Company shall have duly executed and delivered to each applicable Purchaser (i) this Agreement, (ii) evidence of the issuance of the Preferred Shares (in such amounts as set forth on such Purchaser's signature page hereto) and (iii) evidence of the issuance of the Warrants (in such amounts as set forth on such Purchaser's signature page hereto).

(iv) The Common Stock (A) shall be listed on the Nasdaq Stock Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Nasdaq Stock Market from trading on the Nasdaq Stock Market nor, except as disclosed in the SEC Documents, shall suspension by the SEC or the Nasdaq Stock Market have been threatened, as of the Closing Date, either (x) in writing by the SEC or the Nasdaq Stock Market or (y) by falling below the minimum listing maintenance requirements of the Nasdaq Stock Market.

(v) The Purchasers acquiring Preferred Shares shall have received evidence from the Secretary of State of the State of Delaware that the Certificate of Designation has been filed therewith as of, or promptly after, the Closing Date and has become effective as of the Closing Date.

(vi) The Company shall have obtained all governmental, regulatory or third party consents, permits, approvals, registrations, waivers and any other required approvals that are necessary for consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing, all of which shall be and remain so long as necessary in full force and effect. For the avoidance of doubt, any required approvals that are not necessary for the consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing shall not be required by this clause (vi).

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

7. Participation Rights to Future Securities Issuances.



7.1 Participation Right. If the Company sells any shares of a series of Preferred Stock and/or rights, options, or warrants to purchase shares of Common Stock or of a series of Preferred Stock, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for shares of a series of Common Stock or Preferred Stock (“Qualifying New Securities”); provided that notwithstanding anything to the contrary any equity, options, warrant or similar equity-linked issuances to employees, consultants or vendors of the Company shall be excluded and not be deemed to be a Qualifying New Securities herein, the Company shall give notice to the Purchasers within 30 days after the issuance of Qualifying New Securities. Such notice shall describe the type, price, and terms of the Qualifying New Securities. Each Purchaser shall have 20 days from the date notice is given to elect to purchase up to the number of Qualifying New Securities which equals the greater of (x) that number of Qualifying New Securities having an aggregate purchase price equal to 400% of the aggregate Purchase Price paid by such Purchaser for Preferred Stock and Warrants pursuant to this Agreement, or (y) the proportion that the Common Stock then held by such Purchaser (including all shares of Common Stock then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of any shares of preferred stock of the Company and any other securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Stock, including options and warrants (“Derivative Securities”) then held by such Purchaser) bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Stock and other Derivative Securities). The closing of such sale shall occur within 45 days of the date notice is given to the Purchasers. Notwithstanding the foregoing, no Purchaser, or Affiliate (as defined in the certificate of Designation) thereof, shall be entitled to purchase Qualifying New Securities hereunder in an amount that would result in the Purchaser, in the aggregate and together with any Affiliate of such Purchaser, beneficially owning (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 19.99% of the number of shares of Common Stock outstanding immediately after giving effect to such purchase Qualifying New Securities.

7.2 Termination. The covenants set forth in Section 7.1 shall terminate and be of no further force or effect upon the redemption or conversion in full of the Preferred Shares.

8. Registration Rights. The Company agrees that, within reasonable promptness, and in any event within ninety (90) days following the Closing Date, it will file with the SEC (at its sole cost and expense) a registration statement registering the resale by the Purchasers of the Underlying Shares and an aggregate number of 75,000 Dividend Shares issuable as payment of the Preferred Stock dividend at the Purchaser’s option (the “Registration Statement”) on behalf of the Purchasers (or their Permitted Transferee(s)), and it shall use its commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable after the filing thereof. The Registration Statement shall register a number of Underlying Shares equal to the number of Underlying Reserved Shares and 75,000 Dividend Shares. In the event that the number of Underlying Shares registered on the Registration Statement is insufficient for the number of Underlying Shares to be issued at any point in time upon the conversion of Preferred Shares, the payment of the Preferred Stock dividend in Dividend Shares and/or the exercise of the Warrants (a “Subsequent Issuance”), the Company agrees to file with the SEC a separate registration statement within 30 days of such Subsequent Issuance, and it shall use its commercially reasonable efforts to have such registration statement declared effective as soon as practicable after the filing thereof. To increase the number of Underlying Shares registered thereunder by an amount sufficient

thereof, to increase the number of underlying shares registered thereunder by an amount sufficient

to register the number of Underlying Shares to be issued in such Subsequent Issuance. The Company agrees to cause such Registration Statement or another shelf registration statement that includes the Underlying Shares, to remain effective until the earliest of (i) the second anniversary of the Closing, (ii) the date on which the Purchasers (or their Permitted Transferee(s)) cease to hold any Underlying Shares issued pursuant to this Agreement, or (iii) on the first date on which the Purchasers are able to sell all of their Underlying Shares issued pursuant to this Agreement (or shares received in exchange therefor) under Rule 144 within 90 days without the volume or manner of sale limitations of such rule. The Purchasers agree to disclose their ownership to the Company upon request to assist it in making the determination with respect to Rule 144 described in clause (iii) above. In no event shall the Purchasers (or their Permitted Transferee(s)) be identified as statutory underwriters in the Registration Statement, unless in response to a comment or request from the staff of the SEC or another regulatory agency; provided, that if the SEC requests that the Purchasers (or their Permitted Transferee(s)) be identified as statutory underwriters in the Registration Statement, the Purchasers (or their Permitted Transferee(s)) will have an opportunity to withdraw their Underlying Shares from the Registration Statement. Notwithstanding the foregoing, if the SEC prevents the Company from including any or all of the shares proposed to be registered under the Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Underlying Shares by the applicable stockholders or otherwise, such Registration Statement shall register for resale such number of Underlying Shares which is equal to the maximum number of Underlying Shares as is permitted by the SEC. In such event, the number of Underlying Shares to be registered for each selling stockholder named in the Registration Statement shall be reduced pro rata among all such selling stockholders. The Purchasers (or their Permitted Transferee(s)) acknowledge and agree that the Company may suspend the use of any such registration statement if it determines that in order for such registration statement not to contain a material misstatement or omission, an amendment thereto would be needed, or if such filing or use could materially affect a bona fide business or financing transaction of the Company or would require premature disclosure of information that would adversely affect the Company that would at that time not otherwise be required in a current, quarterly, or annual report under the Exchange Act, provided, that, (I) the Company shall not so delay filing or so suspend the use of the Registration Statement for a period of more than ninety (90) consecutive days or more than a total of one hundred-twenty (120) calendar days in any three hundred sixty (360) day period and (II) the Company shall use commercially reasonable efforts to make such Registration Statement available for the sale by the Purchasers (or their Permitted Transferee(s)) of such securities as soon as practicable thereafter. The Company's obligations to include the Underlying Shares for resale in the Registration Statement are contingent upon the Purchasers (or their Permitted Transferee(s)) furnishing in writing to the Company such information regarding the Purchasers (or their Permitted Transferee(s)), the securities of the Company held by the Purchasers (or their Permitted Transferee(s)) and the intended method of disposition of such Underlying Shares, which shall be limited to non-underwritten public offerings, as shall be reasonably requested by the Company to effect the registration of such Underlying Shares, and shall execute such documents in connection with such registration as the Company may reasonably request that are customary of a selling stockholder in similar situations.

9. Indemnification

(a) To the extent permitted by law, the Company shall indemnify each Purchaser and its directors, executive officers, stockholders, members, partners, employees, and

agents and each Person controlling such Purchaser within the meaning of Section 15 of the Securities Act (each a “Purchaser Party”), against all claims, losses, damages and liabilities (or action in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 9(d) below), arising out of or based on any (i) breach of any representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents, (ii) action instituted against a Purchaser Party in any capacity, or any of them or their respective affiliates, by any shareholder of the Company who is not an affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents or (iii) untrue statement (or alleged untrue statement) of a material fact contained in the Registration Statement, prospectus, any amendment or supplement thereof, or other document prepared by the Company and incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse each Purchaser Party, for reasonable legal and other out-of-pocket expenses reasonably incurred and documented in connection with investigating or defending any such claim, loss, damage, liability or action as incurred; provided that the Company will not be liable in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Purchaser expressly for use in preparation of the Registration Statement, prospectus, amendment or supplement; provided however, that the Company will not be liable in any such case where the claim, loss, damage or liability arises out of or is related to the failure of such Purchaser to comply with the covenants and agreements contained in this Section 9 respecting sales of the Securities, and except that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time the Registration Statement becomes effective or in an amended prospectus filed with the SEC pursuant to Rule 424(b) which meets the requirements of Section 10(a) of the Securities Act (each, a “Final Prospectus”), such indemnity shall not inure to the benefit of any such Purchaser or any such controlling Person, if a copy of a Final Prospectus furnished by the Company to the Purchaser for delivery was not furnished to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage.

(b) Each Purchaser will severally, and not jointly, indemnify the Company, each of its directors and officers, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 9(d) below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in the Registration Statement, prospectus, or any amendment or supplement thereof, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, and each Person controlling the Company for reasonable legal and other out-of-pocket expenses reasonably incurred and documented in connection with investigating or defending any such claim, loss, damage, liability or action as incurred, in each case to the extent, but only to the extent, that such

damage, liability or action as incurred, in each case to the extent, but only to the extent, that such

untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Purchaser expressly for use in preparation of the Registration Statement, prospectus, amendment or supplement; provided that the indemnity shall not apply to the extent that such claim, loss, damage or liability results from the fact that the Final Prospectus was not made available to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, claim, damage or liability. Notwithstanding the foregoing, a Purchaser's aggregate liability pursuant to this subsection shall not exceed the net proceeds received by the Purchaser from the sale of the Underlying Shares included in the Registration Statement giving rise to such indemnification obligation.

(c) Each party entitled to indemnification under this Section 9(c) (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party (at its expense) to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such Indemnified Party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless such failure is materially prejudicial to the Indemnifying Party in defending such claim or litigation. An Indemnifying Party shall not be liable for any settlement of an action or claim effected without its written consent. No Indemnifying Party, in its defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(d) If the indemnification provided for in this Section 9(d) is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

10. Miscellaneous.

(a) Termination. In the event that the Closing shall not have occurred with respect to a Purchaser on or before five (5) Business Days from the date hereof due to the

Company's or such Purchaser's failure to satisfy the conditions set forth in Section 6 above (and the nonbreaching party does not waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party. "Business Day" shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

(b) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(c) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(f) Entire Agreement; Amendments. The Transaction Documents, together with the exhibits thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Purchaser(s) listed on the signature page(s) hereto; provided no amendment to Section 10(a) may be made without the consent of each Purchaser. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. The Company has not, directly or indirectly, made any agreements with any Purchaser relating to the terms or conditions of the transactions contemplated by this Agreement except as set forth in this Agreement. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Purchaser has made any commitment or promise or has any other obligation to provide any financing to the Company or otherwise.



(g) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; or (ii) one Business Day after receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party). The addresses and email address for such communications shall be:

If to the Company, to its address and email address set forth on the Company's signature page hereto, with a copy (for informational purposes only) to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attention: Robert Goedert, P.C.
Kevin Frank
Email: *****

If to a Purchaser, to its address and email address set forth on its signature page hereto or to such other address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Preferred Shares and/or Warrants. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchaser(s) on the signature page(s) hereto.

(i) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors, assigns, Indemnified Parties and Indemnitees, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(j) Survival. Unless this Agreement is terminated under Section 10(a), the representations and warranties of the Company and the Purchasers contained in Sections 3 and 4, and the agreements and covenants set forth in Sections 2, 5, 8 and 9 shall survive the Closing. Each Purchaser shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

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



(l) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Remedies. Each Purchaser and each holder of the Securities shall have all rights and remedies set forth in this Agreement and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security) to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the Purchasers. The Company therefore agrees that a Purchaser shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages and without posting a bond or other security.

(n) Fees and Expenses. At or promptly following the Closing, the Company shall pay the out of pocket expenses incurred by the Purchasers in connection with this transaction, including, without limitation, the reasonable legal fees and expenses of counsel to the Purchasers, not to exceed 1% of the Purchase Price.

[Signature Pages Follow]



The undersigned has executed this Agreement as of the date first set forth above.

THE COMPANY:

CANOO INC.

By:

A handwritten signature in blue ink, appearing to read 'G. Ethridge', with a long horizontal flourish extending to the right.

(Signature)

Name: Greg Ethridge

Title: Chief Financial Officer

Address:

15520 Highway 114

Justin, Texas 76247

Attention: Greg Ethridge; Hector Ruiz

Email: *****

The undersigned has executed this Agreement as of the date first set forth above.

PURCHASER:

AFV Partners SPV-11/B LLC



(Signature)

Name: Anthony Aquila

Title: Chief Executive Officer

Number of Preferred Shares Purchased:	1,500
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Number of Shares of Common Stock for Which the Purchased Warrant Can Be Exercised:	<u>670,991</u>
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Total Purchase Price:	<u><u>\$1,500,000</u></u>
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Address for purposes of notice and delivery:

2126 Hamilton Road, Suite 260
Argyle, Texas 76226

Exhibit A
Form of Warrant

WARRANT TO PURCHASE SHARES OF COMMON STOCK

CANOO INC.

Warrant Shares: 670,991

Original Issuance Date: April 26, 2024

THIS WARRANT TO PURCHASE SHARES OF COMMON STOCK (the “Warrant”) certifies that, for value received, AFV Partners SPV-11/B LLC or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after April 26, 2024 (the “Initial Exercise Date”) and on or prior to 5:00 p.m. (New York City time) on April 26, 2029 (the “Termination Date”), but, subject to Section 2(a), not thereafter, to subscribe for and purchase from CANOO INC., a Delaware corporation (the “Company”), up to 670,991 shares of common stock, par value \$0.0001 per share (the “Common Stock”), of the Company (as subject to adjustment hereunder, the “Warrant Shares”). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the “Purchase Agreement”), dated April 26, 2024, among the Company and the purchaser[s] signatory thereto.

Section 2. Exercise.

(a) Exercise of Warrant. Notwithstanding anything in this Warrant to the contrary, until the Company has obtained the approval (the “Requisite Shareholder Approval”) of the proposal required to be approved by the Company’s stockholders pursuant to the applicable rules and regulations of Nasdaq (or any successor entity), including Nasdaq Listing Standard Rule 5635, prior to further issuances of the Company’s Common Stock upon (x) the conversion of the Series C Preferred Stock, (y) the exercise of warrants issued pursuant to the Purchase Agreement or (z) payment of Dividends hereunder, at the option of the Holder, in shares of Common Stock where, in aggregate, the issuance of such shares of Common Stock under (x), (y) or (z) would (i) exceed 19.99% of the aggregate number of shares of the Company’s Common Stock issued and outstanding as of April 9, 2024, appropriately adjusted for any stock dividend, stock split, reverse stock split or similar transaction (the “Exchange Cap”), or (ii) cause the Holder, in the aggregate and together with any affiliate of such Holder, to beneficially own (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the rules promulgated thereunder) in excess of 19.99% of the number of shares of Common Stock outstanding immediately after giving effect to exercise or otherwise result in a “change of control” within the meaning of Nasdaq Listing Standard Rule 5635(b) (the “Beneficial Ownership Limitation”), the exercise of the purchase rights represented by this Warrant may not be made if such exercise would result in an issuance of shares of Common Stock in excess of the Exchange Cap or in violation of the Beneficial Ownership Limitation, as applicable. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto as Exhibit A (the “Notice of Exercise”). Notwithstanding the foregoing, if the Company is unable to issue all or any part of the Warrant Shares prior to the Termination Date because the Company has not obtained the Requisite Shareholder Approval, the Termination Date shall be extended to a Business Day selected by the Company that is not less than twenty (20) days and not more than thirty-five (35) days from the date on which the Company obtained the Requisite Shareholder Approval. Notwithstanding anything in this Warrant to the contrary, the exercise of the purchase rights represented by this Warrant may not be made if such exercise would result in an issuance of shares of Common Stock to the extent that after giving effect to such conversion or receipt of such Conversion Shares, the Holder, in the aggregate and together with any affiliate of such Holder, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect (but only after giving effect) to such conversion or receipt of shares, except and to the extent as expressly waived or consented to in writing by the Holder provided that any such waiver or consent shall become effective 61 days following the date on which it is provided. The foregoing provision shall not apply to a Holder who, in the aggregate and together with any affiliate of such Holder, beneficially owned (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of

Section 15(u) of the Exchange Act and the rules promulgated thereunder) in excess of 2.22% of the number of

shares of Common Stock outstanding immediately before giving effect to such conversion or receipt of shares. In connection with the submission of any Notice of Exercise, the Holder shall furnish such information as the Company may reasonably request to assist it in determining the Holder's beneficial ownership pursuant to this Section 2(a). Within the earlier of (A) two (2) Trading Days and (B) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$2.2355, subject to adjustment hereunder (the "Exercise Price").

(c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available, for the public resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (x) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (y) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof, or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the restricted characteristic

accordance with Section 5(a)(7) of the Securities Act, the Warrant Shares shall have the restricted characteristic

of the Warrants being exercised, subject to the holding period of the Warrant Shares being “tacked” on to the holding period of this Warrant in accordance with Rule 144. The Company agrees not to take any position contrary to this Section 2(c).

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market, but the Common Stock is quoted on OTCQB or OTCQX, the VWAP of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the relevant date: New York Stock Exchange, NYSE American LLC, or any national exchange operated by the Nasdaq Stock Market, or listed or quoted on an exchange or quotation system that is a successor to the New York Stock Exchange, NYSE American LLC or the Nasdaq Stock Market.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market, but the Common Stock is quoted on OTCQB or OTCQX, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(d) Mechanics of Exercise

- (i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by The Depository Trust Company through its Deposit or Withdrawal at Custodian system (“DWAC”) and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to, or resale of the Warrant Shares by, the Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of the Warrant Shares, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company, and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the “Warrant Share Delivery Date”). Upon delivery of the Notice of

(such date, the Warrant Share Delivery Date). Upon delivery of the notice of

Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. Other than as a result of the limitations set forth in Section 2(a) of this Warrant, if the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the third Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a registrar (which may be the Transfer Agent) that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, the following terms have the following meanings:

“Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 12:00 p.m. (New York City time) on the Initial Exercise Date, which may be delivered at any time after the time of execution of the Purchase Agreement, the Company agrees to deliver, or cause to be delivered, the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, and other than as a result of the limitations set forth in Section 2(a) of this Warrant, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder’s brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a “Buy-In”), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver

such exercise was not honored (in which case such exercise shall be deemed rescinded) or derived

to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Warrants with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Other than as a result of the limitations set forth in Section 2(a) of this Warrant, nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share of Common Stock.

