

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): February 25, 2020

DPW HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-12711
(Commission File Number)

94-1721931
(I.R.S. Employer Identification No.)

201 Shipyard Way, Suite E, Newport Beach, CA 92663
(Address of principal executive offices) (Zip Code)

(949) 444-5464
(Registrant's telephone number, including area code)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	DPW	NYSE American

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On February 24, 2020, (the “**Closing Date**”), DPW Holdings, Inc., a Delaware corporation (the “**Company**”) entered into a Securities Purchase Agreement (the “**Agreement**”) with Ault & Company, Inc., a Delaware corporation and a stockholder of the Company (the “**Ault & Company**”). Milton C. Ault, III, the Company’s Chief Executive Officer and Chairman of the Board of Directors, is the Chairman of the Board of Directors and Chief Executive Officer of Ault & Company. William B. Horne, the Company’s Chief Financial Officer and Vice Chairman of the Board of Directors, is the Vice Chairman of the Board of Directors and Chief Financial Officer of Ault & Company.

Pursuant to the terms of the Agreement, Ault & Company will invest at its sole and absolute discretion up to \$15,000,000 (the “**Purchase Price**”) in the Company through the purchase of the Company’s Series C Convertible Preferred Stock (“**Series C Preferred Stock**”), during the period commencing on the Closing Date and ending on the earlier of (i) March 23, 2025, or (ii) the closing date on which the sum of the aggregate purchase price for all the shares of the Series C Preferred Stock equals the Purchase Price. Each share of Series C Preferred Stock, par value \$0.001, shall be purchased at \$1,000 (the “**Stated Value**”) for up to a maximum issuance of 15,000 shares of Series C Preferred Stock. Each share of Series C Preferred Stock shall become convertible into such number of fully paid and non-assessable shares of the Company’s common stock (“**Common Stock**”) for \$1.76 per share, subject to adjustments.

Upon the voluntary or involuntary liquidation, dissolution or winding up of the Company’s affairs, then, before any distribution or payment shall be made to the holders of any Common Stock or any other class or series of junior stock, the holders of the Series C Preferred Stock shall be entitled to receive out liquidating distributions in the amount of \$1,000.00 per share. The holders of Series C Preferred Stock shall be entitled to vote with holders of outstanding shares of Common Stock, voting on an “as converted” basis together as a single class, with respect to any and all matters presented to the stockholders of the Company.

Finally, in order to meet the requirement of the NYSE American, Ault & Company may not convert such shares of Series C Preferred Stock into shares of Common Stock without approval of the Company’s stockholders and the NYSE American.

The foregoing description of the Agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the full text of the document which is attached hereto as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 is incorporated by reference herein.

The shares of Series C Preferred Stock described in this Current Report on Form 8-K are being offered and sold to Ault & Company in reliance upon exemption from the registration requirements under Section 4(a)(2) under the Securities Act of 1933, as amended.

Item 3.03. Material Modification to Rights of Security Holders.

The filing of the Amendment (as defined below) and the issuance of the Series C Preferred Stock affects the holders of common stock of the Company to the extent provided for in the Amendment. The information included in Items 1.01 and 5.03, below, including the description of the Amendment, is incorporated by reference into this Item 3.03.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information set forth in Item 1.01 is incorporated by reference herein.

As previously reported on Current Report on Form 8-K filed with the Securities and Exchange Commission on February 28, 2019, the board of directors (the “**Board**”) of the Company, authorized the designation of a new series of preferred stock out of its available preferred stock and authorized the issuance of up to 2,500 shares of the Series C Preferred Stock. On February 27, 2019, the Company filed a Certificate of Designations of Rights and Preferences of Series C Convertible Redeemable Preferred Stock (the “**Certificate of Designations**”) to its Certificate of Incorporation, with the Secretary of State of the State of Delaware to establish the preferences, limitations and relative rights of the Series C Preferred Stock. Each such share of Series C Preferred Stock entitled its holder to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Company for their action or consideration on an “as converted” basis together with the Common Stock. As set forth in the Certificate of Designations, the Series C Preferred Stock was convertible into such number of fully paid and non-assessable shares of Common Stock for \$0.12 per share, subject to adjustments. In addition, the Series C Preferred Stock was mandatorily redeemable by the Company after five years from the date of issuance. No shares of the Series C Preferred Stock have been issued as of the date hereof.

On February 24, 2020, the Board approved an Amended and Restated Certificate of Designations of Rights and Preferences of Series C Convertible Preferred Stock (the “**Amendment**”) amending the conversion price to \$1.76 per share of Common Stock and eliminating the redemption provisions. No other amendment to the Certificate of Designations was made. On February 24, 2020, the Company filed the Amendment with the Secretary of State of the State of Delaware.

The foregoing description of the Amendment does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the full text of the document which is attached hereto as **Exhibit 3.1** to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 9.01 Exhibits and Financial Statements.

(d) Exhibits:

Exhibit No.	Description
3.1	Form of Amended & Restated Certificate of Designations of Rights and Preferences of Series C Convertible Preferred Stock
10.1	Form of Securities Purchase Agreement

SIGNATURE

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

DPW HOLDINGS, INC.
a Delaware corporation

Dated: February 25, 2020

/s/ Milton C. Ault, III
Milton C. Ault, III
Chief Executive Officer

DPW HOLDINGS, INC.**AMENDED AND RESTATED****CERTIFICATE OF DESIGNATIONS OF RIGHTS AND PREFERENCES****OF****SERIES C CONVERTIBLE PREFERRED STOCK****February 24, 2020**

Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware (the “**DGCL**”) and Article IV Section 4 of the Certificate of Incorporation of DPW Holdings, Inc. (the “**Corporation**”), the Corporation hereby certifies that:

WHEREAS, Article IV, Section 1 of the Certificate of Incorporation authorizes the issuance of up to 25,000,000 shares of preferred stock, par value \$0.001 per share, of the Corporation (“**Preferred Stock**”) in one or more series, and expressly authorizes the Board of Directors of the Corporation (the “**Board**”), subject to limitations prescribed by law, to provide, out of the unissued shares of Preferred Stock, one or more series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions and limitations of the shares of such series;

WHEREAS, it is the desire of the Board to establish and fix the number of shares to be included in a new series of Preferred Stock and the designation, rights, preferences and limitations of the shares of such new series;

WHEREAS, in accordance with the provisions of Section 151 of the DGCL and pursuant to the authority under Article IV, Section 4 of the Certificate of Incorporation of the Corporation, the Board is authorized to issue from time to time shares of the Corporation’s Preferred Stock in one or more series;

WHEREAS, the Board previously adopted a resolution authorizing the creation and issuance of a series of said Preferred Stock designated as the “Series C Convertible Redeemable Preferred Stock” (the “**Series C Preferred Stock**”) and the Certificate of Designations for the Series C Preferred Stock was filed with the Secretary of State of the State of Delaware on February 27, 2019;

WHEREAS, on February 24, 2020, the Board approved and adopted the following resolution for purposes of amending certain provisions of the Series C Preferred Stock; and

WHEREAS, no shares of Series C Preferred Stock were ever issued.

NOW THEREFORE, BE IT RESOLVED, that a new series of Preferred Stock of the Corporation, designated as “Series C Convertible Preferred Stock,” be, and it hereby is, created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the Series C Preferred Stock, and the qualifications, limitations or restrictions thereof are as set forth in such Amended and Restated Certificate of Designation (the “**COD**”), as filed with the Delaware Secretary of State in accordance with the Corporation’s Certificate of Incorporation, the Bylaws and the DGCL; and be it further

RESOLVED, that the statements contained in the foregoing resolutions creating and designating the said shares and fixing the number, limited powers, preferences and relative, optional, participating, and other special rights and the qualifications, limitations, restrictions, and other distinguishing characteristics thereof shall, upon the effective date of said series, be deemed to be included in and be a part of the Certificate of Incorporation of the Corporation; and be it further

RESOLVED, that the Board does hereby approve the adoption of the COD related to the Series C Preferred Stock to the Corporation’s Certificate of Incorporation, and does hereby determine that the adoption of the COD is in the best interests of the stockholders; and be it further

RESOLVED, that each of the Chief Executive Officer, Chief Financial Officer and Executive Vice President of the Corporation (the “**Authorized Officers**”) are hereby authorized and directed to take all actions necessary to prepare and file the COD with the Secretary of State of the State of Delaware as they deem either necessary or appropriate to proceed with any such action.

Section 1. Number of Shares and Designation. This series of Preferred Stock shall be designated as the “Series C Convertible Preferred Stock,” par value \$0.001 per share (the “**Series C Preferred Stock**”). The Series C Preferred Stock shall be perpetual, subject to the provisions of Section 6 hereof, and the authorized number of shares of the Series C Preferred Stock shall be 15,000. The number of shares of Series C Preferred Stock may be increased from time to time pursuant to the provisions of Section 14 hereof and any such additional shares of Series C Preferred Stock shall form a single series with the Series C Preferred Stock. Each share of Series C Preferred Stock shall have the same designations, rights, preferences, powers, restrictions and limitations as every other share of Series C Preferred Stock.

Section 2. Certain Definitions. The following terms shall have the meanings defined in this Section 2:

“**Affiliate**” shall have the meaning ascribed to such term in Rule 405 of the Securities Act.

“**Business Day**” means any day, other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law, regulation, or executive order to close.

“**Capital Stock**” means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interest in (however designated) capital stock.