(vi) Charges, Taxes and Expenses. The issuance of Warrant Shares and delivery of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as **Exhibit B**, duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares. "Transfer Agent" means Continental Stock Transfer & Trust Company, the current transfer agent of the Company, at its principal office in One State Street Plaza, 30th Floor, New York, New York 10004 and any successor transfer agent of the Company.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of Common Stock payable in shares of Common Stock (which, for avoidance of doubt, shall not include any Warrant Shares issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b)[RESERVED].

(c) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the Company's assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding voting power, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock or more than 50% of the outstanding voting securities (each, a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction. For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time concurrently with, or within thirty (30) days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, that, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity, the same type or form of consideration (and in the same proportion), valued at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction; provided, further, that if holders of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of Common Stock will be deemed to have received shares of common stock of the Successor Entity (which Successor Entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the highest VWAP

any non-cash consideration, if any, being offered in such fundamental transaction and (ii) the highest YTM

during the period beginning on the Trading Day immediately preceding the public announcement of the applicable Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder's request pursuant to this Section 3(c) and (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date and (E) a zero cost of borrow. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within the later of (i) five Business Days of the Holder's election and (ii) the date of consummation of the Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(c) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(d) (i) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) and 3(c) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights).

(ii) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof), immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share of Common Stock, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If, (A) the Company declares a dividend (or any other distribution in whatever form) on the shares of Common Stock, (B) the Company declares a special nonrecurring cash dividend on, or a redemption of, the shares of Common Stock, (C) the Company authorizes the granting to all holders of the shares of Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company is required in connection with a Fundamental Transaction, or (E) the Company authorizes the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the shares of Common Stock of record to be entitled to such dividend, distribution, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(g) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with the Securities Act and any other applicable securities laws, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a) as to any transfer which may be involved in such division or combination, the

compliance with section 7(a), as to any transfer which may be involved in such division or combination, etc

Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5. Miscellaneous.

(a) Currency. Unless otherwise indicated, all dollar amounts referred to in this Warrant are in United States Dollars ("U.S. Dollars"). All amounts owing under this Warrant shall be paid in U.S. Dollars. All amounts denominated in other currencies shall be converted in the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "Exchange Rate" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Warrant, the U.S. Dollar exchange rate as published in the Wall Street Journal (NY edition) on the relevant date of calculation.

(b) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 3(d) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(c) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(d) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then such action may be taken, or such right may be exercised on the next succeeding Trading Day.

(e) Authorized Shares. The Company covenants that during the period the Warrant is outstanding, it will reserve from its authorized and unissued shares of Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares underlying this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant, subject in all respects to the limitations set forth in Section 2(a) of this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares underlying this Warrant may be issued, as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. Subject to the Requisite Shareholder Approval with respect to shares issued in excess of the Exchange Cap or the Beneficial Ownership Limitation, , the Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer

action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer

of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any shares of Common Stock above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, including without limitation using reasonable best efforts to obtain the receipt of the Requisite Shareholder Approval, and (iii) use reasonable best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant, including without limitation the receipt of the Requisite Shareholder Approval; provided, however, if the Company reasonably determines that the conversion of the Series C Preferred Stock, the exercise of this Warrant or the payment of any dividends in shares of Common Stock would, in the aggregate, exceed the Exchange Cap or violate the Beneficial Ownership Limitation, the Company shall duly call, give notice of, establish a record date for, convene and hold a special meeting of the common stockholders, to be held as promptly as reasonably possible, for the purpose of obtaining the Requisite Shareholder; provided further that the Board of Directors shall recommend to its common stockholders the approval of the Requisite Shareholder Approval.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(f) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

(g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, will have restrictions upon resale imposed by state, federal or foreign securities laws.

(h) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(i) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

(j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any share of Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(k) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns

Obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns

of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(m) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(n) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(o) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

CANOO INC

By: 

Name: Greg Ethridge

Title: Chief Financial Officer

[GOEV - Signature Page to Warrant]

EXHIBIT A
NOTICE OF EXERCISE

TO: CANOO INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

-
-
-
-
-

EXHIBIT B
ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)
Address: _____
(Please Print)
Phone Number: _____
Email Address: _____
Dated: _____
Holder's Signature: _____
Holder's Address: _____

Exhibit B

**Certificate of Designation of Series C Cumulative Perpetual Redeemable Preferred Shares
Par Value \$0.0001 Per Share, Of Canoo Inc.**

**CERTIFICATE OF DESIGNATION OF
SERIES C CUMULATIVE PERPETUAL REDEEMABLE
PREFERRED STOCK,
PAR VALUE \$0.0001 PER SHARE, OF
CANOO INC.**

Pursuant to Sections 151 and 103 of the
General Corporation Law of the State of Delaware

CANOO INC., a corporation organized and existing under the laws of the State of Delaware (the “Company”), certifies that pursuant to the authority contained in its Certificate of Incorporation, and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Audit Committee of the Board of Directors of the Company (the “Audit Committee”) has duly approved and adopted the following resolution on April 9, 2024, and the resolution was adopted by all necessary action on the part of the Company:

WHEREAS, the Certificate of Incorporation of the Company provides for a class of its authorized stock known as Preferred Stock, consisting of 10,000,000 shares, \$0.0001 par value per share, issuable from time to time in one or more series; and

WHEREAS, the Board of Directors is authorized to provide for the issue of all or any number of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the authority vested in the Board of Directors by the Certificate of Incorporation and Section 151 of the General Corporation Law of the State of Delaware, the Audit Committee does hereby designate, create, authorize and provide for the issue of a series of 25,000 shares of Preferred Stock, par value \$0.0001 per share, having the voting powers and such designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions that are set forth in this resolution of the Audit Committee pursuant to the authority expressly vested in the Board of Directors by the provisions of the Certificate of Incorporation and hereby constituting an amendment to the Certificate of Incorporation as follows:

Section 1. Designation. The designation of the series of preferred stock of the Company is “Series C Cumulative Perpetual Redeemable”, par value \$0.0001 per share (the “Series C Preferred Stock”). Each share of the Series C Preferred Stock shall be identical in all respects to every other share of the Series C Preferred Stock. Each share of Series C Preferred Stock shall have a stated value equal to \$1,000.00 (the “Stated Value”).

Section 2. Number of Shares. The authorized number of shares of Series C Preferred Stock is 25,000. Shares of Series C Preferred Stock that are redeemed, purchased or otherwise acquired

by the Company, or converted into another series of Preferred Stock, shall revert to authorized but unissued shares of Preferred Stock (provided that any such cancelled shares of Series C Preferred Stock may be reissued only as shares of any series other than Series C Preferred Stock).

Section 3. Defined Terms and Rules of Construction.

(a) **Definitions.** As used herein with respect to the Series C Preferred Stock:

“Accrued Dividends” shall mean, as of any date, with respect to any share of Series C Preferred Stock, all dividends that have accrued pursuant to Section 4(a)(i) but that have not been paid in cash or, at the option of the Holder, in shares of Common Stock as of such date.

“Affiliate” shall mean any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 9(c).

“Average Common Stock Price” shall mean (i) the average of the closing sale prices per share of the Common Stock (or, if no closing sale price is reported, the average of the closing bid and ask prices per share or, if more than one in either case, the average of the average closing bid and the average closing ask prices per share) for the ten consecutive Trading Days immediately preceding, but not including, the Determination Date as reported on the principal national securities exchange on which the Common Stock is then traded, or (ii) the average of the last quoted bid prices for the Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or similar organization for the ten consecutive Trading Days immediately preceding, but not including, the Determination Date, if the Common Stock is not then listed for trading on a U.S. securities exchange; provided that in no event shall the Average Common Stock Price be less than the Floor Price.

“Beneficial Ownership Limitation” shall mean the limitation on conversion of shares of Series C Preferred Stock set forth in Section 7(d)(ii) hereof.

“Board of Directors” shall mean the board of directors of the Company.

“Business Day” shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Bylaws” shall mean the Amended and Restated Bylaws of the Company in effect on the date hereof, as they may be amended from time to time.

“Certificate of Designation” shall mean this Certificate of Designation relating to the Series C Preferred Stock, as it may be amended from time to time.

“Certificate of Incorporation” shall mean the Second Amended and Restated Certificate of Incorporation of the Company, as amended from time to time, including by this Certificate of Designation.



“Change of Control” is deemed to occur when, after the original issuance of the Series C Preferred Stock, the following have occurred and are continuing: (i) the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of the Company’s capital stock entitling that person to exercise more than 50% of the total voting power of all capital stock of the Company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and (ii) following the closing of any transaction referred to in clause (i) above, neither the Company nor the acquiring or surviving entity has a class of common securities (or American Depositary Receipts representing such securities) listed on the Trading Market.

“Change of Control Conversion Date” shall mean the date the Series C Preferred Stock is to be converted, which will be a Business Day selected by the Company that is no fewer than 20 days nor more than 35 days after the date on which the Company provides the required notice of the occurrence of a Change of Control to the Holders; provided that the foregoing 35 day limitation shall not apply to any Change of Control Notice issued prior to the occurrence of such Change of Control if the Change of Control Conversion Date specified therein is fixed relative to the consummation of such Change of Control.

“Change of Control Conversion Right” shall have the meaning set forth in Section 7(a).

“Change of Control Notice” shall have the meaning set forth in Section 8(c).

“Close of Business” shall mean 5:00 p.m., New York City time.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commission” shall mean the U.S. Securities and Exchange Commission, including the staff thereof.

“Common Stock” shall mean the common stock, par value \$0.0001 per share, of the Company.

“Common Stock Equivalents” shall mean any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, Options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company” shall mean Canoo Inc., a corporation organized and existing under the laws of the State of Delaware, and any successor thereof.

“Conversion Notice” shall have the meaning assigned to it in Section 7(a).

“Conversion Price” means the lesser of: (i) 120% of the applicable Average Common Stock Price, provided that if the Average Common Stock Price is equal to the Floor Price, the Conversion Price



shall be determined based on 100% of the Average Common Stock Price instead of 120% and (ii) \$2.2355, subject to adjustment as set forth herein.

“Conversion Shares” shall mean, collectively, the shares of Common Stock issuable upon conversion of the shares of Series C Preferred Stock in accordance with the terms hereof.

“Determination Date” shall mean (i) with respect to a Change of Control, the date on which such Change of Control occurred or April 9, 2024, whichever date shall result in a greater number of shares of Common Stock to be issued to the Holders upon conversion, and (ii) with respect to the Optional Conversion Right, the Optional Conversion Date.

“Dividend Nonpayment” shall have the meaning set forth in Section 4(b).

“Dividend Payment Date” shall mean March 30, June 30, September 30, and December 30 of each year (each, a “Quarterly Date”), commencing on the first Quarterly Date immediately following the Original Issue Date; provided, that if any such Quarterly Date is not a Business Day then the “Dividend Payment Date” shall be the next Business Day immediately following such Quarterly Date.

“Dividend Payment Record Date” shall have the meaning set forth in Section 4(a)(iii).

“Dividend Rate” shall have the meaning set forth in Section 4(a)(i), subject to adjustments set forth in Section 4(a)(i) and Section 4(b).

“Dividends” shall have the meaning set forth in Section 4(a)(i).

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

“Exchange Cap” shall mean 19.99% of the aggregate number of shares of the Company’s Common Stock issued and outstanding as of April 9, 2024. The Exchange Cap shall be appropriately adjusted for any stock dividend, stock split, reverse stock split or similar transaction.

“Exchange Cap and Beneficial Ownership Proposal” shall mean the proposal required to be approved by the Company’s stockholders pursuant to the applicable rules and regulations of Nasdaq (or any successor entity), including Nasdaq Listing Standard Rule 5635, prior to further issuances of the Company’s Common Stock upon (i) the conversion of the Series C Preferred Stock, (ii) the exercise of warrants issued pursuant to the Purchase Agreement or (iii) payment of Dividends hereunder, at the option of the Holder, in shares of Common Stock where, in aggregate, the issuance of such shares of Common Stock under (i), (ii) or (iii) would (x) exceed the Exchange Cap, or (y) result in a violation of the Beneficial Ownership Limitation.

“First Reset Date” shall have the meaning set forth in Section 4(a)(i).

“Floor Price” shall mean \$2.00.

“Fundamental Transaction” shall have the meaning set forth in Section 9(c).

“Holdings” shall mean, collectively, the holders of the Series C Preferred Stock.



“Liquidation” shall have the meaning set forth in Section 6.

“Liquidation Preference” shall have the meaning set forth in Section 6.

“Nasdaq” shall mean the Nasdaq Stock Market.

“Optional Conversion Date” shall mean any date on which Series C Preferred Stock is to be converted, which shall be a Business Day selected by the Company that is no fewer than 20 days nor more than 35 days after the date on which any Holder provides notice of its intent to convert some or all of the Preferred Stock.

“Optional Conversion Right” shall have the meaning set forth in Section 7(a).

“Optional Redemption Date” shall have the meaning set forth in Section 8(a).

“Optional Redemption Right” shall have the meaning set forth in Section 8(a).

“Original Issue Date” shall mean, with respect to a share of Series C Preferred Stock, the date of the first issuance of any such share of Series C Preferred Stock regardless of the number of transfers of any such share of Series C Preferred Stock and regardless of the number of certificates which may be issued to evidence such Series C Preferred Stock.

“Payment Period” shall mean, with respect to a share of Series C Preferred Stock, the period beginning on the day after the preceding Dividend Payment Date (or if no Dividend Payment Date has occurred since the Original Issue Date of such share of Series C Preferred Stock, the Original Issue Date) to and including the next Dividend Payment Date; provided that, for the purpose of determining the amount of Accrued Dividends for any Payment Period, the Payment Period shall be calculated based on the actual number of days elapsed during such Payment Period on a 360-day year consisting of twelve 30-day months.

“Person” shall mean any individual, company, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

“Preferred Stock” shall mean any and all series of preferred stock of the Company, including the Series C Preferred Stock.

“Purchase Agreement” shall mean the Securities Purchase Agreement, dated on or about April 9, 2024, among the Company and the Holders, as amended, modified or supplemented from time to time in accordance with its terms.

“Purchase Rights” shall have the meaning set forth in Section 9(b).

“Purchaser” shall mean any purchaser of Series C Preferred Stock.

“Register” shall mean the securities register maintained in respect of the Series C Preferred Stock by the Company.



“Requisite Shareholder Approval” shall mean the receipt of approval by the Company’s stockholders with respect to the Exchange Cap and Beneficial Ownership Proposal.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Series C Preferred Stock” shall have the meaning set forth in Section 1.

“Special Optional Redemption Right” shall have the meaning set forth in Section 8(b).

“Stated Value” shall have the meaning set forth in Section 1.

“Subsidiary” shall mean any direct or indirect subsidiary of the Company formed or acquired before or after the date of the Purchase Agreement.

“Successor Entity” shall have the meaning set forth in Section 9(c).

“Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the relevant date: New York Stock Exchange, NYSE American LLC, or any national exchange operated by Nasdaq, or listed or quoted on an exchange or quotation system that is a successor to the New York Stock Exchange, NYSE American LLC or Nasdaq.

“Transaction Documents” means the Purchase Agreement, this Certificate of Designation and all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Warrants” means the warrants to issue Common Stock issued in connection with the purchase of Series C Preferred Stock pursuant to the Purchase Agreement or in connection with any subsequent purchase of Series C Preferred Stock contemplated by the Purchase Agreement.

(b) **Rules of Construction.** Unless the context otherwise requires: (i) a term has the meaning assigned to it herein; (ii) an accounting term not otherwise defined herein has the meaning accorded to it in accordance with generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis; (iii) words in the singular include the plural, and in the plural include the singular; (iv) “or” is not exclusive; (v) “will” shall be interpreted to express a command; (vi) “including” means including without limitation; (vii) provisions apply to successive events and transactions; (viii) references to any Section or clause refer to the corresponding Section or clause, respectively, of this Certificate of Designation; (ix) any reference to a day or number of days, unless expressly referred to as a Business Day or Trading Day, shall mean the respective calendar day or number of calendar days; (x) references to sections of or rules under the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, and any term defined by reference to a section of or rule under the Exchange Act shall include Commission and judicial interpretations of such section or rule; (xi) references to sections of the Code shall be deemed to include any substitute, replacement or successor sections as well



as the Treasury Regulations promulgated thereunder from time to time; and (xii) headings are for convenience only.

Section 4. Dividends.

(a) Holders shall be entitled to receive, out of the assets of the Company, Dividends on the terms described below:

(i) For each period from and including the Original Issue Date, and to but excluding the fifth anniversary of the Original Issue Date. (the “First Reset Date”), the Company shall pay, subject to Section 4(c), if, as and when declared by the Board of Directors, out of funds of the Company, on each Dividend Payment Date for the applicable Payment Period or Payment Periods dividends on each outstanding share of Series C Preferred Stock (the “Dividends”) at a rate per annum equal to 7.50% of the Liquidation Preference per share of Series C Preferred Stock (the “Dividend Rate”), payable in accordance with Section 4(a)(ii) below. For each Payment Period beginning on the First Reset Date, the Dividend Rate shall be equal to the prior Payment Period’s Dividend Rate, plus 1.50%. Subject to Section 4(c), to the extent not paid in cash, whether or not the Company has earnings, whether or not the payment of such dividends is then permitted under Delaware law, whether or not such dividends are authorized or declared, and whether or not any agreements to which the Company is a party prohibit the current payment of dividends, including any agreement relating to the Company’s indebtedness, Dividends on each share of Series C Preferred Stock shall accrue daily from and after the Original Issue Date of such share and shall compound on a quarterly basis on each Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed). The Accrued Dividends, to the extent unpaid, shall in all cases be payable upon a Liquidation pursuant to Section 6 or upon any conversion of the Series C Preferred Stock pursuant to Section 7. Dividend payments shall be aggregated per Holder and shall be made to the nearest cent (with \$0.005 being rounded upward).

(ii) Each Dividend if, as and when such Dividends are declared by the Board of Directors, shall be paid to the Holders in cash or, at the option of the Holder, in shares of Common Stock. Any shares of Common Stock issued in payment of a Dividend on Preferred Stock shall be valued at the closing price of the last Trading Day preceding the record date designated by the Board of Directors relating to such Dividends. Notwithstanding anything in this Certificate of Designation to the contrary, until the Company has obtained the Requisite Stockholder Approval, the Company may not issue shares of Common Stock in payment of a Dividend to the extent such payment would result in an issuance of shares of Common Stock in excess of the Requisite Stockholder Approval.