“**Change of Control Event**” shall mean the occurrence of any of the following in one or a series of related transactions:

- (i) one or more acquisitions after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) under the Exchange Act), resulting in a majority or more of the voting rights or equity interests in the Corporation being transferred to such Persons or their Affiliates;
- (ii) a replacement of more than a majority of the members of the Board that is not approved by those individuals who are members of the Board on the date hereof (or other directors previously approved by such individuals);
- (iii) a merger or consolidation of the Corporation or any one or more Subsidiaries owning a majority of the consolidated assets of the Corporation and all Subsidiaries, or a sale of all or substantially all of the assets of the Corporation and its consolidated Subsidiaries in one or a series of related transactions, unless following such transaction or series of transactions, the Holders of the Corporation’s securities immediately prior to the first such transaction continue to hold at least a majority of the voting rights and equity interests in the surviving entity or acquirer of such assets;
- (iv) a recapitalization, reorganization or other transaction involving the Corporation or any Subsidiary that constitutes or results in a transfer of a majority or more of the voting rights or equity interests in the Corporation to any Persons; or
- (v) the execution by the Corporation or its controlling stockholders of an agreement providing for any of the foregoing events.

“**Commencement Date**” means February 24, 2020.

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Stock**” means (i) the Class A common stock, \$0.001 par value, of the Corporation and (ii) any Capital Stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

“**Common Stock Equivalents**” means any securities of the Corporation or any of its 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.

“**Conversion Date**” shall have the meaning set forth in Section 6(b)(ii) hereof.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder, all as in effect at the time.

“**Holder**” or “**Holders**” shall mean each holder of shares of Series C Preferred Stock.

“**Junior Stock**” shall have the meaning set forth in Section 9 hereof.

“**Majority Holders**” means any Holder(s) of a majority of the then outstanding shares of Series C Preferred Stock.

“**Notice of Conversion**” shall have the meaning set forth in Section 6(b)(i) hereof.

“**Parity Stock**” shall have the meaning set forth in Section 9 hereof.

“**Person**” means an individual, a corporation, a partnership, an association, a limited liability company, an unincorporated business organization, a trust or other entity or organization, and any government or political subdivision or any agency or instrumentality thereof.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder, all as in effect at the time.

“**Senior Stock**” shall have the meaning set forth in Section 9 hereof

“**Share Delivery Date**” shall have the meaning set forth in Section 6(b)(ii) hereof.

“**Stated Value**” means \$1,000.00 per share of Series C Preferred Stock.

“**Subsidiary**” or “**Subsidiaries**” of any Person means (i) any corporation with respect to which more than 50% of the issued and outstanding voting equity interests of such corporation is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries, or (ii) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner.

“**Trading Day**” means a day on which the principal Trading Market is open for trading.

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American; the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; any level of the OTC Markets operated by OTC Markets Group, Inc. or the OTC Bulletin Board (or any successors to any of the foregoing).

Section 3. Dividends. The Holders of shares of Series C Preferred Stock shall not be entitled to receive any dividends.

Section 4. Liquidation Preference. Upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation's affairs, then, before any distribution or payment shall be made to the holders of any Common Stock or any other class or series of Junior Stock, the Holders shall be entitled to receive out of the Corporation's assets legally available for distribution to stockholders, liquidating distributions in the amount of the liquidation preference, or \$1,000.00 per share. After payment of the full amount of the liquidating distributions to which they are entitled, the Holders will have no right or claim to any of the Corporation's remaining assets. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the Corporation's available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series C Preferred Stock and the corresponding amounts payable on all Senior Stock and Parity Stock, then after payment of the liquidating distribution on all outstanding Senior Stock, the holders of the Series C Preferred Stock and all other such classes or series of Parity Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. For such purposes, any consolidation or merger of the Corporation with or into any other entity, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, or a statutory share exchange shall not be deemed to constitute the voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

Section 5. Voting Rights.

(a) Voting Generally. Each Holder shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration (whether at a meeting of stockholders of the Corporation, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law or by the provisions of Section 5(b) below. In any such vote, (i) in the case of the election of directors, the Series C Preferred Stock shall be voted on an "as converted" basis together with the Common Stock, and (ii) in all other cases, the Series C Preferred Stock shall be voted on an "as converted" basis together with the Common Stock, subject to the provisions of the DGCL. Each holder of outstanding shares of Series C Preferred Stock shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Corporation's bylaws.

(b) Protective Provisions. Without limiting the foregoing, as long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not, without the prior written consent of the Majority Holders, (i) alter or change adversely the powers, preferences or rights given to the Series C Preferred Stock or alter or amend this Certificate of Designations, (ii) amend its Certificate of Incorporation or other charter documents in any manner that adversely affects any rights of the Holders of Series C Preferred Stock, (iii) increase or decrease the number of authorized shares of Series C Preferred Stock, (iv) whether or not prohibited by the terms of the Series C Preferred Stock, circumvent a right or preference of the Series C Preferred Stock, or (v) enter into any agreement with respect to any of the foregoing. Holders shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholder) with respect to which they would be entitled to vote, which notice shall be provided pursuant to the Corporation's Bylaws and the DGCL.

Section 6. Conversion of Series C Preferred Stock.

(a) Optional Conversion. Each share of Series C Preferred Stock shall become convertible, at the option of the Holder, into such number of fully paid and non-assessable shares of Common Stock determined by dividing the Stated Value of such share of Series C Preferred Stock by the then applicable Conversion Price (defined below) (the "**Conversion Price**"). The Conversion Price shall be subject to adjustment as provided in Section 6(d) below.

For purposes hereof, the term "**Conversion Price**" shall mean \$1.76, subject to adjustment as provided in Section 6(d) below.

(b) Mechanics of Conversion.

(i) Before any Holder of Series C Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 6(a) hereof, such Holder shall give written notice to the Corporation at its principal corporate office of the election to convert shares of Series C Preferred Stock, the number of shares of Series C Preferred Stock to be converted, the number of shares of Series C Preferred Stock owned subsequent to the conversion at issue, and the name or names in which the certificate or certificates for shares of Common Stock are to be issued (each, a “**Notice of Conversion**”). No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Series C Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Series C Preferred Stock to the Corporation unless all of the shares of Series C Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Series C Preferred Stock promptly following the Conversion Date at issue.

(ii) Shares of Series C Preferred Stock converted into Common Stock in accordance with the terms hereof shall be canceled and shall not be reissued. The Corporation shall, as soon as practicable after delivery of the Notice of Conversion, in the case of a conversion pursuant to Section 6(a) hereof, and as soon as practicable after delivery of the certificate(s) evidencing the Series C Preferred Stock, within three (3) Business Days thereafter (the “**Share Delivery Date**”), issue and deliver or cause to be delivered to such Holder or Holders, or to the nominee or nominees thereof, a certificate or certificates representing the number of validly issued, fully paid and non-assessable shares of Common Stock to which such Holder or Holders shall be entitled as aforesaid. Conversion under this Section 6 shall be deemed to have been made immediately prior to the close of business on the date of delivery of the Notice of Conversion, unless a later date is specified in the Notice of Conversion, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date (such date, the “**Conversion Date**”). If, in the case of any conversion of the Series C Preferred Stock pursuant to this Section 6, such shares of Common Stock are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such shares of Common Stock, to rescind such conversion, in which event the Corporation shall promptly return to the Holder any original Series C Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the shares of Common Stock issued to such Holder pursuant to the rescinded conversion. The Corporation’s obligation to issue and deliver the shares of Common Stock upon conversion of Series C Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such shares of Common Stock. In the event a Holder shall elect to convert any or all of the Stated Value of its Series C Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Series C Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Series C Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue shares of Common Stock and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such shares of Common Stock pursuant to this Section 6 by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Series C Preferred Stock being converted, \$50 per Business Day (increasing to \$100 per Business Day on the third Business Day and increasing to \$200 per Business Day on the sixth Business Day after such damages begin to accrue) for each Business Day after the Share Delivery Date until such Shares of Common Stock are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder’s right to pursue actual damages for the Corporation’s failure to deliver shares of Common Stock within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(c) Fractional Shares; Computation Certificates.

(i) No fractional shares shall be issued upon conversion of the Series C Preferred Stock into shares of Common Stock and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share for any shares in excess of one-half (1/2).

(ii) Upon the occurrence of each adjustment of the Conversion Price of Series C Preferred Stock pursuant to this Section 6, the Corporation, at its expense, shall promptly compute such adjustment in accordance with the terms hereof and prepare and furnish to each Holder of Series C Preferred Stock a statement, signed by its independent certified public accountants, setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based. The Corporation shall, upon the written request at any time of any Holder of Series C Preferred Stock, furnish or cause to be furnished to such Holder a like certificate setting forth (A) such adjustment, (B) the Conversion Price for such Series C Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such Series C Preferred Stock.

(d) Adjustments of the Conversion Price. The Conversion Price of the Series C Preferred Stock shall be subject to adjustment from time to time as follows:

(i) Adjustments for Recapitalization. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 6), provision shall be made so that the Holders shall thereafter be entitled to receive upon conversion of the Series C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the Holders after the recapitalization to the end that the provisions of this Section 6 (including, without limitation, provisions for adjustments of the Conversion Price and the number of shares of Common Stock issuable upon conversion of the Series C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(ii) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Effective Date effect a subdivision of the outstanding Common Stock, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Effective Date combine the outstanding shares of Common Stock, the Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(iii) Adjustments for Distribution. In addition to any adjustments pursuant to Section 6(d) hereof, in the event the Corporation shall declare a distribution payable in Common Stock, Common Stock Equivalents or other securities of the Corporation, any Subsidiary or any other Persons, evidences of indebtedness issued by the Corporation, any Subsidiary or other Persons, assets (or rights to acquire assets), or options, rights or other property not referred to in Section 6(e) hereof to the holders of Common Stock, in each case whether 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) (each, a “**Distribution**”), then, in each such case for the purpose of this Section 6(d), the Holders shall be entitled to a proportionate share of any such Distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such Distribution.