(iii) Each Dividend shall be paid pro rata to the Holders. Each Dividend shall be payable to the Holders as they appear on the Register at the Close of Business on the date which is 15 days preceding the applicable Dividend Payment Date (such date, an “Dividend Payment Record Date”).



(b) (a) If the Holders elect to receive a cash dividend payment and the Company fails to make the corresponding cash dividend payment (a “Dividend Nonpayment”) with respect to three or more consecutive or non-consecutive Payment Periods, the Dividend Rate on the Preferred Stock will increase an additional 0.25% per annum commencing immediately following the third Payment Period for which there has been a Dividend Nonpayment and will increase an additional 0.25% per annum every third succeeding Dividend Nonpayment (whether the Payment Periods to which such Dividend Nonpayments relate are consecutive or non-consecutive); provided, however, the maximum Dividend Rate on the Preferred Stock (after giving effect to Section 4(a)(i) and this Section 4(b)) shall be capped at 12.0% per annum.

(c) If the date relating to a Liquidation pursuant to Section 6, upon any conversion of the Series C Preferred Stock pursuant to Section 7, or upon any redemption of the Series C Preferred Stock pursuant to Section 8, respectively, is after a Dividend Payment Record Date for a declared Dividend on the Series C Preferred Stock but occurs on or prior to the next Dividend Payment Date, then the Holder of such share of Series C Preferred Stock at the Close of Business on such Dividend Payment Record Date will be entitled, notwithstanding the related Liquidation, conversion or redemption, as applicable, to receive, on or, at the Company’s election, before such Dividend Payment Date, such declared Dividend on such share of Series C Preferred Stock. Except as provided in this Section 4(c), Dividends on any share of Preferred Stock will cease to accumulate from and after the date relating to a Liquidation pursuant to Section 6, upon any conversion of the Series C Preferred Stock pursuant to Section 7, or upon any redemption of the Series C Preferred Stock pursuant to Section 8, as applicable.

Section 5. Voting Rights. The Holders of shares of Series C Preferred Stock shall be entitled to vote as a single class with the holders of the Common Stock and the holders of any other class or series of capital stock of the Company then entitled to vote with the Common Stock on all matters submitted to a vote of the holders of Common Stock. With respect to such vote, each Holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock and shall be entitled to notice of any stockholders’ meeting in accordance with the Bylaws. With respect to any matter submitted to a vote of the holders of Common Stock, each share of Series C Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which such share of Series C Preferred Stock was convertible on the record date for determining holders of Common Stock entitled to vote on such matter (such date, the “Applicable Record Date”); *provided*, (i) that the aggregate number of votes to which a holder of Series C Preferred Stock shall be entitled shall be reduced by the aggregate number of shares of Common Stock issued to such holder pursuant to Section 4(a)(ii) as adjusted pursuant to Section 9 hereunder; (ii) that until the Company has obtained the Requisite Shareholder Approval, the amount set forth in the foregoing clause (a) shall not exceed an amount equal to: (x) the total number of shares of Common Stock into which all outstanding shares of Series C Preferred Stock could be converted as of the Applicable Record Date without violating the Exchange Cap or Beneficial Ownership Limitation, divided by (y) the total number of shares of Series C Preferred Stock outstanding as of the Applicable Record Date; and (iii) that for purposes of determining the number of votes each share of Series C Preferred Stock is entitled to pursuant to this Section 5, the Conversion Price shall not be less than \$2.33. As long as any shares of Series C Preferred Stock are outstanding, the Company shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of Series C Preferred Stock, (i) alter or change adversely the powers, preferences or rights given to the Series C Preferred Stock or alter or amend this Certificate of

Designation, (ii) amend or repeal any provision of, or add any provision to, the Certificate of Incorporation or Bylaws, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of Preferred Stock, if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series C Preferred Stock; or (iii) declare or pay any junior dividends or repurchase any junior securities during any time that all Accrued Dividends on the Series C Preferred Stock have not been paid in full in cash or, at the option of the Holder, in shares of Common Stock.

Section 6. Liquidation. Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary (a "Liquidation"), each Holder, will be entitled to payment out of the assets of the Company, prior and in preference to holders of Common Stock of the Company, but on a *pari passu* basis with the holders of Series B Preferred Stock and any other parity capital stock of the Company approved then outstanding, in an amount per share equal to the Stated Value (the "Liquidation Preference") plus any accumulated and unpaid Dividends thereon.

Section 7. Conversion.

(a) **Conversion Upon Change of Control.** Upon the occurrence of a Change of Control, each Holder will have the right (subject to the Special Optional Redemption Right) to convert some or all of the Series C Preferred Stock held by such Holder (the "Change of Control Conversion Right") on the Change of Control Conversion Date specified in the applicable Change of Control Notice into a number of shares of Common Stock per share of the Preferred Stock to be converted equal to (x) the Liquidation Preference of such Series C Preferred Stock plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a Dividend Payment Record Date and prior to the corresponding Dividend Payment Date, in which case no additional amount for such accumulated and unpaid Dividends to be paid on such Dividend Payment Date shall be included) divided by (y) the Conversion Price. A Holder shall exercise its Change of Control Conversion Right by providing the Company with a written response to the applicable Change of Control Notice, which response shall specify the number of shares to be converted and otherwise comply with any reasonable procedures specified by the Company in the Change of Control Notice. For the avoidance of doubt, if, prior to the Change of Control Conversion Date, the Company has provided notice of its election to redeem some or all of the shares of Series C Preferred Stock (whether pursuant to its Optional Redemption Right or its Special Optional Redemption Right), the Holders will not have the Change of Control Conversion Right with respect to such shares of Preferred Stock.

(b) [Intentionally Omitted]

(c) **Optional Conversion.** Each Holder will have the right (subject to the Special Optional Redemption Right) to convert some or all of the Series C Preferred Stock held by such Holder (the "Optional Conversion Right") at any time and from time to time into a number of shares of the Common Stock per share of the Preferred Stock equal to (x) the Liquidation Preference of such Series C Preferred Stock plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the Optional Conversion Date (unless the Optional Conversion Date is after a Dividend Payment Record Date and prior to the



corresponding Dividend Payment Date for the Series C Preferred Stock, in which case no additional amount for such accumulated and unpaid dividends to be paid on such Dividend Payment Date shall be included) divided by (y) the Conversion Price. A Holder shall exercise its Optional Conversion Right by providing written notice to the Company of its intent to convert and the number of shares of Series C Preferred Stock to be converted (the “Conversion Notice”). The Company shall fix the Optional Conversion Date in accordance with the terms of this Certificate of Designation and notify the converting Holder within a reasonable amount of time following the receipt of such Holder’s notice of conversion. For the avoidance of doubt, if, prior to the Optional Conversion Date, the Company has provided notice of its election to redeem some or all of the shares of Series C Preferred Stock (whether pursuant to its Optional Redemption Right or its Special Optional Redemption Right), the Holders will not have the Optional Conversion Right with respect to such shares of Preferred Stock.

(d) Conversion and Issuance Limitations.

(i) Notwithstanding anything in this Certificate of Designation to the contrary, until the Company has obtained the Requisite Stockholder Approval, the Series C Preferred Stock shall not be convertible into Conversion Shares to the extent such conversion would result in an issuance of shares of Common Stock in excess of the Exchange Cap.

(ii) Until the Company shall have obtained the Requisite Stockholder Approval, no Holder shall be permitted to effect any conversion of shares of Series C Preferred Stock or receive Conversion Shares hereunder to the extent that after giving effect to such conversion or receipt of such Conversion Shares, the Holder, in the aggregate and together with any affiliate of such Holder, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 19.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or receipt of shares or if such conversion would otherwise result in a “change of control” within the meaning of Nasdaq Listing Rule 5635(b). In connection with the submission of any Conversion Notice, the Holder shall furnish such information as the Company may reasonably request to assist it in determining the Holder’s beneficial ownership pursuant to this Section 7(d)(ii).

(iii) No Holder shall be permitted to effect any conversion of shares of Series C Preferred Stock or receive Conversion Shares hereunder to the extent that after giving effect (but only after giving effect) to such conversion or receipt of such Conversion Shares, the Holder, in the aggregate and together with any affiliate of such Holder, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or receipt of shares, except and to the extent as waived or consented to in writing by the Holder; provided that any such waiver or consent shall become effective 61 days following the date on which it is provided. The foregoing provision shall not apply to a Holder who, in the aggregate and together with any affiliate of such Holder, beneficially owned (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately before giving effect to such conversion or receipt of shares. In connection with the submission of any

Conversion Notice, the Holder shall furnish such information as the Company may reasonably request to assist it in determining the Holder's beneficial ownership pursuant to this Section 7(d)(iii).

(e) **Common Stock Issuance.** Any shares of Common Stock issued upon conversion of Series C Preferred Stock shall be (i) duly authorized, validly issued and fully paid and nonassessable and (ii) shall rank *pari passu* with the other shares of Common Stock outstanding from time to time.

(f) **Mechanics of Conversion.**

(i) Delivery of Book-Entry Statement Upon Conversion. Not later than three (3) Trading Days after the date of the conversion, the Company shall deliver, or cause to be delivered, to the converting Holder a book-entry statement evidencing the number of Conversion Shares being acquired upon the conversion.

(ii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the applicable Average Common Stock Price.

(g) **Transfer Taxes and Expenses.** The issuance of certificates or book-entry statements for shares of the Common Stock on conversion of the Series C Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holders of such shares of Series C Preferred Stock and the Company shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 8. Redemption.

(a) **Optional Redemption.** On or after the fifth anniversary of the Original Issue Date ("Optional Redemption Date"), the Company may, at its option, redeem the Series C Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price equal to 103% of the Liquidation Preference, plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the date of such redemption, without interest (the "Optional Redemption Right"). The Company shall exercise its Optional Redemption Right by mailing written notice to each Holder, which notice shall specify: (i) the number of shares of Series C Preferred Stock to be redeemed and the amount to be paid therefor; and (ii) the date on which such redemption shall occur, which shall be a Business Day not less than 20 days and not more than 60 days from the date on which such notice is mailed. If less than all outstanding shares of Series C Preferred Stock are to be redeemed, the Company shall redeem the shares pro rata amongst all Holders according to the number of shares held by each Holder. Notwithstanding the



foregoing, if, pursuant to Section 7(d)(i), the Series C Preferred Stock is not convertible in whole or in part on the Optional Redemption Date, the Optional Redemption Date shall be extended to a Business Day selected by the Company that is not less than 20 days and not more than 35 days from the date on which Section 7(d)(i) no longer applies.

(b) **Special Optional Redemption.** Upon the occurrence of a Change of Control, the Company may, at its option, redeem the Series C Preferred Stock, in whole or in part, within 120 days after the closing date relating to such Change of Control, for cash at a redemption price equal to the greater of: (i) 103% of the Liquidation Preference, plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the date of such redemption, without interest and (ii) the price per share the holders of Series C Preferred Stock would receive if they converted into Common Stock immediately preceding the Change of Control (the “Special Optional Redemption Right”). The Company may exercise its Special Optional Redemption Right by notifying holders of such redemption in any Change of Control Notice complying with the requirements of Section 8(c). In the event the Company issues a Change of Control Notice in which it does not elect to redeem all outstanding Series C Preferred Stock pursuant to its Special Optional Redemption Right and the Change of Control to which such notice relates has been consummated, the Company may exercise its Special Option Redemption Right with respect to any shares of Series C Preferred Stock that are not converted pursuant to the initial Change of Control Notice, provided that such redemption is completed within 120 days of the closing date relating to such Change of Control.

(c) **Change of Control Notice.** Promptly following the later of (x) the occurrence of a Change of Control or (y) the Company becoming aware of such Change of Control, the Company shall mail written notice (a “Change of Control Notice”) to each Holder specifying:

- (i) the date on which such Change of Control occurred;
- (ii) the total purchase price (if any) associated with the Change of Control;
- (iii) whether the Company intends to exercise its Special Optional Redemption Right and if so, the number of shares of Series C Preferred Stock to be redeemed, the amount to be paid therefor, and the date on which such securities are to be redeemed; and
- (iv) the applicable Change of Control Conversion Date (if the Company does not intend to redeem all outstanding Series C Preferred Stock pursuant to its Special Optional Redemption Right).

Notwithstanding the foregoing, the Company shall, to the extent permissible, issue a Change of Control Notice prior to the occurrence of an anticipated Change of Control to each Holder specifying:

- (i) the date on which such Change of Control is anticipated to occur;
- (ii) the anticipated total purchase price (if any) associated with the Change of Control;



(iii) whether the Company intends to exercise its Special Optional Redemption Right and if so, the number of shares of Series C Preferred Stock to be redeemed, the amount to be paid therefor, and the date on which such securities are to be redeemed; any Special Optional Redemption may be made contingent upon the consummation of such Change of Control and any transactions related thereto and the date for redemption may be fixed relative to such consummation, provided that no redemption shall occur prior to 20 days after the mailing of such Change of Control Notice unless the Holder subject to such redemption shall have consented thereto in writing; and

(iv) the applicable Change of Control Conversion Date (if the Company does not intend to redeem all outstanding Series C Preferred Stock pursuant to its Special Optional Redemption Right); the Change of Control Conversion Date may be fixed relative to the date on which such Change of Control and any transactions related thereto are consummated.

In the event the Company issues a Change of Control Notice prior to an anticipated Change of Control, and the Company subsequently determines that such Change of Control will not occur on substantially the terms set forth in such Change of Control Notice, or at all, the Company shall be entitled to revoke or revise such Change of Control Notice in its reasonable discretion.

Section 9. Certain Adjustments.

(a) **Stock Dividends and Stock Splits.** If the Company, at any time while this Series C Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock or any other Common Stock Equivalents in respect of its Common Stock (which, for avoidance of doubt, shall not include: (x) any shares of Common Stock issued by the Company upon conversion of this Series C Preferred Stock, (y) any Dividend paid in shares of Common Stock pursuant to Section 4(a)(ii) or (z) any dividend payable in respect of any other series of preferred stock of the Company), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Shares underlying the Series C Preferred Stock shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 9(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(b) **Subsequent Rights Offerings.** In addition to any adjustments pursuant to Section 9(a) above, if at any time subsequent to the applicable Original Issue Date the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase

Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series C Preferred Stock (without regard to any limitations on exercise hereof) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(c) **Fundamental Transaction.** If, at any time while this Series C Preferred Stock is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Series C Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Series C Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series C Preferred Stock at the time of such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor

entity in a fundamental transaction in which the Company is not the survivor (the "Successor

Entity”) to assume in writing all of the obligations of the Company under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 9(c) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Series C Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Series C Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series C Preferred Stock (without regard to any limitations on the conversion of this Series C Preferred Stock) prior to such Fundamental Transaction, and with a Conversion Price which applies the Conversion Price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such Conversion Price being for the purpose of protecting the economic value of this Series C Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(d) **Calculations.** All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 9, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

Section 10. Information Rights. During any period in which the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and any shares of the Series C Preferred Stock are outstanding, the Company will (i) transmit by mail to all Holders, copies of the annual reports and quarterly reports that would have been filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act and (ii) promptly upon written request, make available copies of such reports to any prospective holder of the Series C Preferred Stock. The Company will mail the reports to the Holders within 15 days after the respective dates by which such reports would have been filed with the Commission.

Section 11. Requisite Shareholder Approval. If the Company reasonably determines that the conversion of the Series C Preferred Stock, the exercise of the Warrants to each Purchaser or the payment of any dividends in shares of Common Stock would, in the aggregate, exceed the Exchange Cap or violate the Beneficial Ownership Limitation), (i) the Company shall duly call, give notice of, establish a record date for, convene and hold a special meeting of the common stockholders, to be held as promptly as reasonably possible, for the purpose of obtaining the Requisite Shareholder Approval; and (ii) the Board of Directors shall recommend to its common stockholders the approval of the Requisite Shareholder Approval. include such recommendation



in any proxy statement, and use reasonable best efforts to obtain the Requisite Shareholder Approval. In the event that the Company is unable to obtain the Requisite Shareholder Approval, it will, seek to obtain the Requisite Shareholder Approval (and the Board of Directors shall maintain its recommendation for such approval) at each subsequent regular annual meeting of stockholders until such Requisite Shareholder Approval is obtained.

Section 12. Miscellaneous.

(a) **Notices.** Any and all notices or other communications or deliveries to be provided by the Holders hereunder shall be in writing and delivered personally or by e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 15520 Highway 114, Justin, Texas 76247, Attention: General Counsel and Corporate Secretary, e-mail address hector.ruiz@canoo.com, or such other e-mail address or address as the Company may specify for such purposes by notice to the Holders delivered in accordance with this Section 12. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered by e-mail to each Holder at the e-mail address appearing on the books of the Company, or if no such e-mail address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of the date of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth prior to 5:30 p.m. (New York City time) on any date.

(b) **Book-Entry; Certificates.** The Series C Preferred Stock will be issued in book-entry form; provided that, if a Holder requests that such Holder's shares of Series C Preferred Stock be issued in certificated form, the Company will instead issue a stock certificate to such Holder representing such Holder's shares of Series C Preferred Stock. To the extent that any shares of Series C Preferred Stock are issued in book-entry form, references herein to "certificates" shall instead refer to the book-entry notation relating to such shares.

(c) **Lost or Mutilated Preferred Stock Certificate.** If a Holder's Series C Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series C Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Company.

(d) **Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof.

(e) **Waiver.** Any waiver by the Company or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Company or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be



considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Company or a Holder must be in writing.

(f) **Severability.** If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(g) **Headings.** The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(h) **Status of Converted or Redeemed Preferred Stock.** Shares of Series C Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Series C Preferred Stock shall be converted, or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of Preferred Stock and shall no longer be designated as Series C Preferred Stock.



IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be duly executed and acknowledged by its undersigned duly authorized officer this ____ day of April, 2024.

CANOO INC.

By: _____

Name: Greg Ethridge

Title: Chief Financial Officer

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”) is made as of May 3, 2024 (the “Effective Date”), by and between Canoo Inc., a Delaware corporation (the “Company”), and the purchaser(s) listed on the signature page(s) hereto (each a “Purchaser,” and together the “Purchasers”).

WHEREAS, the Company desires to issue, sell and deliver an aggregate of 5,000 shares of the Company’s Series C Cumulative Perpetual Redeemable Preferred Stock, par value \$0.0001 per share (the “Preferred Stock”), and warrants (the “Warrants”) to purchase 2,236,636 shares of the Company’s Common Stock, par value \$0.0001 per share (the “Common Stock”) to certain purchasers;

WHEREAS, the Warrants shall be issued in the form of **Exhibit A** attached hereto;

WHEREAS, each Purchaser hereunder wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement the Preferred Shares (as defined herein) and the Warrants to purchase a certain number of shares of Common Stock; and

WHEREAS, the Company and each Purchaser are executing and delivering this Agreement and the Company is executing and delivering a Warrant to each Purchaser in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Issuance of Securities.