(iv) Adjustment for Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation or a Change of Control Event, shall be effected while any shares of Series C Preferred Stock are outstanding in such a manner that holders of shares of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, or Change of Control Event, lawful and adequate provision shall be made whereby each Holder who has not received the amounts to be distributed to such holder in accordance with this Certificate shall thereafter have the right to receive upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon conversion of Series C Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore so receivable had such reorganization, reclassification or Change of Control Event not taken place, and in such case appropriate provision shall be made with respect to the rights and interests of the Holders to the end that the provisions hereof (including, without limitation, provisions for adjustments of the Conversion Price, Conversion Rate and the number of shares of Common Stock issuable upon conversion of the Series C Preferred Stock) shall thereafter be applicable, as nearly as may be possible, in relation to any shares of stock, securities or assets thereafter deliverable upon the conversion of such shares of Series C Preferred Stock. Prior to or simultaneously with the consummation of any such reorganization, reclassification or Change of Control Event, the survivor or successor corporation (if other than the Corporation) resulting from such reorganization, reclassification or Change of Control Event shall assume by written instrument executed and mailed or delivered to each Holder, the obligation to deliver to such Holders such shares of stock, securities or assets as, in accordance with the foregoing provisions, such Holder may be entitled to receive, and containing the express assumption by such successor corporation of the due and punctual performance and observance of every provision of this Certificate of Designations to be performed and observed by the Corporation and of all liabilities and obligations of the Corporation hereunder with respect to the Series C Preferred Stock.

(v) Subsequent Equity Sales. If, at any time while shares of Series C Preferred Stock are outstanding, the Corporation or any subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice outstanding securities, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or any Common Stock Equivalent, entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the “**Base Conversion Price**” and such issuances, collectively, a “**Dilutive Issuance**”) (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 6 in respect of an Exempt Issuance (as hereafter defined). The Corporation shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 6, indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the “**Dilutive Issuance Notice**”). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice, upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

For the purposes hereof, an “**Exempt Issuance**” shall mean: the issuance of (a) shares of Common Stock or options or other stock based awards to employees, officers or directors and consultants of the Corporation pursuant to the Corporation’s stock or option plans existing as of the date hereof, to employees, officers or directors and consultants of the Corporation pursuant to a written agreement, provided that such shares of Common Stock are not registered and carry no registration rights other than on a Form S-8, (b) securities upon the exercise or exchange of or conversion of the Series C Preferred Stock and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued as of the issuance date of the shares of Series C Preferred Stock, provided that such securities have not been amended since the Commencement Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall provide to the Corporation additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 6, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than five (5) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series C Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any Holder (but in any event not later than five (5) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series C Preferred Stock.

(f) Good Faith Assistance. The Corporation will not, by amendment of its Certificate of Incorporation or Bylaws or through any reorganization, recapitalization, 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 to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 6 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holders against impairment.

(g) Notice of Record Taking. In the event of any taking by the Corporation of a record of the Holders of any class of securities for the purpose of determining the Holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each Holder, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(h) Reservation of Shares. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series C Preferred Stock, 150% of the number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock (the “**Required Reserve Amount**”); and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to enable the Corporation to satisfy its obligation to have available for issuance upon conversion of the Series C Preferred Stock at least a number of shares of Common Stock equal to the Required Reserve Amount, then, in addition to such other remedies as shall be available to the Holder, the Corporation will immediately take all such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, using its best efforts to obtain the requisite stockholder approval of any necessary amendment to these provisions as soon as possible.

(i) Payment of Taxes. The Corporation shall pay all documentary, stamp or other transactional taxes (exclusive of income taxes) attributable to the issuance or delivery of shares of capital stock of the Corporation upon conversion of any shares of Series C Preferred Stock; provided, however, that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Series C Preferred Stock in respect of which such shares are being issued.

(j) Status of Shares. All shares of Common Stock that may be issued in connection with the conversion provisions set forth herein will, upon issuance by the Corporation, be validly issued, fully paid and non-assessable and free from all taxes, liens or charges with respect thereto.

(k) Notice. Any notice required by the provisions of this Section 6 to be given to the Holders of shares of Series C Preferred Stock shall be deemed given upon hand delivery, one (1) Business Day after the notice is sent by overnight courier or three (3) Business Days after the notice is deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the stock books of the Corporation. The Corporation shall provide each Holder with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Corporation shall give written notice to each Holder (i) promptly following any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least ten (10) days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or Distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Common Stock, Common Stock Equivalents, assets or other property to all holders of shares of Common Stock as a class or (C) for determining rights to vote with respect to any matter on which the holders of Common Stock shall have the right to vote.

(l) Cancellation of Series C Preferred Stock. In the event any shares of Series C Preferred Stock shall be converted pursuant to this Section 6 or otherwise reacquired by the Corporation, the shares so converted or reacquired shall be canceled and may not be reissued. The Certificate of Incorporation of the Corporation may be appropriately amended from time to time to effect the corresponding reduction in the Corporation’s authorized capital stock.

(m) Conversion Disputes. In the case of any dispute with respect to a conversion, the Corporation shall promptly issue such number of shares of Common Stock in accordance with subparagraph (c) above as are not disputed. If such dispute involves the calculation of the Conversion Price, and such dispute is not promptly resolved by discussion between the relevant Holder and the Corporation, the Corporation shall submit the disputed calculations to an independent outside accountant via facsimile within ten (10) Business Days of receipt of notice of such dispute. The accountant, at the Corporation’s sole expense, shall promptly audit the calculations and notify the Corporation and the holder of the results no later than ten (10) Business Days from the date it receives the disputed calculations. The accountant’s calculation shall be deemed conclusive, absent manifest error. The Corporation shall then issue the appropriate number of shares of Common Stock in accordance with subparagraph (c) above. If the accountant determines the Corporation’s calculations are correct, the holder shall reimburse the Corporation for the accountant’s expense.

(n) Limitations on Issuances. Notwithstanding anything in this Certificate to the contrary, the total number of shares of Common Stock that may be converted pursuant to this Section 6 shall be prohibited unless stockholder approval and subsequently Trading Market approval is obtained.

Section 7. Intentionally Omitted .

Section 8. Intentionally Omitted.

Section 9. Ranking. The Series C Preferred Stock will rank: (i) senior to all of the Corporation's Common Stock and any other equity securities that the Corporation may issue in the future, the terms of which specifically provide that such equity securities rank junior to the Series C Preferred Stock, in each case with respect to payment of dividends and amounts upon liquidation, dissolution or winding up ("**Junior Stock**"); (ii) equal to any shares of equity securities that the Corporation may issue in the future, the terms of which specifically provide that such equity securities rank on par with such Series C Preferred Stock, in each case with respect to payment of dividends and amounts upon liquidation, dissolution or winding up ("**Parity Stock**"); (iii) junior to the Corporation's Series B Preferred Stock and all other equity securities the Corporation issues, the terms of which specifically provide that such equity securities rank senior to the Series C Preferred Stock, in each case with respect to payment of dividends and amounts upon liquidation, dissolution or winding up (any such issuance would require the affirmative vote of the Holders of at least two-thirds of the outstanding shares of Series C Preferred Stock) ("**Senior Stock**"); and (iv) junior to all of the Corporation's existing and future indebtedness.

Section 10. Information Rights. During any period in which the Corporation is not subject to Section 13 or 15(d) of the Exchange Act and any shares of Series C Preferred Stock are outstanding, the Corporation shall use its best efforts to (a) transmit by mail to all the Holders, as their names and addresses appear in the Corporation's record books and without cost to such holders, copies of the annual reports and quarterly reports that the Corporation would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if the Corporation was subject to such sections (other than any exhibits that would have been required) and (b) promptly upon written request, supply copies of such reports to any prospective holder of Series C Preferred Stock. The Corporation shall mail the reports to the Holders within 30 days after the respective dates by which the Corporation would have been required to file the reports with the Commission if the Corporation were then subject to Section 13 or 15(d) of the Exchange Act, assuming the Corporation is a "non-accelerated filer" in accordance with the Exchange Act.

Section 11. Record Holders. The Corporation and its transfer agent shall deem and treat the record Holder of any shares of Series C Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor its transfer agent shall be affected by any notice to the contrary.

Section 12. Sinking Fund. The Series C Preferred Stock shall not be entitled to the benefits of any retirement or sinking fund.

Section 13. Preemptive Rights. No Holders will, as holders of Series C Preferred Stock, have any preemptive rights to purchase or subscribe for the Corporation's Common Stock or any of its other securities.

Section 14. Amendment of Resolution. The Board reserves the right from time to time to increase (but not in excess of the total number of authorized shares of Preferred Stock) or decrease (but not below the number of shares of Series C Preferred Stock then outstanding) the number of shares that constitute the Series C Preferred Stock by further resolution adopted by the Board or a duly authorized committee of the Board and by the filing of a certificate pursuant to the provisions of the DGCL stating that such increase or decrease, as the case may be, has been so authorized and in other respects to amend this Certificate within the limitations provided by law, this resolution and the Certificate of Incorporation.

Section 15. Restriction and Limitations. Except as expressly provided herein or as required by law so long as any shares of Series C Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent of the Majority Holders, take any action which would adversely and materially affect any of the preferences, limitations or relative rights of the Series C Preferred Stock.