Effective as of the Closing Date, the Company will issue and sell to the Purchasers (i) an aggregate of 5,000 shares (the “Preferred Shares”) of the Company’s Preferred Stock and (ii) a Warrant to purchase 2,236,636 shares of Common Stock (such shares of Common Stock, the “Warrant Shares,” and together with the Warrants, the Preferred Shares and the Underlying Shares (as defined below) the “Securities”). Each Purchaser will purchase the Preferred Shares and the applicable Warrants set forth on its signature page hereto at the aggregate price set forth on the signature page hereto. The total purchase price payable by the Purchasers for the Securities is \$5,000,000 (the “Purchase Price”).

2. Closing and Delivery.

(a) Closing. Subject to the satisfaction of the closing conditions set forth in Section 6, the closing (the “Closing”) of the transactions contemplated hereby shall occur as promptly as practicable following the date of this Agreement (such date, the “Closing Date”). The Closing shall take place via the electronic exchange of documents and signature pages, or at such other time and place as the Company and the Purchasers mutually agree upon.

(b) Delivery. On the Closing Date, to effect the purchase and sale of the Preferred Shares and the Warrants, (i) each Purchaser shall pay its respective aggregate Purchase Price to the Company by wire transfer of immediately available funds in accordance with the Company's written wire instructions, and (ii) the Company shall issue in book entry form, registered in the name of each Purchaser, such aggregate number of Preferred Shares and the Warrants set forth on such Purchaser's signature page hereto to the Purchaser's address as set forth on the signature page hereto (or as otherwise set forth in such Purchaser's delivery instructions).

(c) Purchaser Cap. Notwithstanding anything to the contrary set forth herein, no Purchaser shall be permitted to effect any conversion of shares of Preferred Stock, receive Underlying Shares hereunder, receive Dividend Shares or exercise Warrants to the extent that after giving effect to such conversion or receipt of such Underlying Shares, receipt of Dividend Shares or receipt of Warrant Shares the Purchaser, in the aggregate and together with any affiliate of such Purchaser, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or receipt of shares, except and to the extent as waived or consented to in writing by such Purchaser.

(d) Authorized Shares. The Company covenants that during the period each of the Preferred Stock and the Warrants are outstanding, it will maintain reserved, from its authorized and unissued shares of the Common Stock and, free of preemptive rights and other similar contractual rights of stockholders, a number of its authorized but unissued shares of Common Stock equal to (i) the aggregate number of shares of Common Stock necessary to effect the conversion of the Preferred Stock based on clause (ii) of the Conversion Price (as defined in the Certificate of Designation) (which initial reserve shall be 2,236,636 shares) then in effect and exercise of the Warrants (the "Underlying Reserved Shares") pursuant to the Certificate of Designation of Series C Cumulative Perpetual Redeemable Preferred Stock Par Value \$0.0001 Per Share, Of Canoo Inc. to be filed promptly after the Closing by the Company with the Secretary of State of the State of Delaware, in the form of Exhibit B attached hereto (the "Certificate of Designation"), in the case of the Preferred Stock, and the form of Warrant in the form of Exhibit A attached hereto, in the case of the Warrants. Upon (i) the conversion of the Preferred Shares in accordance with their terms, (ii) payment of dividends on the Preferred Stock pursuant to the Certificate of Designation, at the option of the Purchaser, in shares of Common Stock (the "Dividend Shares") and together with the Underlying Reserved Shares, the "Underlying Shares") and (iii) the exercise of the Warrants, as applicable, the Company shall issue Underlying Shares in book entry form in accordance with the Certificate of Designation, in the case of the Preferred Shares and the Dividend Shares, and in accordance with the form of Warrant, in the case of the Warrants.

3. Company Representations. The Company represents and warrants to each Purchaser, as of the date hereof and as of the Closing Date, as follows:

(a) Organization and Standing. Each of the Company and its "Subsidiaries" (which for purposes of this Agreement means any significant subsidiary as defined in Rule 405 of the Securities Act is duly incorporated, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated. The Company has all requisite power and authority to own and operate its properties and assets and to carry on its business as presently conducted and

as proposed to be conducted. Each of the Company and its Subsidiaries is qualified to do business as a foreign entity in every jurisdiction in which the failure to be so qualified would have, or would reasonably be expected to have, a material adverse effect, individually or in the aggregate, upon the business, properties, tangible and intangible assets, liabilities, operations, prospects, financial condition or results of operation of the Company and its Subsidiaries taken as whole or the ability of the Company to perform its obligations under the Transaction Documents (a “Material Adverse Effect”).

(b) Power. The Company has all requisite corporate power and authority to execute and deliver this Agreement, the schedules and exhibits attached hereto, the Certificate of Designation, the Warrants and any other documents or agreements explicitly contemplated hereunder (collectively, the “Transaction Documents”), and to sell and issue the Preferred Shares and the Warrant hereunder, and to carry out and perform its obligations under the terms of the Transaction Documents.

(c) Authorization. The execution, delivery, and performance of each Transaction Document by the Company has been duly authorized by all requisite action on the part of the Company and its officers, directors and stockholders (other than the Requisite Shareholder Approval (as defined in the Certificate of Designation)) and each Transaction Document constitutes the legal, valid, and binding obligation of the Company enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors’ rights generally, and (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies (the “Enforceability Exceptions”).

(d) Consents and Approvals. Except for any Current Report on Form 8-K, any required filing or notification with the applicable rules and regulations of the Nasdaq Stock Market LLC or any successor entity (the “Nasdaq Stock Market”) and the filing of the Registration Statement (as defined in Section 8 hereof) as required under Section 8 hereof, neither the Company nor any of its Subsidiaries is required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by the Transaction Documents. Assuming the accuracy of the representations of the Purchasers in Section 4, no consent, approval, authorization or other order of, or registration, qualification or filing with, any court, regulatory body, administrative agency, self-regulatory organization, stock exchange or market (including the Nasdaq Stock Market), or other governmental body is required for the execution and delivery of the Transaction Documents, the valid issuance, sale and delivery of the Preferred Shares and the Warrant to be sold pursuant to the Transaction Documents other than such as have been or will be made or obtained, or for any securities filings required to be made under federal or state securities laws applicable to the offering of the Securities, other than the filing of the Certificate of Designation with the State of Delaware. The Company and its Subsidiaries are unaware of any facts or circumstances that might prevent the Company from obtaining or effecting any of the registration, notification or filings pursuant to this Section 3(d).

(e) Non-Contravention. The execution and delivery of the Transaction Documents, the issuance, sale and delivery of the Preferred Shares and the Warrants to be sold by the Company under the Transaction Documents, the issuance and delivery of the Underlying

Shares upon conversion of the Preferred Shares or upon exercise of the Warrants or as may be issued as Dividend Shares (subject as to the Underlying Shares only to any Requisite Shareholder Approval), the performance by the Company of its obligations under the Transaction Documents and the consummation of the transactions contemplated hereby or thereby do not and will not (a) conflict with, result in the breach or violation of, or constitute (with or without the giving of notice or the passage of time or both) a violation of, or default under, (i) any bond, debenture note or other evidence of indebtedness, or under any lease, license, franchise, permit, indenture, mortgage, deed of trust, loan agreement, joint venture or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which it or its properties may be bound or affected, (ii) the Company's amended and restated certificate of incorporation, as amended and as in effect on the date hereof (the "Certificate of Incorporation"), the Company's amended and restated bylaws, as amended and as in effect on the date hereof (the "Bylaws"), or the equivalent document with respect to any of the Company's Subsidiaries, as amended and as in effect on the date hereof, or (iii) subject to the receipt of the Requisite Shareholder Approval, any statute or law, judgment, decree, rule, regulation, ordinance or order of any court or governmental or regulatory body (including the Nasdaq Stock Market), governmental agency, arbitration panel or authority applicable to the Company, any of its subsidiaries or their respective properties, except in the case of clauses (i) and (iii) for such conflicts, breaches, violations or defaults that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect, or (b) result in the creation or imposition of any lien, encumbrance, claim, security interest or restriction whatsoever upon any of the material properties or assets of the Company or any of its Subsidiaries or an acceleration of indebtedness pursuant to any obligation, agreement or condition contained in any material bond, debenture, note or any other evidence of indebtedness or any material indenture, mortgage, deed of trust or any other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company is subject.

(f) Issuance of Securities. The Preferred Shares are duly authorized and when issued and paid for pursuant to the terms of the Transaction Documents will be validly issued, fully paid, and nonassessable, and will be free of any liens or encumbrances with respect to the issuance thereof; provided, however, that the Preferred Shares shall be subject to restrictions on transfer under state or federal securities laws as set forth in the Transaction Documents, or as otherwise may be required under state or federal securities laws as set forth in the Transaction Documents at the time a transfer is proposed. When paid for and issued in accordance with this Agreement, the Warrants will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by the Enforceability Exceptions; provided, however, that the Warrants shall be subject to restrictions on transfer under state or federal securities laws as set forth in the Transaction Documents, or as otherwise may be required under state or federal securities laws as set forth in the Transaction Documents at the time a transfer is proposed. Except as disclosed in reports, schedules, forms, proxy statements, statements and other documents filed by the Company with the Securities and Exchange Commission (the "SEC") pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") during the twelve (12) calendar months prior to the date hereof (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC Documents"), the issuance and delivery of the Preferred Shares and the Warrants will not be

Documents), the issuance and delivery of the Preferred Shares and the warrants will not be

subject to preemptive, co-sale, right of first refusal or any other similar rights of any stockholder of the Company or any other person, or any liens or encumbrances or result in the triggering of any anti-dilution or other similar rights under any outstanding securities of the Company. The Underlying Shares issuable upon conversion of the Preferred Stock, payment of the Preferred Stock dividend in Dividend Shares, and the exercise of the Warrants, will be duly authorized and, when paid for and issued in accordance with the terms of this Agreement, the Certificate of Designation and the Warrants, as applicable, will be validly issued, fully paid, and nonassessable, and will be free of any liens or encumbrances with respect to the issuance thereof; provided, however, that the Underlying Shares shall be subject to restrictions on transfer under state or federal securities laws as set forth in the Transaction Documents, or as otherwise may be required under state or federal securities laws as set forth in the Transaction Documents at the time a transfer is proposed. Except as disclosed in the SEC Documents, the issuance and delivery of the Underlying Shares will not be subject to preemptive, co-sale, right of first refusal or any other similar rights of any stockholder of the Company or any other person, or any liens or encumbrances or result in the triggering of any anti-dilution or other similar rights under any outstanding securities of the Company. The Company has initially reserved 5,000 shares of Preferred Stock for issuance hereunder, 2,236,636 shares of Common Stock for issuance upon conversion of the Preferred Stock, 2,236,636 shares of Common Stock for issuance upon exercise of the Warrants and 250,000 shares of Common Stock for possible issuance as payment of future dividends on the Preferred Stock.

(g) No Bad Actors. None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the placement, any beneficial owner of 20% or more of the Company's outstanding voting securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) of the Securities Act.

(h) No Registration. Assuming the accuracy of each of the representations and warranties of the Purchasers in Section 4 hereof, the issuance by the Company of the Securities is exempt from registration under the Securities Act.

(i) SEC Documents; Financial Statements. During the twelve (12) calendar months prior to the date hereof, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act. As of their respective filing dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective filing dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently

have been prepared in accordance with generally accepted accounting principles, consistency

applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(j) Absence of Certain Changes. Since December 31, 2022, there has been no material adverse change to, and no material adverse development in, the business, properties, operations, condition (financial or otherwise), results of operations or prospects of the Company or its Subsidiaries. Since December 31, 2022, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) had capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead any such creditor to do so.

(k) Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under its Certificate of Incorporation, any certificate of designations of any outstanding series of preferred stock of the Company or the Bylaws or their organizational charter or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except for possible violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect. Without limiting the generality of the foregoing, except as disclosed in the SEC Documents, the Company is not in violation of any of the rules, regulations or requirements of the Nasdaq Stock Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock by the Nasdaq Stock Market in the foreseeable future. Since December 31, 2022, (i) the Common Stock has been included for listing on the Nasdaq Stock Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Nasdaq Stock Market and (iii) except as disclosed in the SEC Documents, the Company has received no communication, written or oral, from the SEC or the Nasdaq Stock Market regarding the suspension or delisting of the Common Stock from the Nasdaq Stock Market. The Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses as currently conducted, except where the failure to possess such certificates, authorizations or permits would not reasonably be expected to have, individually or in the aggregate, a material adverse effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(l) Foreign Corrupt Practices. None of the Company, the Company's Subsidiaries or any director or officer of the Company, or, to the Company's knowledge, any agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its, his or her actions for, or on behalf of, the Company or any of its Subsidiaries (i) used



any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(m) Sarbanes-Oxley Act. The Company is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof.

(n) Equity Capitalization. As of the Effective Date, the authorized capital of the Company consists of 2,010,000,000 shares of capital stock, of which 2,000,000,000 shares are Common Stock, and 10,000,000 shares are preferred stock, of which 45,000 shares are designated Series B Preferred Stock, 25,000 shares will be designated Series C Preferred Stock and, after filing of the Certificate of Designation, 9,930,000 shares will be undesignated Preferred Stock. As of April 30, 2024, the Company had 68,534,525 shares of Common Stock outstanding, 45,000 shares of Series B Preferred Stock outstanding and no shares of Series C Preferred Stock outstanding. All of such outstanding shares have been, or upon issuance will be, validly issued and are fully paid and nonassessable. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents that have not been effectively waived as of the Closing Date. Except as set forth in the SEC Documents or as a result of the purchase and sale of the Preferred Shares and the Warrants: (i) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries; (iii) there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing material Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound; (iv) there are no financing statements securing obligations in any material amounts, either singly or in the aggregate, filed in connection with the Company or any of its Subsidiaries; (v) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act (except for the registration rights granted pursuant to Section 8 hereof); (vi) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (vii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (viii) the Company and its Subsidiaries have no liabilities or

by the issuance of the securities, and (viii) the Company and its Subsidiaries have no liabilities or

obligations required to be disclosed in the SEC Documents but not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or would not reasonably be expected to have a Material Adverse Effect. The Company has furnished to the Purchasers, or filed as exhibits to the SEC Documents, true, correct and complete copies of the Company's Certificate of Incorporation, the Company's Bylaws, and the terms of all securities convertible into, or exercisable or exchangeable for, shares of Common Stock and the material rights of the holders thereof in respect thereto.

(o) Absence of Litigation. Except as disclosed in the SEC Documents, there is no material action, suit, proceeding, inquiry or investigation before or by the Nasdaq Stock Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's Subsidiaries or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise. No court, administrative body or arbitral body has issued any order, judgment, decree or injunction restricting the operation of the business of the Company or any of its Subsidiaries.

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

(q) Title. The Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries. Any real property and facilities held under lease by the Company and any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(r) Intellectual Property Rights. The Company owns, possesses or can acquire on reasonable terms sufficient trademarks, service marks, trade names, patents, copyrights (including registrations and applications for any of the foregoing), domain names, licenses, approvals, trade secrets, know how, inventions, technology and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct its business as now conducted and as proposed to be conducted as set forth in the SEC Documents. To the Company's knowledge, the operation of the business of the Company, as now conducted or as proposed to be conducted in the SEC Documents, together with the Company's use of the Company's Intellectual Property Rights, does not conflict with, infringe, misappropriate or otherwise violate the Intellectual Property Rights of any third party. Except as disclosed in the SEC Documents, no actions, suits,

claims or proceedings have been asserted, or, to the Company's knowledge, threatened against the Company alleging any of the foregoing or seeking to challenge, deny or restrict the operation of the business of the Company and the Company is unaware of any facts which would form a reasonable basis for any such claim. Except as disclosed in the SEC Documents, the Company has not received any notice of a claim of infringement, misappropriation or conflict with Intellectual Property Rights of others, except for such claims that would not, individually or the in aggregate, be reasonably expected to have a Material Adverse Effect.

Except as disclosed in the SEC Documents, the Intellectual Property Rights owned by the Company and, to the knowledge of the Company, any Intellectual Property Rights licensed to the Company have not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the Company's knowledge, threatened material action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such challenge, except for such actions, suits, proceedings, or claims that would not, individually or the in aggregate, be reasonably expected to have a Material Adverse Effect. Except as otherwise disclosed in the SEC Documents, the Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be set forth in the SEC Documents. None of the technology or intellectual property used by the Company in its business has been obtained or is being used by the Company in violation of any contractual obligation binding on the Company or, to the Company's knowledge, any of its officers, directors or employees or otherwise in violation of the rights of any persons.

The Company has duly and properly filed or caused to be filed with the U.S. Patent and Trademark Office (the "PTO"), foreign patent authorities and/or international patent authorities all patent applications disclosed in the SEC Documents as owned by the Company (the "Company Patent Applications"). The Company has complied with the PTO's duty of candor and disclosure for the Company Patent Applications and has made no material misrepresentation during prosecution of the Company Patent Applications. To the Company's knowledge, the Company Patent Applications disclose patentable subject matters, correctly name the inventors of the claimed subject matter and the Company has not been notified of any inventorship challenges nor has any interference been declared or provoked. In addition, no material fact is known by the Company that would preclude the issuance of patents with respect to the Company Patent Applications, or that would render such patents, if issued, invalid or unenforceable.

The Company has used its commercially reasonable efforts, but in no event less than those efforts which would accord with normal industry practice, to maintain the confidentiality of the trade secrets and other confidential Intellectual Property Rights used in connection with the Company's business. Except as would not reasonably be expected to have a Material Adverse Effect, all material trade secrets used in connection with the Company's business are valid and protectable. Furthermore, (i) there has been no misappropriation of any material trade secrets or other material confidential Intellectual Property Rights used in connection with the business of the Company by any person; (ii) no employee, independent contractor or agent of the Company has misappropriated any trade secrets of any other person in the course of performance as an employee, independent contractor or agent of the Company; (iii) no third party is using or has been granted any rights to use any trade secret or other confidential Intellectual Property Rights material to the business of the Company; and (iv) no employee, independent contractor or agent

of the Company is in default or breach of any term of any employment agreement, nondisclosure agreement, assignment of invention agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of Intellectual Property Rights, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

(t) Internal Accounting and Disclosure Controls. Except as set forth in the SEC Documents, the Company maintains a system of internal controls over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in the SEC Documents, the Company maintains disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company’s management, including its principal executive officer and its principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

(u) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an “investment company,” a company controlled by an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for,



an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended.

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

(w) Taxes. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges, fines or penalties that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its financial statements provision reasonably adequate for the payment of all material tax liability of which has not been finally determined and all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary have no actual knowledge of a basis for any such claim.

(x) Transactions with Affiliates and Employees. Except as disclosed in the SEC Documents, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company or a Subsidiary and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

4. Purchasers’ Representations. In connection with the receipt of the Securities pursuant to this Agreement, each Purchaser, severally and not jointly, represents to the Company as of the date hereof and as of the Closing Date as follows:

(a) No Conflicts. The execution, delivery and performance by such Purchaser of this Agreement do not and will not contravene or constitute a default under, or violation of, or be subject to penalties under, (i) any agreement (or require the consent of any party under any such agreement that has not been made or obtained) to which such Purchaser is a party, or (ii) any judgment, injunction, order, decree or other instrument binding upon such Purchaser, except where such contravention, default, violation or failure to obtain a consent, individually or in the



aggregate, would not reasonably be expected to impair Purchaser's ability to perform fully any obligation which Purchaser has or will have under this Agreement.

(b) Accredited Investor Status. Such Purchaser understands the definition of the term "accredited investor" within the meaning of Rule 501(a) of Regulation D, promulgated by the SEC under the Securities Act, and such Purchaser qualifies as an accredited investor.

(c) No Public Sale or Distribution. Such Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Such Purchaser is acquiring the Securities for investment for its own account only and not with a view to, or for resale in connection with, any public sale or "distribution" thereof within the meaning of the Securities Act or under any applicable provision of state law in violation of the Securities Act or such applicable provision of state law. Such Purchaser does not have any present intention to transfer the Securities to any other person or entity in such a "distribution;" provided, however, that by making the representations herein, such Purchaser (i) does not agree to hold any of the Securities it acquires for any minimum or other specific term and (ii) reserves the right to dispose of any or all the Securities it acquires at any time in accordance with or pursuant to a registration statement or a registration exemption under the Securities Act and pursuant to the applicable terms of this Agreement.

(d) Reliance on Exemptions. Such Purchaser understands that the Securities have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of such Purchaser's investment intent as expressed herein. Such Purchaser understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, such Purchaser must hold the Securities indefinitely unless they are registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Such Purchaser acknowledges that the Company has no obligation to register or qualify the Securities for resale except for the registration rights granted pursuant to Section 8 hereof.

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

(f) No Governmental Review. Such Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the



investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Purchaser understands that except for the registration rights granted pursuant to Section 8 hereof: (i) the Securities have not been and are not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Purchaser shall have delivered to the Company an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Purchaser provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 promulgated under the Securities Act, as amended, (“Rule 144”) (or a successor rule thereto); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(h) Legends. Such Purchaser understands that the book entry statements representing the Preferred Shares and, until such time as the resale of the Underlying Shares has been registered under the Securities Act as contemplated by Section 8 hereof, the book entry statements representing the Securities, except as set forth below, shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such Securities):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN] [THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL, IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT.

The legend set forth above shall be removed and the Company shall issue a book entry statement without such legend to the holder of the Securities upon which it is stamped, if, unless otherwise required by state securities laws, (i) such Securities are registered for resale under the Securities Act and such holder has requested legend removal in connection with a bona fide registered sale, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with

an opinion of a law firm reasonably acceptable to the Company, in a form reasonably acceptable to the Company, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the Securities Act and such Securities are no longer required to bear a restrictive legend, or (iii) such Securities have been validly sold, assigned or transferred pursuant to Rule 144 and such holder has furnished the Company with customary documentation to effect such legend removal.

(i) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Purchaser and shall constitute the legal, valid and binding obligations of such Purchaser enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by Enforceability Exceptions.

5. Covenants.

(a) Reasonable Best Efforts. Each party shall use its reasonable best efforts timely to satisfy each of the covenants and conditions to be satisfied by it as provided in Sections 5 and 6 of this Agreement.

(b) Reporting Status. Until the earliest of (i) the date on which the Purchasers shall have sold all the Underlying Shares, (ii) the date on which all the Underlying Shares may be resold pursuant to Rule 144 without (x) the requirement for the Company to be in compliance with the current public information requirement under Rule 144 as to such securities and (y) volume or manner-of-sale restrictions, or (iii) the date which is two (2) years from the Effective Date (the "Reporting Period"), the Company shall timely file all reports required to be filed with the SEC pursuant to the Exchange Act, and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would otherwise permit such termination.

(c) Listing of Shares. The Company hereby agrees to use commercially reasonable best efforts to maintain the listing or quotation of the shares of Common Stock on the Nasdaq Stock Market, and in the time and manner as required by the Nasdaq Stock Market, the Company shall prepare and file with the Nasdaq Stock Market an additional shares listing notification covering all of the shares of Common Stock issuable upon conversion of the Preferred Shares and the exercise of the Warrants. The Company further agrees, if the Company applies to have the Common Stock traded on any other trading market, it will then include in such application all of the Common Shares and Warrant Shares, and will take such other action as is necessary to cause all of the Common Shares and Warrant Shares to be listed or quoted on such other trading market as promptly as possible. The Company will then take all commercially reasonable actions to continue the listing and trading of the Common Stock on the Nasdaq Stock Market and will comply in all material respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Nasdaq Stock Market. The Company agrees to use commercially reasonable efforts to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.



(d) Fees. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by any Purchaser) relating to or arising out of the transactions contemplated hereby. Except as otherwise set forth in this Agreement, each party to this Agreement shall bear its own expenses in connection with the sale of the Preferred Shares and the Warrants to the Purchasers.

(e) Use of Proceeds. The Company shall use the net proceeds from the sale of the Warrant Shares and Preferred Shares for working capital purposes and general corporate purposes, including the purchase of any pending or future acquisitions, and shall not use such proceeds: (i) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and repayment of obligations outstanding as of the date of this Agreement consistent with prior practices or prepayment of obligations outstanding as of the date of this Agreement), (ii) for the redemption of any Common Stock or equivalents thereof, (iii) for the settlement of any outstanding litigation or (iv) in violation of the Foreign Corrupt Practices Act of 1977, as amended, or regulations administered by the Office of Foreign Assets Control of the U.S. Treasury Department or similar applicable regulations.

6. Closing Conditions

(a) The obligations of the Company to deliver the Preferred Shares and the Warrants to each Purchaser on the Closing Date is subject to the satisfaction of each of the following conditions:

(i) The representations and warranties of such Purchaser contained in this Agreement shall be true and correct on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate as of such specified date). Such Purchaser shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by it at or prior to the Closing Date.

(ii) The Company shall have obtained all governmental, regulatory or third party consents, permits, approvals, registrations, waivers and any other required approvals that are necessary for consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing, all of which shall be and remain so long as necessary in full force and effect. For the avoidance of doubt, any required approvals that are not necessary for the consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing shall not be required by this clause (ii).

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

(b) The obligations of each Purchaser to purchase its Preferred Shares and the Warrants on the Closing Date is subject to the satisfaction of each of the following conditions:



(i) The representations and warranties of the Company contained in this Agreement shall be true and correct on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate as of such specified date). The Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(ii) Since the date of execution of this Agreement, (i) no event or series of events shall have occurred that would reasonably be expected to result in a Material Adverse Effect, (ii) the Company shall not have commenced a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law and (iii) there shall not have occurred the commencement against the Company of an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated bankrupt or insolvent.

(iii) The Company shall have duly executed and delivered to each applicable Purchaser (i) this Agreement, (ii) evidence of the issuance of the Preferred Shares (in such amounts as set forth on such Purchaser's signature page hereto) and (iii) evidence of the issuance of the Warrants (in such amounts as set forth on such Purchaser's signature page hereto).

(iv) The Common Stock (A) shall be listed on the Nasdaq Stock Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Nasdaq Stock Market from trading on the Nasdaq Stock Market nor, except as disclosed in the SEC Documents, shall suspension by the SEC or the Nasdaq Stock Market have been threatened, as of the Closing Date, either (x) in writing by the SEC or the Nasdaq Stock Market or (y) by falling below the minimum listing maintenance requirements of the Nasdaq Stock Market.

(v) The Purchasers acquiring Preferred Shares shall have received evidence from the Secretary of State of the State of Delaware that the Certificate of Designation has been filed therewith as of, or promptly after, the Closing Date and has become effective as of the Closing Date.

(vi) The Company shall have obtained all governmental, regulatory or third party consents, permits, approvals, registrations, waivers and any other required approvals that are necessary for consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing, all of which shall be and remain so long as necessary in full force and effect. For the avoidance of doubt, any required approvals that are not necessary for the consummation of the purchase and sale of the Preferred Shares and the Warrants at the Closing shall not be required by this clause (vi).

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

7. Participation Rights to Future Securities Issuances.



7.1 Participation Right. If the Company sells any shares of a series of Preferred Stock and/or rights, options, or warrants to purchase shares of Common Stock or of a series of Preferred Stock, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for shares of a series of Common Stock or Preferred Stock (“Qualifying New Securities”); provided that notwithstanding anything to the contrary any equity, options, warrant or similar equity-linked issuances to employees, consultants or vendors of the Company shall be excluded and not be deemed to be a Qualifying New Securities herein, the Company shall give notice to the Purchasers within 30 days after the issuance of Qualifying New Securities. Such notice shall describe the type, price, and terms of the Qualifying New Securities. Each Purchaser shall have 20 days from the date notice is given to elect to purchase up to the number of Qualifying New Securities which equals the greater of (x) that number of Qualifying New Securities having an aggregate purchase price equal to 400% of the aggregate Purchase Price paid by such Purchaser for Preferred Stock and Warrants pursuant to this Agreement, or (y) the proportion that the Common Stock then held by such Purchaser (including all shares of Common Stock then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of any shares of preferred stock of the Company and any other securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Stock, including options and warrants (“Derivative Securities”) then held by such Purchaser) bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Stock and other Derivative Securities). The closing of such sale shall occur within 45 days of the date notice is given to the Purchasers. Notwithstanding the foregoing, no Purchaser, or Affiliate (as defined in the certificate of Designation) thereof, shall be entitled to purchase Qualifying New Securities hereunder in an amount that would result in the Purchaser, in the aggregate and together with any Affiliate of such Purchaser, beneficially owning (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 19.99% of the number of shares of Common Stock outstanding immediately after giving effect to such purchase Qualifying New Securities.

7.2 Termination. The covenants set forth in Section 7.1 shall terminate and be of no further force or effect upon the redemption or conversion in full of the Preferred Shares.

8. Registration Rights. The Company agrees that, within reasonable promptness, and in any event within ninety (90) days following the Closing Date, it will file with the SEC (at its sole cost and expense) a registration statement registering the resale by the Purchasers of the Underlying Shares and an aggregate number of 250,000 Dividend Shares issuable as payment of the Preferred Stock dividend at the Purchaser’s option (the “Registration Statement”) on behalf of the Purchasers (or their Permitted Transferee(s)), and it shall use its commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable after the filing thereof. The Registration Statement shall register a number of Underlying Shares equal to the number of Underlying Reserved Shares and 250,000 Dividend Shares. In the event that the number of Underlying Shares registered on the Registration Statement is insufficient for the number of Underlying Shares to be issued at any point in time upon the conversion of Preferred Shares, the payment of the Preferred Stock dividend in Dividend Shares and/or the exercise of the Warrants (a “Subsequent Issuance”), the Company agrees to file with the SEC a separate registration statement within 30 days of such Subsequent Issuance, and it shall use its commercially reasonable efforts to have such registration statement declared effective as soon as practicable after the filing thereof. To increase the number of Underlying Shares registered thereunder by an amount sufficient

thereof, to increase the number of underlying shares registered thereunder by an amount sufficient

to register the number of Underlying Shares to be issued in such Subsequent Issuance. The Company agrees to cause such Registration Statement or another shelf registration statement that includes the Underlying Shares, to remain effective until the earliest of (i) the second anniversary of the Closing, (ii) the date on which the Purchasers (or their Permitted Transferee(s)) cease to hold any Underlying Shares issued pursuant to this Agreement, or (iii) on the first date on which the Purchasers are able to sell all of their Underlying Shares issued pursuant to this Agreement (or shares received in exchange therefor) under Rule 144 within 90 days without the volume or manner of sale limitations of such rule. The Purchasers agree to disclose their ownership to the Company upon request to assist it in making the determination with respect to Rule 144 described in clause (iii) above. In no event shall the Purchasers (or their Permitted Transferee(s)) be identified as statutory underwriters in the Registration Statement, unless in response to a comment or request from the staff of the SEC or another regulatory agency; provided, that if the SEC requests that the Purchasers (or their Permitted Transferee(s)) be identified as statutory underwriters in the Registration Statement, the Purchasers (or their Permitted Transferee(s)) will have an opportunity to withdraw their Underlying Shares from the Registration Statement. Notwithstanding the foregoing, if the SEC prevents the Company from including any or all of the shares proposed to be registered under the Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Underlying Shares by the applicable stockholders or otherwise, such Registration Statement shall register for resale such number of Underlying Shares which is equal to the maximum number of Underlying Shares as is permitted by the SEC. In such event, the number of Underlying Shares to be registered for each selling stockholder named in the Registration Statement shall be reduced pro rata among all such selling stockholders. The Purchasers (or their Permitted Transferee(s)) acknowledge and agree that the Company may suspend the use of any such registration statement if it determines that in order for such registration statement not to contain a material misstatement or omission, an amendment thereto would be needed, or if such filing or use could materially affect a bona fide business or financing transaction of the Company or would require premature disclosure of information that would adversely affect the Company that would at that time not otherwise be required in a current, quarterly, or annual report under the Exchange Act, provided, that, (I) the Company shall not so delay filing or so suspend the use of the Registration Statement for a period of more than ninety (90) consecutive days or more than a total of one hundred-twenty (120) calendar days in any three hundred sixty (360) day period and (II) the Company shall use commercially reasonable efforts to make such Registration Statement available for the sale by the Purchasers (or their Permitted Transferee(s)) of such securities as soon as practicable thereafter. The Company's obligations to include the Underlying Shares for resale in the Registration Statement are contingent upon the Purchasers (or their Permitted Transferee(s)) furnishing in writing to the Company such information regarding the Purchasers (or their Permitted Transferee(s)), the securities of the Company held by the Purchasers (or their Permitted Transferee(s)) and the intended method of disposition of such Underlying Shares, which shall be limited to non-underwritten public offerings, as shall be reasonably requested by the Company to effect the registration of such Underlying Shares, and shall execute such documents in connection with such registration as the Company may reasonably request that are customary of a selling stockholder in similar situations.

9. Indemnification

(a) To the extent permitted by law, the Company shall indemnify each Purchaser and its directors, executive officers, stockholders, members, partners, employees, and

agents and each Person controlling such Purchaser within the meaning of Section 15 of the Securities Act (each a “Purchaser Party”), against all claims, losses, damages and liabilities (or action in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 9(d) below), arising out of or based on any (i) breach of any representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents, (ii) action instituted against a Purchaser Party in any capacity, or any of them or their respective affiliates, by any shareholder of the Company who is not an affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents or (iii) untrue statement (or alleged untrue statement) of a material fact contained in the Registration Statement, prospectus, any amendment or supplement thereof, or other document prepared by the Company and incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse each Purchaser Party, for reasonable legal and other out-of-pocket expenses reasonably incurred and documented in connection with investigating or defending any such claim, loss, damage, liability or action as incurred; provided that the Company will not be liable in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Purchaser expressly for use in preparation of the Registration Statement, prospectus, amendment or supplement; provided however, that the Company will not be liable in any such case where the claim, loss, damage or liability arises out of or is related to the failure of such Purchaser to comply with the covenants and agreements contained in this Section 9 respecting sales of the Securities, and except that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time the Registration Statement becomes effective or in an amended prospectus filed with the SEC pursuant to Rule 424(b) which meets the requirements of Section 10(a) of the Securities Act (each, a “Final Prospectus”), such indemnity shall not inure to the benefit of any such Purchaser or any such controlling Person, if a copy of a Final Prospectus furnished by the Company to the Purchaser for delivery was not furnished to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage.

(b) Each Purchaser will severally, and not jointly, indemnify the Company, each of its directors and officers, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 9(d) below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in the Registration Statement, prospectus, or any amendment or supplement thereof, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, and each Person controlling the Company for reasonable legal and other out-of-pocket expenses reasonably incurred and documented in connection with investigating or defending any such claim, loss, damage, liability or action as incurred, in each case to the extent, but only to the extent, that such

damage, liability or action as incurred, in each case to the extent, but only to the extent, that such

untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Purchaser expressly for use in preparation of the Registration Statement, prospectus, amendment or supplement; provided that the indemnity shall not apply to the extent that such claim, loss, damage or liability results from the fact that the Final Prospectus was not made available to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, claim, damage or liability. Notwithstanding the foregoing, a Purchaser's aggregate liability pursuant to this subsection shall not exceed the net proceeds received by the Purchaser from the sale of the Underlying Shares included in the Registration Statement giving rise to such indemnification obligation.

(c) Each party entitled to indemnification under this Section 9(c) (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party (at its expense) to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such Indemnified Party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless such failure is materially prejudicial to the Indemnifying Party in defending such claim or litigation. An Indemnifying Party shall not be liable for any settlement of an action or claim effected without its written consent. No Indemnifying Party, in its defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(d) If the indemnification provided for in this Section 9(d) is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

10. Miscellaneous.

(a) Termination. In the event that the Closing shall not have occurred with respect to a Purchaser on or before five (5) Business Days from the date hereof due to the

Company's or such Purchaser's failure to satisfy the conditions set forth in Section 6 above (and the nonbreaching party does not waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party. "Business Day" shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

(b) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(c) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(f) Entire Agreement; Amendments. The Transaction Documents, together with the exhibits thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Purchaser(s) listed on the signature page(s) hereto; provided no amendment to Section 10(a) may be made without the consent of each Purchaser. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. The Company has not, directly or indirectly, made any agreements with any Purchaser relating to the terms or conditions of the transactions contemplated by this Agreement except as set forth in this Agreement. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Purchaser has made any commitment or promise or has any other obligation to provide any financing to the Company or otherwise.



(g) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; or (ii) one Business Day after receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party). The addresses and email address for such communications shall be:

If to the Company, to its address and email address set forth on the Company's signature page hereto, with a copy (for informational purposes only) to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attention: Robert Goedert, P.C.
Kevin Frank
Email: ****

If to a Purchaser, to its address and email address set forth on its signature page hereto or to such other address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Preferred Shares and/or Warrants. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchaser(s) on the signature page(s) hereto.