Section 16. Waiver. Any right or privilege of the Series C Preferred Stock may be waived (either generally or in a particular instance and either retroactively or prospectively) by and only by the written consent of the Corporation and the Majority Holders and any such waiver shall be binding upon each holder of Series C Preferred Stock or other securities exercisable for or convertible into Series C Preferred Stock. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

Section 17. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any certificates representing Series C Preferred Stock (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of an indemnification undertaking by the applicable Holder to the Corporation in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of the certificate(s), the Corporation shall execute and deliver new certificate(s) of like tenor and date.

Section 18. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations and any of the other transaction documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Corporation to comply with the terms of this Certificate of Designations. The Corporation covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required, to the extent permitted by applicable law. The Corporation shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Corporation's compliance with the terms and conditions of this Certificate of Designations.

Section 19. Non-circumvention. The Corporation hereby covenants and agrees that the Corporation will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations, the Corporation (i) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any shares of Series C Preferred Stock above the Stated Value then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Series C Preferred Stock and (iii) shall, so long as any shares of Series C Preferred Stock are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Series C Preferred Stock, the Required Reserve Amount.

Section 20. Transfer of Series C Preferred Stock. A Holder may transfer some or all of its shares of Series C Preferred Stock without the consent of the Corporation. Any such transfer shall comply with all applicable securities laws.

Section 21. Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the shares of Series C Preferred Stock, in which the Corporation shall record the name, address and facsimile number of the Persons in whose name the shares of Series C Preferred Stock have been issued, as well as the name and address of each transferee. The Corporation may treat the Person in whose name any shares of Series C Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

Section 22. Amendment. This Certificate of Designations or any provision hereof may be amended by obtaining the affirmative vote at a meeting duly called for such purpose, or by written consent without a meeting in accordance with the DGCL, of the Majority Holders, voting separately as a single class, and with such other stockholder approval, if any, as may then be required pursuant to the DGCL and the Corporation's Certificate of Incorporation and Bylaws.

Section 23. Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations 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.

Section 24. Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

Section 25. Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designations and shall not be deemed to limit or affect any of the provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, DPW Holdings, Inc. has caused this Certificate of Designations to be signed by the undersigned as of the date first written above.

DPW HOLDINGS, INC.

By: /s/ Milton C. Ault, III

Name: Milton C. Ault, III
Title: Chief Executive Officer

[Signature Page to Series C Certificate of Designation]

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (the “**Agreement**”) is entered into and effective as of February 24, 2020 (the “**Effective Date**”), by and between DPW Holdings, Inc., a Delaware corporation (the “**Company**”) and Ault & Company, Inc., a Delaware corporation (including its designees, successors and assigns, the “**Investor**”).

RECITALS

A. The parties desire that, upon the terms and subject to the conditions contained herein, the Company shall issue to Investor, and Investor shall purchase from the Company, from time to time as provided herein, up to 15,000 shares of Series C Convertible Preferred Stock (the “**Preferred Shares**”) at a purchase price equal to \$1,000 per share of Series C Preferred Stock (\$15,000,000 in the aggregate); and

B. The offer and sale of the Preferred Shares provided for herein are being made without registration under the Securities Act, in reliance upon the provisions of Section 4(a)(2) of the Securities Act, Regulation D promulgated under the Securities Act, and such other exemptions from the registration requirements of the Securities Act as may be available with respect to any or all of the purchases of Preferred Shares to be made hereunder.

AGREEMENT

In consideration of the premises, the mutual provisions of this Agreement, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Company and Investor agree as follows:

ARTICLE 1
DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated in this **Article I**:

“**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to Investor, without limitation, any Person owning, owned by, or under common ownership with Investor, and any investment fund or managed account that is managed on a discretionary basis by the same investment manager as Investor will be deemed to be an Affiliate.

“**Agreement**” means this Securities Purchase Agreement including the exhibits and schedules hereto.

“**Balance Sheet Date**” has the meaning set forth in Section 3.1(f)(i).

“**Certificate of Designations**” means the Amended and Restated Certificate of Designations of Rights and Preferences in the form attached hereto as Exhibit A.

“**Charter Documents**” has the meaning set forth in Section 3.1(a).

“**Closing**” means any one of (i) the Transaction Closing as set forth in Section 2.2(a) and (ii) each Tranche Closing as set forth in Section 2.4(e)(v).

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Stock**” means the Class A Common Stock, par value \$0.001 per share, of the Company, and any replacement or substitute thereof, or any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

“**Contracts**” means any and all contracts, agreements, commitment, franchises, understandings, arrangements, leases, licenses, registrations, authorizations, easements, servitudes, rights of way, mortgages, bonds, notes, guaranties, Encumbrances, evidence of indebtedness, approvals or other instruments or undertakings to which such person is a party or to which or by which such person or the property of such person is subject or bound, whether written or oral and whether or not entered into in the ordinary and usual course of the Person’s business, excluding any Permits, provided that each such Contract shall provide for the payment of no less than \$15,000.

“**Control Person**” means each director, executive officer, promoter, and such other Persons as may be deemed in control of the Company, as such term is defined by Rule 405 under the Securities Act.

“**Conversion Shares**” means the shares of Common Stock into which the Preferred Shares are convertible in accordance with the Certificate of Designations.

“**Delisting Period**” means any time during the term of this Agreement, that the Common Stock is not listed for and actively and/or regularly trading on a Trading Market, or is suspended or delisted with respect to the trading of the shares of Common Stock on a Trading Market.

“**Disclosure Schedules**” means the disclosure schedules of the Company delivered concurrently herewith, attached hereto, and incorporated herein by reference. The Disclosure Schedules shall contain no material non-public information.

“**DTC**” means The Depository Trust Company, or any successor performing substantially the same function for Company.

“**DWAC Shares**” means, except as expressly stated otherwise herein, all shares of Common Stock issued or issuable to Investor or any Affiliate, successor or assign of Investor pursuant to any of the Transaction Documents, all of which shall be (a) issued in electronic form, (b) freely tradable and without restriction on resale, and (c) timely credited by Company to the specified Deposit/Withdrawal at Custodian (DWAC) account with DTC under its Fast Automated Securities Transfer (FAST) Program or any similar program hereafter adopted by DTC performing substantially the same function, in accordance with irrevocable instructions issued to and countersigned by the Transfer Agent, in the form attached hereto as **Exhibit C** or in such other form agreed upon by the parties.

“**Encumbrances**” means any and all claims, liabilities and obligations and all liens, pledges, charges, mortgages, security interests, restrictions, leases, licenses, easements, liabilities, claims, encumbrances, preferences, priorities or rights of others of every kind and description.

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

“**Firm**” has the meaning set forth in Section 3.1(f)(i).

“**Financial Statements**” has the meaning set forth in Section 3.1(f)(i).

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fundamental Transaction**” means and shall be deemed to have occurred at such time upon any of the following events:

(i) a consolidation, merger or other business combination or event or transaction, following which the holders of Common Stock immediately preceding such consolidation, merger, combination or event either (a) no longer hold a majority of the shares of Common Stock or (b) no longer have the ability to elect a majority of the board of directors of the Company (a “**Change in Control**”);

(ii) the sale or transfer of all or substantially all of the Company’s assets; or

(iii) a purchase, tender or exchange offer made to the holders of the outstanding shares of Common Stock.

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

“Governmental Authority” means any nation or country (including but not limited to the United States) and any commonwealth, territory or possession thereof and any government or governmental or regulatory, legislative, executive authority thereof, or commission, department or political subdivision thereof, whether federal, state, regional, municipal, local or foreign, or any department, board, bureau, agency, instrumentality or authority thereof, or any court or arbitrator (public or private), including, but not limited to, the Commission and FINRA.

“Intellectual Property” means any patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right, copyright and other proprietary intellectual property right and computer program.

“Investigation” has the meaning set forth in Section 3.2(d)(vi).

“Knowledge” means, with respect to any Person, (x) such Person is actually aware of such fact or matter or (y) such Person should reasonably have been expected to discover or otherwise become aware of such fact or matter after reasonable investigation, and for purposes hereof it shall be assumed that such Person has conducted a reasonable investigation of the accuracy of the representations and warranties set forth herein.

“Leased Properties” has the meaning set forth in Section 3.1(n)(ii).

“Legal Requirements” means any and all laws (statutory, judicial or otherwise), ordinances, regulations, judgments, orders, directives, injunctions, writs, decrees or awards of, and any Contracts with, any Governmental Authority, in each case as and to the extent applicable to such person or such person’s business, operations or Properties.

“Liability” means any liability, obligation or indebtedness of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

“Loss” or “Losses” means any and all Liability, damages, fines, fees, penalties and expenses whether or not arising out of litigation, including without limitation, interest, reasonable expenses of investigation, court costs, reasonable out-of-pocket fees and expenses of attorneys, accountants and other experts or other reasonable out-of-pocket expenses of litigation or other legal proceedings, incurred in connection with the rightful enforcement of rights under this Agreement against any party hereto, and whether or not arising out of third party claims against an indemnified party.

“Material Adverse Effect” means any material adverse effect on (i) the legality, validity or enforceability of any Transaction Document, (ii) the results of operations, assets, business, prospects or financial condition of the Company and the Subsidiaries, taken as a whole, or (iii) the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

“Material Agreement” means any material loan agreement, financing agreement, equity investment agreement or securities instrument to which Company is a party, any agreement or instrument to which Company and Investor or any Affiliate of Investor is a party, and any other material agreement listed, or required to be listed, on any of Company’s reports filed or required to be filed with the Commission, including without limitation Forms 10-K, 10-Q and 8-K.