(i) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors, assigns, Indemnified Parties and Indemnitees, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(j) Survival. Unless this Agreement is terminated under Section 10(a), the representations and warranties of the Company and the Purchasers contained in Sections 3 and 4, and the agreements and covenants set forth in Sections 2, 5, 8 and 9 shall survive the Closing. Each Purchaser shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

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



(l) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Remedies. Each Purchaser and each holder of the Securities shall have all rights and remedies set forth in this Agreement and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security) to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the Purchasers. The Company therefore agrees that a Purchaser shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages and without posting a bond or other security.

(n) Fees and Expenses. At or promptly following the Closing, the Company shall pay the out of pocket expenses incurred by the Purchasers in connection with this transaction, including, without limitation, the reasonable legal fees and expenses of counsel to the Purchasers, not to exceed 1% of the Purchase Price.

[Signature Pages Follow]



The undersigned has executed this Agreement as of the date first set forth above.

THE COMPANY:

CANOO INC.

By:

A handwritten signature in blue ink, appearing to read 'G. Ethridge', with a long horizontal flourish extending to the right.

(Signature)

Name: Greg Ethridge

Title: Chief Financial Officer

Address:

15520 Highway 114

Justin, Texas 76247

Attention: Greg Ethridge; Hector Ruiz

Email: *****

The undersigned has executed this Agreement as of the date first set forth above.

PURCHASER:

AFV Partners SPV-11/A LLC

(Signature)

Name: Anthony Aquila

Title: Chief Executive Officer

Number of Preferred Shares Purchased:	5,000
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Number of Shares of Common Stock for Which the Purchased Warrant Can Be Exercised:	<u>2,236,636</u>
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Total Purchase Price:	<u><u>\$5,000,000</u></u>
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Address for purposes of notice and delivery:

2126 Hamilton Road, Suite 260
Argyle, Texas 76226

Exhibit A
Form of Warrant

WARRANT TO PURCHASE SHARES OF COMMON STOCK

CANOO INC.

Warrant Shares: 2,236,636

Original Issuance Date: May 3, 2024

THIS WARRANT TO PURCHASE SHARES OF COMMON STOCK (the “Warrant”) certifies that, for value received, AFV Partners SPV-11/A LLC or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after May 3, 2024 (the “Initial Exercise Date”) and on or prior to 5:00 p.m. (New York City time) on May 3, 2029 (the “Termination Date”), but, subject to Section 2(a), not thereafter, to subscribe for and purchase from CANOO INC., a Delaware corporation (the “Company”), up to 2,236,636 shares of common stock, par value \$0.0001 per share (the “Common Stock”), of the Company (as subject to adjustment hereunder, the “Warrant Shares”). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the “Purchase Agreement”), dated May 3, 2024, among the Company and the purchaser[s] signatory thereto.

Section 2. Exercise.

(a) Exercise of Warrant. Notwithstanding anything in this Warrant to the contrary, until the Company has obtained the approval (the “Requisite Shareholder Approval”) of the proposal required to be approved by the Company’s stockholders pursuant to the applicable rules and regulations of Nasdaq (or any successor entity), including Nasdaq Listing Standard Rule 5635, prior to further issuances of the Company’s Common Stock upon (x) the conversion of the Series C Preferred Stock, (y) the exercise of warrants issued pursuant to the Purchase Agreement or (z) payment of Dividends hereunder, at the option of the Holder, in shares of Common Stock where, in aggregate, the issuance of such shares of Common Stock under (x), (y) or (z) would (i) exceed 19.99% of the aggregate number of shares of the Company’s Common Stock issued and outstanding as of April 9, 2024, appropriately adjusted for any stock dividend, stock split, reverse stock split or similar transaction (the “Exchange Cap”), or (ii) cause the Holder, in the aggregate and together with any affiliate of such Holder, to beneficially own (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the rules promulgated thereunder) in excess of 19.99% of the number of shares of Common Stock outstanding immediately after giving effect to exercise or otherwise result in a “change of control” within the meaning of Nasdaq Listing Standard Rule 5635(b) (the “Beneficial Ownership Limitation”), the exercise of the purchase rights represented by this Warrant may not be made if such exercise would result in an issuance of shares of Common Stock in excess of the Exchange Cap or in violation of the Beneficial Ownership Limitation, as applicable. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto as Exhibit A (the “Notice of Exercise”). Notwithstanding the foregoing, if the Company is unable to issue all or any part of the Warrant Shares prior to the Termination Date because the Company has not obtained the Requisite Shareholder Approval, the Termination Date shall be extended to a Business Day selected by the Company that is not less than twenty (20) days and not more than thirty-five (35) days from the date on which the Company obtained the Requisite Shareholder Approval. Notwithstanding anything in this Warrant to the contrary, the exercise of the purchase rights represented by this Warrant may not be made if such exercise would result in an issuance of shares of Common Stock to the extent that after giving effect to such conversion or receipt of such Conversion Shares, the Holder, in the aggregate and together with any affiliate of such Holder, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect (but only after giving effect) to such conversion or receipt of shares, except and to the extent as expressly waived or consented to in writing by the Holder provided that any such waiver or consent shall become effective 61 days following the date on which it is provided. The foregoing provision shall not apply to a Holder who, in the aggregate and together with any affiliate of such Holder, beneficially owned (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of

Section 15(u) of the Exchange Act and the rules promulgated thereunder) in excess of 2.22% of the number of

shares of Common Stock outstanding immediately before giving effect to such conversion or receipt of shares. In connection with the submission of any Notice of Exercise, the Holder shall furnish such information as the Company may reasonably request to assist it in determining the Holder's beneficial ownership pursuant to this Section 2(a). Within the earlier of (A) two (2) Trading Days and (B) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$2.2355, subject to adjustment hereunder (the "Exercise Price").

(c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available, for the public resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (x) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (y) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof, or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the restricted characteristic

accordance with Section 5(a)(7) of the Securities Act, the Warrant Shares shall have the restricted characteristic

of the Warrants being exercised, subject to the holding period of the Warrant Shares being “tacked” on to the holding period of this Warrant in accordance with Rule 144. The Company agrees not to take any position contrary to this Section 2(c).

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market, but the Common Stock is quoted on OTCQB or OTCQX, the VWAP of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the relevant date: New York Stock Exchange, NYSE American LLC, or any national exchange operated by the Nasdaq Stock Market, or listed or quoted on an exchange or quotation system that is a successor to the New York Stock Exchange, NYSE American LLC or the Nasdaq Stock Market.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market, but the Common Stock is quoted on OTCQB or OTCQX, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(d) Mechanics of Exercise

- (i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by The Depository Trust Company through its Deposit or Withdrawal at Custodian system (“DWAC”) and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to, or resale of the Warrant Shares by, the Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of the Warrant Shares, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company, and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the “Warrant Share Delivery Date”). Upon delivery of the Notice of

(such date, the Warrant Share Delivery Date). Upon delivery of the notice of

Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. Other than as a result of the limitations set forth in Section 2(a) of this Warrant, if the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the third Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a registrar (which may be the Transfer Agent) that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, the following terms have the following meanings:

“Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 12:00 p.m. (New York City time) on the Initial Exercise Date, which may be delivered at any time after the time of execution of the Purchase Agreement, the Company agrees to deliver, or cause to be delivered, the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, and other than as a result of the limitations set forth in Section 2(a) of this Warrant, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder’s brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a “Buy-In”), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver

such exercise was not honored (in which case such exercise shall be deemed rescinded) or derived

to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Warrants with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Other than as a result of the limitations set forth in Section 2(a) of this Warrant, nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share of Common Stock.

(vi) Charges, Taxes and Expenses. The issuance of Warrant Shares and delivery of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as **Exhibit B**, duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares. "Transfer Agent" means Continental Stock Transfer & Trust Company, the current transfer agent of the Company, at its principal office in One State Street Plaza, 30th Floor, New York, New York 10004 and any successor transfer agent of the Company.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of Common Stock payable in shares of Common Stock (which, for avoidance of doubt, shall not include any Warrant Shares issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b)[RESERVED].

(c) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the Company's assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding voting power, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock or more than 50% of the outstanding voting securities (each, a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction. For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time concurrently with, or within thirty (30) days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, that, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity, the same type or form of consideration (and in the same proportion), valued at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction; provided, further, that if holders of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of Common Stock will be deemed to have received shares of common stock of the Successor Entity (which Successor Entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the highest VWAP

any non-cash consideration, if any, being offered in such fundamental transaction and (ii) the highest YTM

during the period beginning on the Trading Day immediately preceding the public announcement of the applicable Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder's request pursuant to this Section 3(c) and (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date and (E) a zero cost of borrow. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within the later of (i) five Business Days of the Holder's election and (ii) the date of consummation of the Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(c) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(d) (i) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) and 3(c) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights).

(ii) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof), immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share of Common Stock, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If, (A) the Company declares a dividend (or any other distribution in whatever form) on the shares of Common Stock, (B) the Company declares a special nonrecurring cash dividend on, or a redemption of, the shares of Common Stock, (C) the Company authorizes the granting to all holders of the shares of Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company is required in connection with a Fundamental Transaction, or (E) the Company authorizes the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the shares of Common Stock of record to be entitled to such dividend, distribution, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(g) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with the Securities Act and any other applicable securities laws, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a) as to any transfer which may be involved in such division or combination, the

compliance with section 7(a), as to any transfer which may be involved in such division or combination, etc

Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5. Miscellaneous.

(a) Currency. Unless otherwise indicated, all dollar amounts referred to in this Warrant are in United States Dollars ("U.S. Dollars"). All amounts owing under this Warrant shall be paid in U.S. Dollars. All amounts denominated in other currencies shall be converted in the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "Exchange Rate" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Warrant, the U.S. Dollar exchange rate as published in the Wall Street Journal (NY edition) on the relevant date of calculation.

(b) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 3(d) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(c) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(d) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then such action may be taken, or such right may be exercised on the next succeeding Trading Day.

(e) Authorized Shares. The Company covenants that during the period the Warrant is outstanding, it will reserve from its authorized and unissued shares of Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares underlying this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant, subject in all respects to the limitations set forth in Section 2(a) of this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares underlying this Warrant may be issued, as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. Subject to the Requisite Shareholder Approval with respect to shares issued in excess of the Exchange Cap or the Beneficial Ownership Limitation, , the Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer

action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer

of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any shares of Common Stock above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, including without limitation using reasonable best efforts to obtain the receipt of the Requisite Shareholder Approval, and (iii) use reasonable best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant, including without limitation the receipt of the Requisite Shareholder Approval; provided, however, if the Company reasonably determines that the conversion of the Series C Preferred Stock, the exercise of this Warrant or the payment of any dividends in shares of Common Stock would, in the aggregate, exceed the Exchange Cap or violate the Beneficial Ownership Limitation, the Company shall duly call, give notice of, establish a record date for, convene and hold a special meeting of the common stockholders, to be held as promptly as reasonably possible, for the purpose of obtaining the Requisite Shareholder; provided further that the Board of Directors shall recommend to its common stockholders the approval of the Requisite Shareholder Approval.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(f) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

(g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, will have restrictions upon resale imposed by state, federal or foreign securities laws.

(h) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(i) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

(j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any share of Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(k) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns

Obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns

of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(m) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(n) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(o) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

CANOO INC.

By: 

Name: Greg Ethridge

Title: Chief Financial Officer

[GOEV - Signature Page to Warrant]

EXHIBIT A
NOTICE OF EXERCISE

TO: CANOO INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

-
-
-
-
-

EXHIBIT B
ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)
Address: _____
(Please Print)
Phone Number: _____
Email Address: _____
Dated: _____
Holder's Signature: _____
Holder's Address: _____

Exhibit B

**Certificate of Designation of Series C Cumulative Perpetual Redeemable Preferred Shares
Par Value \$0.0001 Per Share, Of Canoo Inc.**

**CERTIFICATE OF DESIGNATION OF
SERIES C CUMULATIVE PERPETUAL REDEEMABLE
PREFERRED STOCK,
PAR VALUE \$0.0001 PER SHARE, OF
CANOO INC.**

Pursuant to Sections 151 and 103 of the
General Corporation Law of the State of Delaware

CANOO INC., a corporation organized and existing under the laws of the State of Delaware (the “Company”), certifies that pursuant to the authority contained in its Certificate of Incorporation, and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Audit Committee of the Board of Directors of the Company (the “Audit Committee”) has duly approved and adopted the following resolution on April 9, 2024, and the resolution was adopted by all necessary action on the part of the Company:

WHEREAS, the Certificate of Incorporation of the Company provides for a class of its authorized stock known as Preferred Stock, consisting of 10,000,000 shares, \$0.0001 par value per share, issuable from time to time in one or more series; and

WHEREAS, the Board of Directors is authorized to provide for the issue of all or any number of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the authority vested in the Board of Directors by the Certificate of Incorporation and Section 151 of the General Corporation Law of the State of Delaware, the Audit Committee does hereby designate, create, authorize and provide for the issue of a series of 25,000 shares of Preferred Stock, par value \$0.0001 per share, having the voting powers and such designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions that are set forth in this resolution of the Audit Committee pursuant to the authority expressly vested in the Board of Directors by the provisions of the Certificate of Incorporation and hereby constituting an amendment to the Certificate of Incorporation as follows:

Section 1. Designation. The designation of the series of preferred stock of the Company is “Series C Cumulative Perpetual Redeemable”, par value \$0.0001 per share (the “Series C Preferred Stock”). Each share of the Series C Preferred Stock shall be identical in all respects to every other share of the Series C Preferred Stock. Each share of Series C Preferred Stock shall have a stated value equal to \$1,000.00 (the “Stated Value”).

Section 2. Number of Shares. The authorized number of shares of Series C Preferred Stock is 25,000. Shares of Series C Preferred Stock that are redeemed, purchased or otherwise acquired

by the Company, or converted into another series of Preferred Stock, shall revert to authorized but unissued shares of Preferred Stock (provided that any such cancelled shares of Series C Preferred Stock may be reissued only as shares of any series other than Series C Preferred Stock).

Section 3. Defined Terms and Rules of Construction.

(a) **Definitions.** As used herein with respect to the Series C Preferred Stock:

“Accrued Dividends” shall mean, as of any date, with respect to any share of Series C Preferred Stock, all dividends that have accrued pursuant to Section 4(a)(i) but that have not been paid in cash or, at the option of the Holder, in shares of Common Stock as of such date.

“Affiliate” shall mean any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 9(c).

“Average Common Stock Price” shall mean (i) the average of the closing sale prices per share of the Common Stock (or, if no closing sale price is reported, the average of the closing bid and ask prices per share or, if more than one in either case, the average of the average closing bid and the average closing ask prices per share) for the ten consecutive Trading Days immediately preceding, but not including, the Determination Date as reported on the principal national securities exchange on which the Common Stock is then traded, or (ii) the average of the last quoted bid prices for the Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or similar organization for the ten consecutive Trading Days immediately preceding, but not including, the Determination Date, if the Common Stock is not then listed for trading on a U.S. securities exchange; provided that in no event shall the Average Common Stock Price be less than the Floor Price.

“Beneficial Ownership Limitation” shall mean the limitation on conversion of shares of Series C Preferred Stock set forth in Section 7(d)(ii) hereof.

“Board of Directors” shall mean the board of directors of the Company.

“Business Day” shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Bylaws” shall mean the Amended and Restated Bylaws of the Company in effect on the date hereof, as they may be amended from time to time.

“Certificate of Designation” shall mean this Certificate of Designation relating to the Series C Preferred Stock, as it may be amended from time to time.

“Certificate of Incorporation” shall mean the Second Amended and Restated Certificate of Incorporation of the Company, as amended from time to time, including by this Certificate of Designation.



“Change of Control” is deemed to occur when, after the original issuance of the Series C Preferred Stock, the following have occurred and are continuing: (i) the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of the Company’s capital stock entitling that person to exercise more than 50% of the total voting power of all capital stock of the Company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and (ii) following the closing of any transaction referred to in clause (i) above, neither the Company nor the acquiring or surviving entity has a class of common securities (or American Depositary Receipts representing such securities) listed on the Trading Market.

“Change of Control Conversion Date” shall mean the date the Series C Preferred Stock is to be converted, which will be a Business Day selected by the Company that is no fewer than 20 days nor more than 35 days after the date on which the Company provides the required notice of the occurrence of a Change of Control to the Holders; provided that the foregoing 35 day limitation shall not apply to any Change of Control Notice issued prior to the occurrence of such Change of Control if the Change of Control Conversion Date specified therein is fixed relative to the consummation of such Change of Control.

“Change of Control Conversion Right” shall have the meaning set forth in Section 7(a).

“Change of Control Notice” shall have the meaning set forth in Section 8(c).

“Close of Business” shall mean 5:00 p.m., New York City time.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commission” shall mean the U.S. Securities and Exchange Commission, including the staff thereof.

“Common Stock” shall mean the common stock, par value \$0.0001 per share, of the Company.

“Common Stock Equivalents” shall mean any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, Options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company” shall mean Canoo Inc., a corporation organized and existing under the laws of the State of Delaware, and any successor thereof.

“Conversion Notice” shall have the meaning assigned to it in Section 7(a).

“Conversion Price” means the lesser of: (i) 120% of the applicable Average Common Stock Price, provided that if the Average Common Stock Price is equal to the Floor Price, the Conversion Price



shall be determined based on 100% of the Average Common Stock Price instead of 120% and (ii) \$2.2355, subject to adjustment as set forth herein.

“Conversion Shares” shall mean, collectively, the shares of Common Stock issuable upon conversion of the shares of Series C Preferred Stock in accordance with the terms hereof.

“Determination Date” shall mean (i) with respect to a Change of Control, the date on which such Change of Control occurred or April 9, 2024, whichever date shall result in a greater number of shares of Common Stock to be issued to the Holders upon conversion, and (ii) with respect to the Optional Conversion Right, the Optional Conversion Date.

“Dividend Nonpayment” shall have the meaning set forth in Section 4(b).

“Dividend Payment Date” shall mean March 30, June 30, September 30, and December 30 of each year (each, a “Quarterly Date”), commencing on the first Quarterly Date immediately following the Original Issue Date; provided, that if any such Quarterly Date is not a Business Day then the “Dividend Payment Date” shall be the next Business Day immediately following such Quarterly Date.

“Dividend Payment Record Date” shall have the meaning set forth in Section 4(a)(iii).