“Maximum Tranche Amount” means, subject to any other applicable limitations set forth in this Agreement, the Purchase Price less the amount of any previously noticed and funded Tranches.

“**Officer’s Certificate**” means a certificate in customary form reasonably acceptable to Investor, executed by an authorized officer of the Company.

“**Permits**” means any and all permits, rights, approvals, licenses, authorizations, legal status, orders or Contracts under any Legal Requirement or otherwise granted by any Governmental Authority.

“**Person**” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“**Per Share Purchase Price**” means \$1,000.00.

“**Properties**” means any and all properties and assets (real, personal or mixed, tangible or intangible) owned or used by the Company.

“**Purchase Price**” means up to Fifteen Million Dollars (\$15,000,000).

“**Purchase Right**” with respect to any Person means any security, right, subscription, warrant, option or other Contract that gives the right to purchase or otherwise receive or be issued any shares of capital stock or other equity interests of such Person or any security of any kind convertible into or exchangeable or exercisable for any shares of capital stock or other equity interests of such Person.

“**Records**” means all originals and copies of agreements, instruments, documents, deeds, books, records, files, corporate franchises, stock record books, corporate books containing the minutes of meetings of directors and shareholders and any and all other data and information within the possession of a party or any Affiliate thereof.

“**Regulation D**” means Regulation D promulgated under the Securities Act.

“**Required Approval**” means the approval of the NYSE American, LLC.

“**Required Tranche Documents**” has the meaning set forth in [Section 2.4\(d\)](#).

“**Rule 144**” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect.

“**Rule 144 Eligible**” means eligible for immediate resale under Rule 144 without limitation on the amount of securities sold under Rule 144(e).

“**SEC Reports**” includes all reports required to be filed by the Company under the Securities Act and/or the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two (2) years preceding the Effective Date (or such shorter period as the Company was required by law to file such material) and for the period in which this Agreement is in effect.

“**Secretary’s Certificate**” means a certificate in customary form reasonably acceptable to Investor, executed by the Secretary of the Company.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Series C Preferred Stock**” means shares of Series C Convertible Preferred Stock, \$0.001 par value per share, issuable pursuant to the Certificate of Designations.

“**Preferred Shares**” means the shares of Series C Preferred Stock being issued and sold to the Investor by the Company hereunder.

“**Subsidiary**” means any Person the Company owns or controls, or in which the Company, directly or indirectly, owns a majority of the capital stock or similar interest that would be disclosable pursuant to Regulation S-K, Item 601(b)(21).

“**Tax**” means any and all taxes, charges, fees, levies or other assessments, including, without limitation, local and/or foreign income, net worth, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, share capital, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, service, service use, transfer, registration, recording, ad valorem, value-added, alternative or add-on minimum, estimated, or other taxes, assessments or charges of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

“**Tax Return**” means any federal, state, local and foreign tax return, report or similar statement required to be filed with respect to any Tax (including any attached Schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

“**Taxing Authority**” means the Internal Revenue Service and any other Governmental Authority responsible for the administration of any Tax.

“**Termination Date**” means the earlier of (i) March 23, 2025, or (ii) the Tranche Closing Date on which the sum of the aggregate Tranche Purchase Price for all Tranche Shares equals the Purchase Price.

“**Trading Day**” means any day on which the Common Stock is traded on the Trading Market; provided that it shall not include any day on which the Common Stock is (a) scheduled to trade for less than 5 hours, or (b) suspended from trading.

“**Trading Market**” means the OTCQB, the OTCQX, the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the NYSE American, or the New York Stock Exchange, whichever is at the time the principal trading system, exchange or market for the Common Stock, but does not include the OTC Pink Sheets inter-dealer electronic quotation and trading system.

“**Tranche**” has the meaning set forth in [Section 2.4\(a\)](#).

“**Tranche Closing**” has the meaning set forth in [Section 2.4\(e\)\(iv\)](#).

“**Tranche Closing Date**” has the meaning set forth in [Section 2.4\(e\)\(ii\)](#).

“**Tranche Notice**” has the meaning set forth in [Section 2.4\(b\)](#).

“**Tranche Notice Date**” has the meaning set forth in [Section 2.4\(b\)](#).

“**Tranche Purchase Price**” has the meaning set forth in [Section 2.4\(b\)](#), and shall be specified in writing by the Investor.

“**Tranche Shares**” means the Preferred Shares that are purchased by the Investor pursuant to a Tranche Notice.

“**Transaction Documents**” means this Agreement, the other agreements and documents referenced herein, and the exhibits and schedules hereto and thereto.

“**Transfer Agent**” means Computershare Trust Company, N.A. or any successor transfer agent for the Common Stock.

ARTICLE 2
PURCHASE AND SALE

2.1 Agreement to Purchase.

Subject to the terms and conditions herein and the satisfaction of the conditions to closing set forth in this **Article 2**, the Company hereby agrees to issue to the Investor and the Investor hereby agrees to purchase, in its sole and absolute discretion, up to 15,000 Preferred Shares in one or more Tranches in accordance with Section 2.4 below, from the Company for the Tranche Purchase Price and to furnish to the Company the Tranche Purchase Price in consideration for the Preferred Shares, in accordance with the terms of this Agreement.

2.2 Closing; Conditions to Closing.

(a) Closing. The closing of this Agreement (the “**Transaction Closing**”) shall be deemed to occur when this Agreement has been duly executed by both Investor and the Company, and the other Conditions to the Closing set forth in Section 2.2(b) have been met.

(b) Company Conditions to Closing. As a condition precedent to the Transaction Closing, all of the following (the “**Company Conditions to Closing**”) shall have been satisfied prior to or concurrently with the Company’s execution and delivery of this Agreement:

(i) the following documents shall have been delivered to the Investor: (A) this Agreement (including the Disclosure Schedules), executed by the Company; (B) a Secretary’s Certificate as to (x) the resolutions of the Company’s board of directors authorizing this Agreement and the Transaction Documents, and the transactions contemplated hereby and thereby, and (y) a copy of the Company’s Charter Documents, and (C) a copy of the Company’s press release announcing the transactions contemplated by this Agreement (all documents listed in this Section 2.2(b) are referred to herein as the “**Closing Deliverables**”);

(ii) other than for losses incurred in the ordinary course of business, there shall not have been any Material Adverse Effect on the Company since the date of the last SEC Report filed by the Company, including but not limited to incurring material liabilities; and

(iii) the representations and warranties of the Company in this Agreement shall be true and correct in all material respects.

2.3 Share Sufficiency. On the date of Closing, the Company shall have a sufficient number of duly authorized shares of Series C Preferred Stock to be able to issue the Preferred Shares to the Investor.

2.4 Tranches to Investor

(a) Procedure to Elect a Tranche. Subject to the Maximum Tranche Amount, the Purchase Price and the other conditions and limitations set forth in this Agreement, at any time beginning on the Effective Date, the Investor may, in its sole and absolute discretion, elect to exercise one or more individual purchases of Preferred Shares under this Agreement (each a “**Tranche**”) according to the following procedure.

(b) Delivery of Tranche Notice. The Investor shall, from time to time in its sole and absolute discretion, deliver an irrevocable written notice (the “**Tranche Notice**”), in the form attached hereto as **Exhibit B**, to the Company stating that the Investor shall exercise a Tranche and stating the number of Preferred Shares which the Investor will purchase from the Company at the Per Share Purchase Price, and the aggregate purchase price for such Tranche (the “**Tranche Purchase Price**”). A Tranche Notice delivered by the Investor to the Company by 4:30 p.m. Eastern time on any Trading Day shall be deemed delivered on the same day. A Tranche Notice delivered by the Investor to the Company after 4:30 p.m. Eastern time on any Trading Day, or at any time on a non-Trading Day, shall be deemed delivered on the next Trading Day. The date that the Tranche Notice is deemed delivered is the “**Tranche Notice Date**.” Each Tranche Notice shall be delivered via facsimile or electronic mail, with confirming copy by overnight carrier, in each case to the address set forth after the signature page hereof.

(c) Conditions Precedent to Right to Deliver a Tranche Notice. The right of the Investor to deliver, from time to time or at any time, a Tranche Notice for an amount up to the Purchase Price is subject to the satisfaction, on the date of delivery of such Tranche Notice, of each of the following conditions:

(i) the Common Stock shall be listed for and currently trading on the Trading Market, and to the Company's Knowledge there is no notice of any suspension or delisting with respect the trading of the shares of Common Stock on such Trading Market;

(ii) the representations and warranties of the Company set forth in this Agreement shall be true and correct in all material respects as if made on such date (except for any representations and warranties that are expressly made as of a particular date, in which case such representations and warranties shall be true and correct as of such particular date), and no default shall have occurred under this Agreement, or any other agreement with Investor or any Affiliate of Investor, or any other Material Agreement, and the Company shall deliver an Officer's Certificate to such effect to Investor, signed by an officer of the Company;

(iii) other than losses incurred in the ordinary course of business, there has been no Material Adverse Effect on the Company since the Commitment Closing;

(iv) the Company is not, and will not be as a result of the applicable Tranche, in default of this Agreement, any other agreement with Investor or any Affiliate of Investor, or any other Material Agreement;

(v) there is not then in effect any law, rule or regulation prohibiting or restricting the transactions contemplated in this Agreement or any other Transaction Document, or requiring any consent or approval which shall not have been obtained, nor is there any pending or threatened proceeding or investigation which may have the effect of prohibiting or adversely affecting any of the transactions contemplated by this Agreement; no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or adopted by any court or governmental authority of competent jurisdiction that prohibits the transactions contemplated by this Agreement, and no actions, suits or proceedings shall be in progress, pending or, to the Company's knowledge threatened, by any person (other than Investor or any Affiliate of Investor), that seek to enjoin or prohibit the transactions contemplated by this Agreement;

(vi) the Company is in compliance with all requirements to maintain its then-current listing on the Trading Market; and

(vii) the Company has a sufficient number of duly authorized shares of Common Stock reserved for issuance in such amount as may be required to fulfill its obligations pursuant to the Transaction Documents and any outstanding agreements with Investor and any Affiliate of Investor, including without limitation all conversion shares issuable upon conversion of the Preferred Shares issued in connection with such Tranche.

(d) Documents to be Delivered at Tranche Closing. The Closing of any Tranche and Investor's options hereunder shall additionally be conditioned upon the delivery, unless otherwise provided otherwise below, to Investor of each of the following (the "**Required Tranche Documents**") on or before the applicable Tranche Closing Date:

(i) this Agreement duly executed by the Company

(ii) certificate(s) evidencing a number of Preferred Shares equal to the Tranche Purchase Price divided by the Tranche Share Price shall have been delivered to Investor or an account specified by the Investor for the Tranche Shares;

(iii) the Officer's Certificate, signed by an officer of the Company;

(iv) a Secretary's Certificate executed by the Corporate Secretary of the Company;

(v) the delivery of all Conversion Shares on a timely basis in accordance with any conversion notice delivered to Company prior to the Tranche Closing Date;

(vi) Certificates of Good Standing of the Company and each Subsidiary from each such entity's jurisdiction of incorporation and any jurisdiction in which any such entity is qualified to do business;

(vii) the Required Approval for the issuance of the Tranche Shares shall have been obtained; and

(viii) all documents, instruments and other writings required to be delivered by the Company to Investor on or before the Tranche Closing Date pursuant to any provision of this Agreement or in order to implement and effect the transactions contemplated herein.

(e) Mechanics of Tranche Closing.

(i) On or before any Tranche Closing, the Investor shall deliver to the Company the Tranche Purchase Price in cash or immediately available funds as consideration for the purchase of the Tranche Shares pursuant to wire instructions delivered to the Investor by the Company.

(ii) The Company shall deliver to the Investor all Required Tranche Documents required to be delivered by it pursuant to Section 2.4(d) of this Agreement at or prior to each Tranche Closing. Subject to such delivery and the satisfaction of the conditions set forth in Section 2.4(c) as of the Tranche Closing Date, the closing of the purchase by the Investor of Tranche Shares shall occur by 5:00 p.m. Eastern time, on the date which is five (5) Trading Days following (and not counting) the Tranche Notice Date (each a "**Tranche Closing Date**") at the offices of the Company. The initial Tranche Closing Date is referred to herein as the "Initial Tranche Closing Date."

(iii) If any portion of the Tranche Shares is converted by the Investor on or after the Tranche Notice Date and prior to or on the Tranche Closing Date (which conversion shall be effected by Investor sending the conversion notice to the Company), the Company shall send Investor an electronic copy of its share issuance instructions to the Transfer Agent and shall, if the restrictive legend prescribed by Section 4.1 hereof is not required because of compliance with the provisions with that section, cause the requisite number of shares of Common Stock to be credited to Investor's account with DTC as DWAC Shares by 12:00 p.m. Eastern time on the second Trading Day after the date the Company receives the conversion notice from Investor. If DWAC Shares are not timely credited pursuant to this Section 2.4(e)(iii), then the Tranche Closing Date shall be extended by one (1) Trading Day for each Trading Day that such timely credit of DWAC Shares is not made.

(iv) The closing (each, a "**Tranche Closing**") for each Tranche shall occur on the date that both (i) the Company has delivered to the Investor all Required Tranche Documents, and (ii) Investor has delivered to the Company the Tranche Purchase Price.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of the Company. Except as set forth under the corresponding section of the Disclosure Schedules, which shall be deemed a part hereof and which shall not contain any material non-public information, the Company hereby represents and warrants to, and as applicable covenants with, Investor as of each Closing:

(a) Corporate Organization. The Company (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has full corporate power and authority to carry on its business as it is now being conducted and to own the Properties it now owns, and (ii) is duly qualified or licensed to do business as a foreign corporation in good standing in such other states in which it does business, except where such failure to be so qualified or licensed would not have a Material Adverse Effect on the Company's business; the Company is duly and properly registered pursuant to applicable state laws and regulations in all states where the conduct of the Company's business as presently conducted requires such registration. The copies of the Certificate of Incorporation and Bylaws of the Company (the "**Charter Documents**") annexed hereto as Schedule 3.1(a) are complete and correct copies of such instruments as presently in effect.

(b) Authority. The Company has the corporate power and the authority to execute, deliver and perform this Agreement and each other document contemplated by this Agreement and the Transaction Documents. The execution, delivery and performance of the Transaction Documents by the Company have been duly authorized by its board of directors. No other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance of the Transaction Documents. The Transaction Documents have been duly executed and delivered by the Company and, assuming due execution and delivery hereof by the Investor, are valid and legally binding agreements of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, moratorium, reorganization and similar laws of general applicability relating to or affecting creditors' rights, to general equity principles, and public policy considerations underlying the securities laws, to the extent that such public policy considerations limit the enforceability of the provisions of the Transaction Documents that purport to provide indemnification for securities laws liabilities.

(c) Capitalization. Attached as Schedule 3.1(c) to this Agreement is a capitalization table setting forth the equity capitalization of the Company as of the date hereof, and on a pro forma basis, after giving effect to the sale of the Shares.

Other than as set forth above or on Schedule 3.1(c), no shares of capital stock or other voting or non-voting securities of the Company are issued, reserved for issuance or outstanding. All outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and non-assessable and not subject to or issued in violation of any Purchase Right, right of first refusal, preemptive right, subscription right or any similar right under any provision of the applicable corporate laws of the State of Delaware, the Charter Documents, or any Contract to which the Company is a party or otherwise bound. Except as set forth on Schedule 3.1(c), there are no oral and/or written, direct and/or indirect options, warrants, rights, convertible or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, commitments, Contracts, arrangements or undertakings of any kind to which the Company is a party or by which it is bound; (a) obligating the Company to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other equity interests in, or any security convertible or exercisable for or exchangeable into any capital stock of or other equity interest in, the Company, (b) obligating the Company to issue, grant, extend or enter into any such option, warrant, call, right, security, commitment, Contract, arrangement or undertaking or (c) that give any Person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights occurring to holders of the capital stock of the Company. As of the date of this Agreement, there are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of capital stock of the Company. To the Company's Knowledge, the offer and sale of all capital stock, convertible securities, rights, warrants, or options of the Company issued prior to the Closing complied with all applicable federal and state securities laws and the Company has not been notified by the Commission, the NYSE American, any state securities commission or any other Governmental Authority of the absence of compliance by the Company with any federal and state securities laws or other Legal Requirements. No stockholder has a matured and/or unmatured right of rescission or claim for damages with respect thereto.

(d) Consents; Permits; Defaults. Assuming the accuracy of the representations and warranties of the Investor in Section 3.2, other than as contemplated in the Transaction Documents, none of the execution, delivery or performance of the Transaction Documents by the Company, the consummation by the Investor of any transaction contemplated by the Transaction Documents, or compliance by the Company with any of the provisions of the Transaction Documents will require (with or without notice or lapse of time, or both) any consent, approval, authorization or permit of, or filing or registration with or notification to, any Governmental Authority or any other Person, other than the failure to obtain such consents, approvals, authorizations or permits of, or to make such filings, registrations with or notifications to any Governmental Authority or any other Person, individually or in the aggregate, has not had a Material Adverse Effect on the Company.

(e) Non-Contravention. The execution, delivery and performance the Transaction Documents by the Company does not and will not (i) result in a breach of, or constitute a default under the Charter Documents, (ii) result in a breach of, or constitute a default under, any loan agreement, indenture or mortgage or any material lease, agreement, franchise, license, permit or other undertaking or Contract to which the Company is a party or any of its Properties may be subject or bound, (iii) result in a violation of any order, writ, injunction, decree or award of any court or Governmental Authority including, but not limited to, the Commission, to the Company or relating to any of its Properties, or (iv) result in a violation of any federal or state law, statute, ordinance, rule or regulation or other Legal Requirement applicable the Company.

(f) Financial Statements.

(i) The Company has delivered or made available (for purposes of this section, filings that are publicly available prior to the date hereof on the EDGAR system of the Commission under the name of the Company are deemed to have been made available) to the Investor: (i) a true and complete copy of the Company's unaudited consolidated balance sheet as of September 30, 2019 (the "**Balance Sheet Date**") and the related unaudited consolidated statements of operations, changes in the Company stockholder's deficit and cash flows for the period then ended and (ii) a true and complete copy of the Company's audited balance sheet as of December 31, 2018 and December 31, 2017 and the related audited statements of operations, changes in the Company stockholder's deficit and cash flows for each of the years ended December 31, 2018 and December 31, 2017, prepared in accordance with GAAP, together with the report of Marcum, LLP, the Company's independent registered public accounting firm (the "**Firm**"), which has served as the Company's auditors since the audit of its 2016 financial statements (such statements, including the related notes and schedules thereto, are referred to herein as the "**Financial Statements**"). The Financial Statements have been prepared from, are in accordance with, and accurately reflect, the books and records of the Company, comply in all material respects with applicable accounting requirements in the case of the Financial Statements; fairly present in all material respects the financial position and the results of operations and cash flows (and changes in financial position, if any) of the Company as of the times and for the periods referred to therein (subject, in the case of unaudited statements, to normally recurring year-end adjustments that are not material either individually or in the aggregate and the absence of footnotes). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as set forth in the notes thereto). The Financial Statements are in form appropriate for filing with the Commission.