“Dividend Rate” shall have the meaning set forth in Section 4(a)(i), subject to adjustments set forth in Section 4(a)(i) and Section 4(b).

“Dividends” shall have the meaning set forth in Section 4(a)(i).

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

“Exchange Cap” shall mean 19.99% of the aggregate number of shares of the Company’s Common Stock issued and outstanding as of April 9, 2024. The Exchange Cap shall be appropriately adjusted for any stock dividend, stock split, reverse stock split or similar transaction.

“Exchange Cap and Beneficial Ownership Proposal” shall mean the proposal required to be approved by the Company’s stockholders pursuant to the applicable rules and regulations of Nasdaq (or any successor entity), including Nasdaq Listing Standard Rule 5635, prior to further issuances of the Company’s Common Stock upon (i) the conversion of the Series C Preferred Stock, (ii) the exercise of warrants issued pursuant to the Purchase Agreement or (iii) payment of Dividends hereunder, at the option of the Holder, in shares of Common Stock where, in aggregate, the issuance of such shares of Common Stock under (i), (ii) or (iii) would (x) exceed the Exchange Cap, or (y) result in a violation of the Beneficial Ownership Limitation.

“First Reset Date” shall have the meaning set forth in Section 4(a)(i).

“Floor Price” shall mean \$2.00.

“Fundamental Transaction” shall have the meaning set forth in Section 9(c).

“Holdings” shall mean, collectively, the holders of the Series C Preferred Stock.



“Liquidation” shall have the meaning set forth in Section 6.

“Liquidation Preference” shall have the meaning set forth in Section 6.

“Nasdaq” shall mean the Nasdaq Stock Market.

“Optional Conversion Date” shall mean any date on which Series C Preferred Stock is to be converted, which shall be a Business Day selected by the Company that is no fewer than 20 days nor more than 35 days after the date on which any Holder provides notice of its intent to convert some or all of the Preferred Stock.

“Optional Conversion Right” shall have the meaning set forth in Section 7(a).

“Optional Redemption Date” shall have the meaning set forth in Section 8(a).

“Optional Redemption Right” shall have the meaning set forth in Section 8(a).

“Original Issue Date” shall mean, with respect to a share of Series C Preferred Stock, the date of the first issuance of any such share of Series C Preferred Stock regardless of the number of transfers of any such share of Series C Preferred Stock and regardless of the number of certificates which may be issued to evidence such Series C Preferred Stock.

“Payment Period” shall mean, with respect to a share of Series C Preferred Stock, the period beginning on the day after the preceding Dividend Payment Date (or if no Dividend Payment Date has occurred since the Original Issue Date of such share of Series C Preferred Stock, the Original Issue Date) to and including the next Dividend Payment Date; provided that, for the purpose of determining the amount of Accrued Dividends for any Payment Period, the Payment Period shall be calculated based on the actual number of days elapsed during such Payment Period on a 360-day year consisting of twelve 30-day months.

“Person” shall mean any individual, company, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

“Preferred Stock” shall mean any and all series of preferred stock of the Company, including the Series C Preferred Stock.

“Purchase Agreement” shall mean the Securities Purchase Agreement, dated on or about April 9, 2024, among the Company and the Holders, as amended, modified or supplemented from time to time in accordance with its terms.

“Purchase Rights” shall have the meaning set forth in Section 9(b).

“Purchaser” shall mean any purchaser of Series C Preferred Stock.

“Register” shall mean the securities register maintained in respect of the Series C Preferred Stock by the Company.



“Requisite Shareholder Approval” shall mean the receipt of approval by the Company’s stockholders with respect to the Exchange Cap and Beneficial Ownership Proposal.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Series C Preferred Stock” shall have the meaning set forth in Section 1.

“Special Optional Redemption Right” shall have the meaning set forth in Section 8(b).

“Stated Value” shall have the meaning set forth in Section 1.

“Subsidiary” shall mean any direct or indirect subsidiary of the Company formed or acquired before or after the date of the Purchase Agreement.

“Successor Entity” shall have the meaning set forth in Section 9(c).

“Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the relevant date: New York Stock Exchange, NYSE American LLC, or any national exchange operated by Nasdaq, or listed or quoted on an exchange or quotation system that is a successor to the New York Stock Exchange, NYSE American LLC or Nasdaq.

“Transaction Documents” means the Purchase Agreement, this Certificate of Designation and all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Warrants” means the warrants to issue Common Stock issued in connection with the purchase of Series C Preferred Stock pursuant to the Purchase Agreement or in connection with any subsequent purchase of Series C Preferred Stock contemplated by the Purchase Agreement.

(b) **Rules of Construction.** Unless the context otherwise requires: (i) a term has the meaning assigned to it herein; (ii) an accounting term not otherwise defined herein has the meaning accorded to it in accordance with generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis; (iii) words in the singular include the plural, and in the plural include the singular; (iv) “or” is not exclusive; (v) “will” shall be interpreted to express a command; (vi) “including” means including without limitation; (vii) provisions apply to successive events and transactions; (viii) references to any Section or clause refer to the corresponding Section or clause, respectively, of this Certificate of Designation; (ix) any reference to a day or number of days, unless expressly referred to as a Business Day or Trading Day, shall mean the respective calendar day or number of calendar days; (x) references to sections of or rules under the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules, and any term defined by reference to a section of or rule under the Exchange Act shall include Commission and judicial interpretations of such section or rule; (xi) references to sections of the Code shall be deemed to include any substitute, replacement or successor sections as well



as the Treasury Regulations promulgated thereunder from time to time; and (xii) headings are for convenience only.

Section 4. Dividends.

(a) Holders shall be entitled to receive, out of the assets of the Company, Dividends on the terms described below:

(i) For each period from and including the Original Issue Date, and to but excluding the fifth anniversary of the Original Issue Date. (the “First Reset Date”), the Company shall pay, subject to Section 4(c), if, as and when declared by the Board of Directors, out of funds of the Company, on each Dividend Payment Date for the applicable Payment Period or Payment Periods dividends on each outstanding share of Series C Preferred Stock (the “Dividends”) at a rate per annum equal to 7.50% of the Liquidation Preference per share of Series C Preferred Stock (the “Dividend Rate”), payable in accordance with Section 4(a)(ii) below. For each Payment Period beginning on the First Reset Date, the Dividend Rate shall be equal to the prior Payment Period’s Dividend Rate, plus 1.50%. Subject to Section 4(c), to the extent not paid in cash, whether or not the Company has earnings, whether or not the payment of such dividends is then permitted under Delaware law, whether or not such dividends are authorized or declared, and whether or not any agreements to which the Company is a party prohibit the current payment of dividends, including any agreement relating to the Company’s indebtedness, Dividends on each share of Series C Preferred Stock shall accrue daily from and after the Original Issue Date of such share and shall compound on a quarterly basis on each Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed). The Accrued Dividends, to the extent unpaid, shall in all cases be payable upon a Liquidation pursuant to Section 6 or upon any conversion of the Series C Preferred Stock pursuant to Section 7. Dividend payments shall be aggregated per Holder and shall be made to the nearest cent (with \$0.005 being rounded upward).

(ii) Each Dividend if, as and when such Dividends are declared by the Board of Directors, shall be paid to the Holders in cash or, at the option of the Holder, in shares of Common Stock. Any shares of Common Stock issued in payment of a Dividend on Preferred Stock shall be valued at the closing price of the last Trading Day preceding the record date designated by the Board of Directors relating to such Dividends. Notwithstanding anything in this Certificate of Designation to the contrary, until the Company has obtained the Requisite Stockholder Approval, the Company may not issue shares of Common Stock in payment of a Dividend to the extent such payment would result in an issuance of shares of Common Stock in excess of the Requisite Stockholder Approval.

(iii) Each Dividend shall be paid pro rata to the Holders. Each Dividend shall be payable to the Holders as they appear on the Register at the Close of Business on the date which is 15 days preceding the applicable Dividend Payment Date (such date, an “Dividend Payment Record Date”).



(b) (a) If the Holders elect to receive a cash dividend payment and the Company fails to make the corresponding cash dividend payment (a “Dividend Nonpayment”) with respect to three or more consecutive or non-consecutive Payment Periods, the Dividend Rate on the Preferred Stock will increase an additional 0.25% per annum commencing immediately following the third Payment Period for which there has been a Dividend Nonpayment and will increase an additional 0.25% per annum every third succeeding Dividend Nonpayment (whether the Payment Periods to which such Dividend Nonpayments relate are consecutive or non-consecutive); provided, however, the maximum Dividend Rate on the Preferred Stock (after giving effect to Section 4(a)(i) and this Section 4(b)) shall be capped at 12.0% per annum.

(c) If the date relating to a Liquidation pursuant to Section 6, upon any conversion of the Series C Preferred Stock pursuant to Section 7, or upon any redemption of the Series C Preferred Stock pursuant to Section 8, respectively, is after a Dividend Payment Record Date for a declared Dividend on the Series C Preferred Stock but occurs on or prior to the next Dividend Payment Date, then the Holder of such share of Series C Preferred Stock at the Close of Business on such Dividend Payment Record Date will be entitled, notwithstanding the related Liquidation, conversion or redemption, as applicable, to receive, on or, at the Company’s election, before such Dividend Payment Date, such declared Dividend on such share of Series C Preferred Stock. Except as provided in this Section 4(c), Dividends on any share of Preferred Stock will cease to accumulate from and after the date relating to a Liquidation pursuant to Section 6, upon any conversion of the Series C Preferred Stock pursuant to Section 7, or upon any redemption of the Series C Preferred Stock pursuant to Section 8, as applicable.

Section 5. Voting Rights. The Holders of shares of Series C Preferred Stock shall be entitled to vote as a single class with the holders of the Common Stock and the holders of any other class or series of capital stock of the Company then entitled to vote with the Common Stock on all matters submitted to a vote of the holders of Common Stock. With respect to such vote, each Holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock and shall be entitled to notice of any stockholders’ meeting in accordance with the Bylaws. With respect to any matter submitted to a vote of the holders of Common Stock, each share of Series C Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which such share of Series C Preferred Stock was convertible on the record date for determining holders of Common Stock entitled to vote on such matter (such date, the “Applicable Record Date”); *provided*, (i) that the aggregate number of votes to which a holder of Series C Preferred Stock shall be entitled shall be reduced by the aggregate number of shares of Common Stock issued to such holder pursuant to Section 4(a)(ii) as adjusted pursuant to Section 9 hereunder; (ii) that until the Company has obtained the Requisite Shareholder Approval, the amount set forth in the foregoing clause (a) shall not exceed an amount equal to: (x) the total number of shares of Common Stock into which all outstanding shares of Series C Preferred Stock could be converted as of the Applicable Record Date without violating the Exchange Cap or Beneficial Ownership Limitation, divided by (y) the total number of shares of Series C Preferred Stock outstanding as of the Applicable Record Date; and (iii) that for purposes of determining the number of votes each share of Series C Preferred Stock is entitled to pursuant to this Section 5, the Conversion Price shall not be less than \$2.33. As long as any shares of Series C Preferred Stock are outstanding, the Company shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of Series C Preferred Stock, (i) alter or change adversely the powers, preferences or rights given to the Series C Preferred Stock or alter or amend this Certificate of

Designation, (ii) amend or repeal any provision of, or add any provision to, the Certificate of Incorporation or Bylaws, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of Preferred Stock, if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series C Preferred Stock; or (iii) declare or pay any junior dividends or repurchase any junior securities during any time that all Accrued Dividends on the Series C Preferred Stock have not been paid in full in cash or, at the option of the Holder, in shares of Common Stock.

Section 6. Liquidation. Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary (a "Liquidation"), each Holder, will be entitled to payment out of the assets of the Company, prior and in preference to holders of Common Stock of the Company, but on a *pari passu* basis with the holders of Series B Preferred Stock and any other parity capital stock of the Company approved then outstanding, in an amount per share equal to the Stated Value (the "Liquidation Preference") plus any accumulated and unpaid Dividends thereon.

Section 7. Conversion.

(a) **Conversion Upon Change of Control.** Upon the occurrence of a Change of Control, each Holder will have the right (subject to the Special Optional Redemption Right) to convert some or all of the Series C Preferred Stock held by such Holder (the "Change of Control Conversion Right") on the Change of Control Conversion Date specified in the applicable Change of Control Notice into a number of shares of Common Stock per share of the Preferred Stock to be converted equal to (x) the Liquidation Preference of such Series C Preferred Stock plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a Dividend Payment Record Date and prior to the corresponding Dividend Payment Date, in which case no additional amount for such accumulated and unpaid Dividends to be paid on such Dividend Payment Date shall be included) divided by (y) the Conversion Price. A Holder shall exercise its Change of Control Conversion Right by providing the Company with a written response to the applicable Change of Control Notice, which response shall specify the number of shares to be converted and otherwise comply with any reasonable procedures specified by the Company in the Change of Control Notice. For the avoidance of doubt, if, prior to the Change of Control Conversion Date, the Company has provided notice of its election to redeem some or all of the shares of Series C Preferred Stock (whether pursuant to its Optional Redemption Right or its Special Optional Redemption Right), the Holders will not have the Change of Control Conversion Right with respect to such shares of Preferred Stock.

(b) [Intentionally Omitted]

(c) **Optional Conversion.** Each Holder will have the right (subject to the Special Optional Redemption Right) to convert some or all of the Series C Preferred Stock held by such Holder (the "Optional Conversion Right") at any time and from time to time into a number of shares of the Common Stock per share of the Preferred Stock equal to (x) the Liquidation Preference of such Series C Preferred Stock plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the Optional Conversion Date (unless the Optional Conversion Date is after a Dividend Payment Record Date and prior to the



corresponding Dividend Payment Date for the Series C Preferred Stock, in which case no additional amount for such accumulated and unpaid dividends to be paid on such Dividend Payment Date shall be included) divided by (y) the Conversion Price. A Holder shall exercise its Optional Conversion Right by providing written notice to the Company of its intent to convert and the number of shares of Series C Preferred Stock to be converted (the “Conversion Notice”). The Company shall fix the Optional Conversion Date in accordance with the terms of this Certificate of Designation and notify the converting Holder within a reasonable amount of time following the receipt of such Holder’s notice of conversion. For the avoidance of doubt, if, prior to the Optional Conversion Date, the Company has provided notice of its election to redeem some or all of the shares of Series C Preferred Stock (whether pursuant to its Optional Redemption Right or its Special Optional Redemption Right), the Holders will not have the Optional Conversion Right with respect to such shares of Preferred Stock.

(d) Conversion and Issuance Limitations.

(i) Notwithstanding anything in this Certificate of Designation to the contrary, until the Company has obtained the Requisite Stockholder Approval, the Series C Preferred Stock shall not be convertible into Conversion Shares to the extent such conversion would result in an issuance of shares of Common Stock in excess of the Exchange Cap.

(ii) Until the Company shall have obtained the Requisite Stockholder Approval, no Holder shall be permitted to effect any conversion of shares of Series C Preferred Stock or receive Conversion Shares hereunder to the extent that after giving effect to such conversion or receipt of such Conversion Shares, the Holder, in the aggregate and together with any affiliate of such Holder, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 19.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or receipt of shares or if such conversion would otherwise result in a “change of control” within the meaning of Nasdaq Listing Rule 5635(b). In connection with the submission of any Conversion Notice, the Holder shall furnish such information as the Company may reasonably request to assist it in determining the Holder’s beneficial ownership pursuant to this Section 7(d)(ii).

(iii) No Holder shall be permitted to effect any conversion of shares of Series C Preferred Stock or receive Conversion Shares hereunder to the extent that after giving effect (but only after giving effect) to such conversion or receipt of such Conversion Shares, the Holder, in the aggregate and together with any affiliate of such Holder, would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or receipt of shares, except and to the extent as waived or consented to in writing by the Holder; provided that any such waiver or consent shall become effective 61 days following the date on which it is provided. The foregoing provision shall not apply to a Holder who, in the aggregate and together with any affiliate of such Holder, beneficially owned (as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder) in excess of 9.99% of the number of shares of Common Stock outstanding immediately before giving effect to such conversion or receipt of shares. In connection with the submission of any

Conversion Notice, the Holder shall furnish such information as the Company may reasonably request to assist it in determining the Holder's beneficial ownership pursuant to this Section 7(d)(iii).

(e) **Common Stock Issuance.** Any shares of Common Stock issued upon conversion of Series C Preferred Stock shall be (i) duly authorized, validly issued and fully paid and nonassessable and (ii) shall rank *pari passu* with the other shares of Common Stock outstanding from time to time.

(f) **Mechanics of Conversion.**

(i) Delivery of Book-Entry Statement Upon Conversion. Not later than three (3) Trading Days after the date of the conversion, the Company shall deliver, or cause to be delivered, to the converting Holder a book-entry statement evidencing the number of Conversion Shares being acquired upon the conversion.

(ii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the applicable Average Common Stock Price.

(g) **Transfer Taxes and Expenses.** The issuance of certificates or book-entry statements for shares of the Common Stock on conversion of the Series C Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holders of such shares of Series C Preferred Stock and the Company shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 8. Redemption.

(a) **Optional Redemption.** On or after the fifth anniversary of the Original Issue Date ("Optional Redemption Date"), the Company may, at its option, redeem the Series C Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price equal to 103% of the Liquidation Preference, plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the date of such redemption, without interest (the "Optional Redemption Right"). The Company shall exercise its Optional Redemption Right by mailing written notice to each Holder, which notice shall specify: (i) the number of shares of Series C Preferred Stock to be redeemed and the amount to be paid therefor; and (ii) the date on which such redemption shall occur, which shall be a Business Day not less than 20 days and not more than 60 days from the date on which such notice is mailed. If less than all outstanding shares of Series C Preferred Stock are to be redeemed, the Company shall redeem the shares pro rata amongst all Holders according to the number of shares held by each Holder. Notwithstanding the



foregoing, if, pursuant to Section 7(d)(i), the Series C Preferred Stock is not convertible in whole or in part on the Optional Redemption Date, the Optional Redemption Date shall be extended to a Business Day selected by the Company that is not less than 20 days and not more than 35 days from the date on which Section 7(d)(i) no longer applies.