(ii) The Firm, which has certified the Company's Financial Statements and related schedules, is an independent registered public accounting firm with respect to the Company as required by the Securities Act and the rules and regulations promulgated thereunder and the Public Company Accounting Oversight Board (United States).

(iii) There are no relationships or services, or any other factors that may affect the objectivity and independence of the Firm under applicable auditing standards. The Firm has not performed any non-audit services for any Person related to the Company.

(g) Contracts.

(i) Schedule 3.1(g)(i) contains an accurate and complete list and terms of all the Company's Contracts. Other than as set forth on Schedule 3.1(g)(i), the Company is not a party to or bound by any of the following, whether written or oral:

(A) Any Contract that cannot by its terms be terminated by the Company with thirty (30) days' or less notice without penalty or whose term continues beyond one (1) year after the date of this Agreement;

(B) Any Contract or commitment for capital expenditures for non-product orders by the Company in excess of \$100,000 per calendar quarter in the aggregate other than purchase orders to vendors to manufacture products sold to customers;

(C) Any lease or license with respect to any material Properties, whether as landlord, tenant, licensor or licensee;

(D) Any Contract or other instrument relating to the borrowing of money or the guarantee of any obligation or the deferred payment of the purchase price of any Properties;

(E) Any Contract with any Affiliate of the Company relating to the provision of goods or services by or to the Company other than purchase orders to vendors to manufacture products sold to customers;

(F) Any Contract for the sale of any assets;

(G) Any Contract that purports to limit the Company's freedom to compete freely in any line of business or in any geographic area;

(H) Any preferential purchase right, right of first refusal, or similar agreement; or

(I) Any other Contract that is material to the business of the Company.

(ii) All of the Contracts listed or required to be listed in Schedule 3.1(g)(i) are valid, binding and to the Knowledge of the Company, in full force and effect, and the Company has not been notified or advised by any party thereto of such party's intention or desire to terminate or modify any such Contract in any respect. To the Knowledge of the Company no other party is in breach of any of the terms or covenants of any Contract listed or required to be listed on Schedule 3.1(g)(i) that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Following the Closing, the Company will continue to be entitled to all of the benefits currently held by the Company under each Contract listed or required to be listed on Schedule 3.1(g)(i).

(iii) The Company is not a party to or bound by any Contract or Contracts the terms of which were arrived at by, or otherwise reflect, less-than-arm's-length negotiations or bargaining.

(h) Absence of Certain Changes or Events.

(i) Except as set forth on Schedule 3.1(h)(i) or as disclosed in the SEC Reports, since the Balance Sheet Date, there has not been:

(A) any event, circumstance or change that had or would reasonably be expected to result in a Material Adverse Effect on the Company;

(B) any damage, destruction or loss (whether or not covered by insurance) that had or would reasonably be expected to result in a Material Adverse Effect of the Company; or

(C) any Material Adverse Effect in the Company's sales patterns, pricing policies, accounts receivable or accounts payable.

(ii) Except as set forth on Schedule 3.1(h)(ii) or as disclosed in the SEC Reports, since the Balance Sheet Date, the Company has not:

(A) merged into or with or consolidated with, any other corporation or acquired the business or assets of any Person;

(B) purchased securities from any Person;

(C) created, incurred, assumed, guaranteed or otherwise become liable or obligated with respect to any Liabilities, or made any loan or advance to, or any investment in, any person, except in each case in the ordinary course of business;

(D) made any change in any existing election, or made any new election, with respect to any tax law in any jurisdiction which election could have an effect on the tax treatment of the Company or the Company's business operations;

- (E) entered into, amended or terminated a material Contract;
- (F) sold, transferred, leased, mortgaged, encumbered or otherwise disposed of, or agreed to sell, transfer, lease, mortgage, encumber or otherwise dispose of, any Properties;
- (G) settled any claim or litigation, or filed any motions, orders, briefs or settlement agreements in any proceeding before any Governmental Authority or any arbitrator;
- (H) incurred or approved, or entered into any Contract, agreement or commitment to make, any expenditures in excess of \$100,000;
- (I) maintained its Records and/or any other books of account other than in the usual, regular and ordinary manner in accordance with GAAP and on a basis consistent with prior periods and has not made any change in any of its accounting methods or practices that would be required to be disclosed under GAAP;
- (J) granted any increase in the compensation payable or to become payable to directors, officers or employees (including, without limitation, any such increase pursuant to any bonus, profit-sharing or other plan or commitment);
- (K) suffered any extraordinary losses or waived any rights of material value;
- (L) made any payment to any Affiliate or forgiven any indebtedness due or owing from any Affiliate to the Company other than director fees and other payments described in the SEC Reports;
- (M) engaged in any one or more activities or transactions with an Affiliate outside the ordinary course of business;
- (N) declared, set aside or paid any dividends, or made any distributions or other payments in respect of its equity securities, or repurchased, redeemed or otherwise acquired any such securities;
- (O) amended its Charter Documents;
- (P) issued any capital stock or other securities, or granted, or entered into any agreement to grant, any options, convertible rights, other rights, warrants, calls or agreements relating to its capital stock; or
- (Q) agreed or committed to do any of the foregoing.

(i) Absence of Undisclosed Liabilities and Agreements. The Company does not have any debt, loss, damage, adverse claim, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise) which are not accurately reflected or provided for in the balance sheet dated as of the Balance Sheet Date included within the Financial Statements (whether or not they are required to be disclosed under GAAP), other than (a) those incurred in the ordinary course of the Company's business since Balance Sheet Date, (b) those disclosed in this Agreement or the disclosure schedules and (c) those material obligations arising subsequent to the date hereof pursuant to the express terms of executory Contracts, which executory Contracts (to the extent such Contracts are material to the business of the Company) are identified on Schedule 3.1(i). Neither the Company nor any of its officers or directors has effected any securitization transactions or "off-balance sheet arrangements" (as defined in Item 303(c) of Regulations S-K of the Commission) since the Balance Sheet Date. Except as set forth on Schedule 3.1(i) or otherwise contemplated by this Agreement, as of the Closing there will be no Liabilities of the Company.

(j) Compliance with Law. The business of the Company has been operated in compliance with all Legal Requirements, including all laws, ordinances, rules, regulations and orders of all Governmental Authorities and the NYSE American, except where such failure would not have a Material Adverse Effect on the Company or its business. The Company has filed all reports and statements, including but not limited to the SEC Reports, together with any amendments required to be made with respect thereto, that it was required to file with any Governmental Authority or any other body having jurisdiction over the Company's operations. The Company has not received any written communication from a Governmental Authority that alleges that the Company is not in compliance with any federal, state, local or foreign laws, ordinances and regulations or has not made all of the filings required by all such authorities, organizations and agencies.

(k) Tax Matters. All Tax Returns required to be filed by or on behalf of the Company have been duly and timely filed with the appropriate Taxing Authority in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns are true, complete and correct in all material respects. All Taxes payable by or on behalf of the Company (whether or not shown on any Tax Return) have been fully and timely paid. With respect to any period for which Tax Returns have not yet been filed or for which Taxes are not yet due or owing, the Company has made due and sufficient accruals for such Taxes in the Financial Statements and in its books and records. All required estimated Tax payments sufficient to avoid any underpayment penalties or interest have been made by or on behalf of the Company. The Company has complied in all material respects with all applicable laws relating to the payment and withholding of Taxes in connection with amounts paid or owing to any employee, independent contractor, creditor, equity owner or other third party and has duly and timely withheld and paid over to the appropriate Taxing Authority all amounts required to be so withheld and paid under all applicable laws.

(l) Absence of Questionable Payments. Neither the Company nor any Affiliate, director, officer, partner, employee, agent, representative or other Person acting on behalf of the Company has: (i) used any funds for contributions, payments, gifts or entertainment, or made any expenditures relating to political activities of foreign, federal, state or local government officials or others in violation of any law (including the Foreign Corrupt Practices Act of 1977, as amended), or (ii) accepted or received any unlawful contributions, payments, gifts or expenditures.

(m) Litigation. Other than as set forth on Schedule 3.1(m) or as disclosed in the SEC Reports, there is no claim, action, suit or proceeding pending or, to the Knowledge of the Company, threatened against any of the Company or its Properties which, if adversely determined, will affect or can reasonably be expected to affect materially and adversely, the Company, or which seeks to prohibit, restrict or delay consummation of the transaction contemplated hereby or any of the conditions to consummation of such transaction, nor to the Knowledge of the Company is there any judgment, decree, injunction, ruling or order of any court, Governmental Authority, including, but not limited to, the Commission, any commission, agency or instrumentality or arbitrator outstanding against the Company having, or which may in the future have, any such effect. Neither the Company nor any Affiliate thereof is under investigation with respect to, any violation of any provision of any federal or state law or administrative regulation in respect of the business of the Company. The Company is not a party to or bound by any judgment, decree, injunction, ruling or order of any Governmental Authority or any other person which has affected or may affect materially and adversely the Preferred Shares.

(n) Title to Property.

(i) Personal Property. All material items of personal property used in the business of the Company are in good operating condition and fit for operation in the ordinary course of the Company's business (subject to normal wear and tear) with no defects that could reasonably be expected to interfere with the conduct of the normal operation of such items and are suitable for the purposes for which they are currently being used.