(b) **Special Optional Redemption.** Upon the occurrence of a Change of Control, the Company may, at its option, redeem the Series C Preferred Stock, in whole or in part, within 120 days after the closing date relating to such Change of Control, for cash at a redemption price equal to the greater of: (i) 103% of the Liquidation Preference, plus any accumulated and unpaid Dividends thereon (whether or not authorized or declared) to, but excluding, the date of such redemption, without interest and (ii) the price per share the holders of Series C Preferred Stock would receive if they converted into Common Stock immediately preceding the Change of Control (the “Special Optional Redemption Right”). The Company may exercise its Special Optional Redemption Right by notifying holders of such redemption in any Change of Control Notice complying with the requirements of Section 8(c). In the event the Company issues a Change of Control Notice in which it does not elect to redeem all outstanding Series C Preferred Stock pursuant to its Special Optional Redemption Right and the Change of Control to which such notice relates has been consummated, the Company may exercise its Special Option Redemption Right with respect to any shares of Series C Preferred Stock that are not converted pursuant to the initial Change of Control Notice, provided that such redemption is completed within 120 days of the closing date relating to such Change of Control.

(c) **Change of Control Notice.** Promptly following the later of (x) the occurrence of a Change of Control or (y) the Company becoming aware of such Change of Control, the Company shall mail written notice (a “Change of Control Notice”) to each Holder specifying:

- (i) the date on which such Change of Control occurred;
- (ii) the total purchase price (if any) associated with the Change of Control;
- (iii) whether the Company intends to exercise its Special Optional Redemption Right and if so, the number of shares of Series C Preferred Stock to be redeemed, the amount to be paid therefor, and the date on which such securities are to be redeemed; and
- (iv) the applicable Change of Control Conversion Date (if the Company does not intend to redeem all outstanding Series C Preferred Stock pursuant to its Special Optional Redemption Right).

Notwithstanding the foregoing, the Company shall, to the extent permissible, issue a Change of Control Notice prior to the occurrence of an anticipated Change of Control to each Holder specifying:

- (i) the date on which such Change of Control is anticipated to occur;
- (ii) the anticipated total purchase price (if any) associated with the Change of Control;



(iii) whether the Company intends to exercise its Special Optional Redemption Right and if so, the number of shares of Series C Preferred Stock to be redeemed, the amount to be paid therefor, and the date on which such securities are to be redeemed; any Special Optional Redemption may be made contingent upon the consummation of such Change of Control and any transactions related thereto and the date for redemption may be fixed relative to such consummation, provided that no redemption shall occur prior to 20 days after the mailing of such Change of Control Notice unless the Holder subject to such redemption shall have consented thereto in writing; and

(iv) the applicable Change of Control Conversion Date (if the Company does not intend to redeem all outstanding Series C Preferred Stock pursuant to its Special Optional Redemption Right); the Change of Control Conversion Date may be fixed relative to the date on which such Change of Control and any transactions related thereto are consummated.

In the event the Company issues a Change of Control Notice prior to an anticipated Change of Control, and the Company subsequently determines that such Change of Control will not occur on substantially the terms set forth in such Change of Control Notice, or at all, the Company shall be entitled to revoke or revise such Change of Control Notice in its reasonable discretion.

Section 9. Certain Adjustments.

(a) **Stock Dividends and Stock Splits.** If the Company, at any time while this Series C Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock or any other Common Stock Equivalents in respect of its Common Stock (which, for avoidance of doubt, shall not include: (x) any shares of Common Stock issued by the Company upon conversion of this Series C Preferred Stock, (y) any Dividend paid in shares of Common Stock pursuant to Section 4(a)(ii) or (z) any dividend payable in respect of any other series of preferred stock of the Company), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Shares underlying the Series C Preferred Stock shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 9(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(b) **Subsequent Rights Offerings.** In addition to any adjustments pursuant to Section 9(a) above, if at any time subsequent to the applicable Original Issue Date the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase

Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series C Preferred Stock (without regard to any limitations on exercise hereof) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(c) **Fundamental Transaction.** If, at any time while this Series C Preferred Stock is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Series C Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Series C Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series C Preferred Stock at the time of such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor

entity in a fundamental transaction in which the Company is not the survivor (the "Successor

Entity”) to assume in writing all of the obligations of the Company under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 9(c) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Series C Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Series C Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series C Preferred Stock (without regard to any limitations on the conversion of this Series C Preferred Stock) prior to such Fundamental Transaction, and with a Conversion Price which applies the Conversion Price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such Conversion Price being for the purpose of protecting the economic value of this Series C Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(d) **Calculations.** All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 9, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

Section 10. Information Rights. During any period in which the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and any shares of the Series C Preferred Stock are outstanding, the Company will (i) transmit by mail to all Holders, copies of the annual reports and quarterly reports that would have been filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act and (ii) promptly upon written request, make available copies of such reports to any prospective holder of the Series C Preferred Stock. The Company will mail the reports to the Holders within 15 days after the respective dates by which such reports would have been filed with the Commission.

Section 11. Requisite Shareholder Approval. If the Company reasonably determines that the conversion of the Series C Preferred Stock, the exercise of the Warrants to each Purchaser or the payment of any dividends in shares of Common Stock would, in the aggregate, exceed the Exchange Cap or violate the Beneficial Ownership Limitation), (i) the Company shall duly call, give notice of, establish a record date for, convene and hold a special meeting of the common stockholders, to be held as promptly as reasonably possible, for the purpose of obtaining the Requisite Shareholder Approval; and (ii) the Board of Directors shall recommend to its common stockholders the approval of the Requisite Shareholder Approval. include such recommendation



in any proxy statement, and use reasonable best efforts to obtain the Requisite Shareholder Approval. In the event that the Company is unable to obtain the Requisite Shareholder Approval, it will, seek to obtain the Requisite Shareholder Approval (and the Board of Directors shall maintain its recommendation for such approval) at each subsequent regular annual meeting of stockholders until such Requisite Shareholder Approval is obtained.

Section 12. Miscellaneous.

(a) **Notices.** Any and all notices or other communications or deliveries to be provided by the Holders hereunder shall be in writing and delivered personally or by e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 15520 Highway 114, Justin, Texas 76247, Attention: General Counsel and Corporate Secretary, e-mail address hector.ruiz@canoo.com, or such other e-mail address or address as the Company may specify for such purposes by notice to the Holders delivered in accordance with this Section 12. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered by e-mail to each Holder at the e-mail address appearing on the books of the Company, or if no such e-mail address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of the date of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth prior to 5:30 p.m. (New York City time) on any date.

(b) **Book-Entry; Certificates.** The Series C Preferred Stock will be issued in book-entry form; provided that, if a Holder requests that such Holder's shares of Series C Preferred Stock be issued in certificated form, the Company will instead issue a stock certificate to such Holder representing such Holder's shares of Series C Preferred Stock. To the extent that any shares of Series C Preferred Stock are issued in book-entry form, references herein to "certificates" shall instead refer to the book-entry notation relating to such shares.

(c) **Lost or Mutilated Preferred Stock Certificate.** If a Holder's Series C Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series C Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Company.

(d) **Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof.

(e) **Waiver.** Any waiver by the Company or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Company or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be



considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Company or a Holder must be in writing.

(f) **Severability.** If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(g) **Headings.** The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(h) **Status of Converted or Redeemed Preferred Stock.** Shares of Series C Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Series C Preferred Stock shall be converted, or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of Preferred Stock and shall no longer be designated as Series C Preferred Stock.



IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be duly executed and acknowledged by its undersigned duly authorized officer this ____ day of April, 2024.

CANOO INC.

By: _____

Name: Greg Ethridge

Title: Chief Financial Officer

Executive Chairman Agreement

This Executive Chairman Agreement (this “Agreement”) is made as of the 12th day of August 2024 (the “Effective Date”) and is by and between Canoo Inc., a Delaware corporation (the “Company”), and Anthony Aquila (the “Executive Chairman,” “you” or “your”).

WHEREAS, the Company and the Executive Chairman entered into an agreement dated November 25, 2020 for the Executive Chairman to serve as Executive Chairman of the Board of Directors of the Company (the “Prior Agreement”);

WHEREAS, pursuant to its terms, the Prior Agreement expired on December 31, 2023;

WHEREAS, notwithstanding the expiration of the Prior Agreement, the Executive Chairman has, since January 1, 2024, continued to serve as Executive Chairman of the Company and in the capacity of a director on the Company’s Board of Directors (the “Board”) and the parties have operated pursuant to the terms and provisions set forth in the Prior Agreement, including, without limiting to, the provisions related to reimbursement of business expenses and fees; and

WHEREAS, as of the Effective Date, the Company and the Executive Chairman mutually desire to memorialize the terms under which the Executive Chairman will continue to serve in such capacity and as a director on the Board.

NOW, THEREFORE, in consideration for the above recited promises and the mutual promises, agreements and covenants of the Company and the Executive Chairman contained herein, the adequacy and sufficiency of which are hereby acknowledged, the Company and the Executive Chairman hereby agree as follows:

1. **Term.** The term of this Agreement (the “Term”) and your services as Executive Chairman of the Board will commence as of the Effective Date and will continue until the Termination Date. The “Termination Date” means the earliest of (a) your voluntary resignation from the Board upon at least thirty (30) days of advanced written notice to the Board, (b) your failure to be re-elected to the Board by Company shareholders at the Company’s year 2026 annual general meeting, (c) a vote of no-confidence by a majority of the Board, and (d) December 31, 2026.
2. **Duties.** During the Term, you will have the duties, authorities and responsibilities commensurate with the duties, authorities and responsibilities of an Executive Chairman of a company the size and nature of the Company. Without limiting the foregoing, you will be responsible for: (a) providing entrepreneurial leadership to the Company’s senior executives; (b) leading the development and execution of the Company’s long-term strategy and product and business roadmap to be developed by you, the Company’s senior executive team and the Board (the “Product and Business Roadmap”), including, without limitation, product development and innovation, acquisitions, dispositions and other strategic partnerships and initiatives; (c) capital raising to support the Product and Business Roadmap; (d) mentoring senior management; (e) building and developing relationships with important external stakeholders, including, without limitation, oversight of investors relations, public relations and media strategy; and (f) reviewing the performance of management in meeting the Product and Business Roadmap and other annual and long-term goals and objectives. You will also have the authority typically associated with the most senior executive of the Company, with authority over the senior management team of the Company, including, without limitation, all hiring and other personnel decisions. You will have exclusive control over the manner and means of your performance of your duties, including the choice of place and time of your performance.

3. **Compensation Generally.** Effective upon the Effective Date, the Company will provide you the following payments and benefits:

a) **Annual Fee.** During the Term, the Company will pay you an annual fee of \$500,000 (“Fee”), payable in advance in equal quarterly installments (with payment for any pro-rated quarter made with the payment for the following quarter)), with such payment to occur no later than 30 days following the commencement of the applicable calendar quarter. The Fee is subject to reasonable adjustment by the Board in case the scope of your duties is reduced by Board resolution.

b) **Benefits and Perquisites.** During the Term, you will be entitled to any other benefits and perquisites generally available to members of the Board.

c) **Business Expenses.** The Company will reimburse you for reasonable and customary business expenses, including travel expenses, in accordance with Canoo Inc.’s business expense reimbursement policy. All such expenses to be approved by the Board. In addition, the Company will reimburse you for:

(i) air travel expenses for either, at the option of Company, (x) first class airfare or (y) the lower of (1) a base rate of \$9,600 per hour, excluding fees and expenses (e.g. landing, ramp, segment, crew, government and other fees and taxes) and (2) a fully-loaded rate of \$12,000 per hour, excluding such incidental fees and expenses, in each case, for the business use of your private jet, subject to appropriate adjustments for increased costs.

d) **Directors and Officers Insurance.** You will be indemnified to the greatest extent provided to any director or officer of the Company and you will be covered under the Company’s directors’ and officers’ liability insurance both during and, while potential liability exists, after the Term. Notwithstanding anything in this Agreement or in the Company’s governing documents to the contrary, but subject to applicable law, you will have no liabilities to the Company, its subsidiaries or its affiliates for any acts or omissions taken by you, unless determined by a court of competent jurisdiction in a final, non-appealable judgment or order that any such claim is solely the result of your gross negligence or willful misconduct (an “Excluded Claim”). The Company will, to the extent legally permissible, indemnify, defend and hold you harmless from and against any and all claims, investigations, demands, or proceedings (a “Proceeding”) arising from or related in any manner, except for any Proceeding arising in whole or in part from your negligence or willful misconduct, to the activities and duties contemplated by this Agreement or your service as Executive Chairman and, subject to a customary undertaking to repay such expenses if you are ultimately determined not be entitled to indemnity, will advance upon demand all defense costs and expenses relating to any Proceeding. The provisions of this Section 4(d) are not exclusive so that you will additionally be eligible for indemnity, contribution and advancement of expenses in accordance with the terms of any other arrangement with the Company or its affiliates.

4. **Code Section 409A.** The intent of the parties is that payments and benefits under this Agreement be exempt from or comply with Code Section 409A and the regulations and guidance promulgated thereunder (collectively, “Code Section 409A”) and, accordingly, to the maximum extent permitted, this Agreement will be interpreted to be in compliance therewith. For purposes of Code Section 409A, your right to receive any installment payments pursuant to this Agreement will be treated as a right to receive a series of separate and distinct payments. To the extent that

reimbursements (including tax reimbursements) or other in-kind benefits under this Agreement constitute “nonqualified deferred compensation” for purposes of Code Section 409A, (i) all such expenses or other reimbursements hereunder will be made on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by you, (ii) any right to such reimbursement or in-kind benefits will not be subject to liquidation or exchange for another benefit, and (iii) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year will in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year. Notwithstanding any other provision of this Agreement to the contrary, in no event will any payment under this Agreement that constitutes “nonqualified deferred compensation” for purposes of Code Section 409A be subject to offset by any other amount unless otherwise permitted by Code Section 409A.

5. **Confidentiality Agreement.** You will be expected to comply with the Company’s standard form of nondisclosure agreement for non-employee service providers, which you executed in connection with the Prior Agreement.

6. **Independent Contractor Relationship.**

a) **Independent Contractor.** Your relation to the Company under this Agreement is that of an independent contractor. Nothing in this Agreement is intended or should be construed to create a partnership, joint venture, or employer-employee relationship between you and the Company. You agree that you will take no position with respect to, or on any tax return or application for benefits, or in any proceeding directly or indirectly involving the Company, that is inconsistent with your being an independent contractor (and not an employee) of the Company. Without limiting the generality of the foregoing, the subsequent provisions of this Section 6 shall apply to you in connection with your independent contractor relationship with the Company.

b) **Benefits and Contributions.** You are not entitled to or eligible for any benefits that the Company may make available to its employees, such as group insurance, profit-sharing, or retirement benefits. Because you are an independent contractor, the Company will not withhold or make payments for social security, make unemployment insurance or disability insurance contributions, or obtain workers’ compensation insurance on your behalf. If, the foregoing notwithstanding, you are reclassified as an employee of the Company, or any affiliate of the Company, by the U.S. Internal Revenue Service, the U.S. Department of Labor, or any other federal or state agency as the result of any administrative or judicial proceeding, you agree that you will not, as the result of such reclassification, be entitled to or eligible for, on either a prospective or a retrospective basis, any employee benefits under any plans or programs established or maintained by the Company.

c) **Taxes.** You are solely responsible for filing all tax returns and submitting all payments as required by any federal, state, or local tax authority arising from the payments and benefits to you under this Agreement, and agree to do so in a timely manner. If applicable, the Company will report the payments and benefits paid or provided to you under this Agreement by filing Form 1099-MISC with the Internal Revenue Service as required by law. You hereby agree to defend, indemnify and hold the Company harmless from and against all claims, damages, losses and expenses, penalties, including reasonable fees and expenses of attorneys and other professionals and other costs of litigation, incurred by the Company related to or arising out of your failure to comply with your tax filing obligations in connection with receipt of the payments and benefits under this Agreement.



- d) Compliance with Laws. You will comply with all applicable federal, state, or local laws governing self-employed individuals, including laws requiring the payment of taxes, such as income and employment taxes, and social security, disability, and other contributions.
7. **Entire Agreement**. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior understandings and agreements, including any terms sheets, whether oral or written, between you and the Company or any predecessor entities.
8. **Governing Law**. The provisions of this Agreement will be governed by and construed in accordance with the laws of the state of Texas (excluding any conflict of law rule or principle that would refer to the laws of another jurisdiction). EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING HEREUNDER. The Company will reimburse all costs or expenses (including, without limitation, reasonable attorneys' fees) you incur in connection with any dispute with the Company regarding this Agreement or your service as Executive Chairman that is not subject to advancement under Section 4(b) or otherwise if you substantially prevail on any issue related to such dispute.
9. **Counterparts; Signature Transmission**. This Agreement may be executed on separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement. Signatures transmitted by facsimile or electronic mail will be binding as evidence of each party's agreement to be bound by the terms of this Agreement.
10. **Third Party Beneficiaries; Assignment**. This Agreement will be binding upon you and the Company and will inure to the benefit of you and the Company, and, in each case, the parties' respective heirs, personal and legal representatives, successors and permitted assigns. You may not assign your rights and obligations under this Agreement, and any such assignment will be null and void.
11. **Severability**. The provisions of this Agreement will be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof will not affect the validity or enforceability of the other provisions of this Agreement.
12. **Notices**. For purposes of this Agreement, notices and all other communications provided for in this Agreement will be in writing and will be deemed to have been duly given (a) on the date of delivery, if delivered by hand, (b) on the date of transmission, if delivered by confirmed electronic mail, (c) on the first business day following the date of deposit, if delivered by guaranteed overnight delivery service, or (d) on the fourth business day following the date delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to you:

At the address (or to the email address) shown in the books and records of the Company

If to the Company:

Board of Directors
Canoo Inc.
15520 TX-114

Justin, Texas 76247

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If you decide to accept the terms of this Agreement, and I hope you will, please signify your acceptance by signing and dating the enclosed copy of this Agreement. Should you have anything that you wish to discuss, please do not hesitate to contact us. This Agreement will be effective immediately upon the full execution of this Agreement by the parties below.

Very truly yours,

CANOO INC.

By: _____

Name: Thomas Dattilo

Title: Lead Independent Director



Acknowledgement

By signing this Agreement, I hereby represent and warrant that I have had the opportunity to seek the advice of independent legal counsel or other advice as I deem appropriate before signing and have done so. I sign this Agreement voluntarily. I have read, understand and voluntarily agree to perform the services on the terms and conditions set out above.

ANTHONY AQUILA



DATED: August 12, 2024

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Greg Ethridge, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Canoo Inc., a Delaware corporation (the “registrant”);
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(s) 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)) for the registrant 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 principles;
 - (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(s) 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, 2024

By: _____

/s/ Greg Ethridge
Greg Ethridge
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION 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 Canoo Inc. (the "Company") on Form 10-Q for the period ended June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 14, 2024

By: _____
/s/ Greg Ethridge
Greg Ethridge
Chief Financial Officer
(Principal Financial Officer)