(ii) Real Property. The Company owns no real property. The Company's only leased properties are the properties in Newport Beach, CA, Fremont, CA, Israel and Salisbury, the United Kingdom (collectively, the "**Leased Properties**"). All real estate Taxes for which the Company is responsible with respect to any Leased Property (and which are not otherwise incorporated into payments made under any lease), have been paid in full, as and when due.

(o) Intellectual Property. The Company has, or has rights to use, all Intellectual Property necessary for the conduct of the business of the Company as currently conducted. The Company has received no written notice that the Intellectual Property used by it violates or infringes upon the rights of any Person. All rights to such Intellectual Property are enforceable and to the Knowledge of the Company, there is no existing infringement by another Person of any of the rights to the Company's Intellectual Property of others. All the Company's Intellectual Property rights registered or applied for registration under the name of the Company are set forth on Schedule 3.1(o).

(p) SEC Reports. The Company has filed with the Commission all SEC Reports required to be filed pursuant to the Securities Act and Exchange Act and is current in its reporting obligations. As of their respective dates, all SEC Reports complied in all material respects with requirements of the Securities Act and Exchange Act and the rules and regulations promulgated thereunder and none of the SEC Reports when they were filed contained an untrue statement of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(q) Books and Records; Internal Accounting Controls. The Records of the Company accurately reflect in all material respects the information relating to the business of the Company, the location and collection of its Properties and the nature of all transactions giving rise to the obligations or accounts receivable of the Company to the extent required to be contained therein. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate actions is taken with respect to any differences.

(r) Broker. The Company has not retained any broker in connection with any transaction contemplated by this Agreement. The Company shall not be obligated to pay any fee or commission associated with the retention or engagement by the Company of any broker in connection with any transaction contemplated by this Agreement.

(s) Common Stock Symbol. The Company Common Stock is currently listed on the NYSE American under the symbol "DPW."

(t) No Commission or NYSE American Inquiries; Delisting. Except as set forth on Schedule 3.1(t) or as disclosed in the SEC Reports, to the best of the Company's Knowledge, the Company is not, and has never been, the subject of any formal or informal inquiry or investigation by the Commission or the NYSE American. Except as set forth on Schedule 3.1(t), the Company has no Knowledge of any action by the Commission or the NYSE American that seeks to deregister or delist the Common Stock from the NYSE American or otherwise render such shares ineligible for listing and trading on the NYSE American.

(u) Preferred Shares. The Preferred Shares and the Conversion Shares will, upon each issuance whether pursuant to Tranche Notice or conversion of the Preferred Shares, be duly authorized, fully paid and non-assessable and vest in the holder thereof title thereto free and clear of any restrictions on transfer (other than any restrictions under applicable state or federal securities laws), Taxes, Encumbrances, options, warrants, Purchase Rights, Contracts, commitments, equities, claims, and demands and will not be subject to any pre-emptive or other similar rights.

(v) Disclosure of Material Information. Neither the Company nor any other Person acting on its behalf has provided or will provide the Investor or its agents or counsel with any information that the Company believes constitutes material non-public information (other than with respect to the transactions contemplated by this Agreement and the Transaction Documents). The Company understands and confirms that the Investor will be relying on the foregoing representations in effecting transactions in the Preferred Shares.

(w) Labor Matters. The Company is not a party to any representation or collective bargaining agreement with any employees.

(x) Employment Agreements and Plans. The Company has furnished the Investor with a list of all employment, consulting, advisory and confidentiality agreements to which the Company is a party. The Company has delivered to the Investor true and complete copies of each such agreement (or written descriptions thereof for any such agreements which are not in writing). Except as set forth on Schedule 3.1(x), the Company has not and does not maintain or contribute to any outstanding incentive compensation, deferred compensation, profit sharing, stock option, stock bonus, stock purchase, savings, consultant, retirement, pension, medical, dental, disability or other benefit plans or arrangements with or for the benefit of any officer, employee or former officer, employee of the Company or for the benefit of any distributor, sales representative or other person resulting from a relationship with the Company.

(y) Insurance. The Company has furnished the Investor with a list of all material bonds and liability, fire and other insurance contracts of whatsoever description to which the Company is a party, and under which the Company is or was a beneficiary.

(z) Director and Officer Insurance. The Company has maintained insurance for its officers and directors for the last five (5) years without any lapse in coverage.

(aa) DTC Eligibility. The Company's Transfer Agent is a participant in and the Common Stock is eligible for transfer pursuant to the Depository Trust Company's Fast Automated Securities Transfer Program.

(bb) Disclosure. No representation or warranty by the Company in this Agreement, the Exhibits or the Schedules hereto and thereto and no statement contained in any document, certificate, or other writing furnished or to be furnished by the Company to the Investor or any of its representatives or agents pursuant to the provisions hereof or in connection with the transactions, contains or will contain any untrue statement of material fact or omits or will omit to state any material fact necessary in order to make the statements herein or therein made, in the light of the circumstances under which they were made, not misleading.

3.2 Representations and Warranties of Investor. Investor hereby represents and warrants as of the Effective Date as follows:

(a) Authority. The Investor has all necessary corporate power and authority to execute and deliver the Transaction Documents, to perform its obligations hereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Transaction Documents by the Investor, and the consummation by the Investor of the transactions contemplated hereby have been duly and validly authorized by its board of directors, and no other corporate proceedings on the part of the Investor are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement and the Transaction Documents have been duly validly executed and delivered by the Investor and, assuming due authorization, execution and delivery by the Company, constitutes a legally valid and binding obligation of the Investor, enforceable against the Investor in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject to the effect of general principles of equity, whether considered in a proceeding in equity or at law).

(b) No Conflict. None of the execution, delivery or performance of the Transaction Documents by the Investor, the consummation by the Investor of the transactions contemplated by this Agreement, or compliance by the Investor with any of the provisions of this Agreement will (with or without notice or lapse of time, or both): (a) conflict with or violate any provision of the organizational or governing documents of the Investor, or (b) assuming that all consents, approvals, authorizations and permits described in Section 3.1(d) have been obtained and all filings and notifications described in Section 3.1(d) have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any law applicable to the Investor, except, with respect to clause (b), for any such conflicts, violations, consents, breaches, losses, defaults, other occurrences which, individually or in the aggregate, have not had a Material Adverse Effect on the Investor.

(c) Information in the Form 8-K. The information supplied by the Investor in writing expressly for inclusion or incorporation by reference in the Form 8-K (as hereinafter defined) and any amendment thereof or supplement thereto, will not, on the date submitted to the Company, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading.

(d) Securities Act Representations.

(i) Restricted Shares. The Investor represents that it understands that the Preferred Shares to be sold to it pursuant to this Agreement will not be registered pursuant to the registration requirements of the Securities Act and that the resale of such Preferred Shares is subject to certain restrictions hereunder and under federal and state securities laws. The Investor represents that it is acquiring such Preferred Shares for its own account, not as a nominee or agent, and not with a view to the distribution thereof in violation of applicable securities laws. The Investor further represents that it has been advised and understands that since such Preferred Shares have not been registered under the Securities Act, such Preferred Shares must be held indefinitely unless (A) the resale of such Preferred Shares has been registered under the Securities Act, (B) a sale of such Preferred Shares is made in conformity with the holding period, volume and other limitations of Rule 144 promulgated by the Commission under the Securities Act, or (C) in the opinion of counsel reasonably acceptable to the Company, some other exemption from registration is available with respect to any proposed sale, transfer or other disposition of such Preferred Shares.

(ii) Legend. The Investor represents that it has been advised and understands that, subject to applicable securities laws, stop transfer instructions will be given to the Company's Transfer Agent with respect to the Preferred Shares and the Conversion Shares and that a legend, substantially in the form provided for in Section 4.1(b), setting forth the restrictions on transfer will be set forth on the certificates for the Preferred Shares or any substitutions therefor.

(iii) Accredited Investor. The Investor is an "accredited investor" (as such term is defined in Regulation D under the Securities Act).

(iv) Litigation. There are no actions, suits, arbitrations, mediations, proceedings or claims pending or, to the knowledge of the Investor, threatened against Investor that seek to restrain or enjoin the consummation of the transactions contemplated hereby.

(v) Acknowledgement of Receipt of Information. The Investor has had an opportunity to ask questions and receive answers and materials, and to discuss the business of the Company and its Subsidiaries and related matters, with certain key officers of the Company and its Subsidiaries regarding the transactions contemplated hereunder (the "**Investigation**"). The Investor hereby acknowledges and agrees that other than the Company's representations and warranties set forth in Section 3.1, neither the Company nor any of its representatives makes or has made any representation or warranty, express or implied, at law or in equity, with respect to the business of the Company or any Subsidiary thereof nor with respect to the Preferred Shares. Nothing in this Section 3.2(d)(v) (including any information provided to the Investor by the Company pursuant to the Investigation) shall derogate from the representations and warranties of the Company contained in Section 3.1 hereof or from the ability of Investor to rely on such representations and warranties or to seek indemnification for Losses in respect of such representations and warranties.

ARTICLE 4
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions

(a) The Preferred Shares may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Preferred Shares other than (i) pursuant to an effective Registration Statement or Rule 144, (ii) to the Company, (iii) to an Affiliate of Investor, or (iv) in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, to the effect that such transfer does not require registration of such transferred Preferred Shares under the Securities Act.

(b) Investor agrees to the imprinting, so long as is required by this Section 4.1 of the following legend, or substantially similar legend, on any certificate evidencing Preferred Shares that qualify to have the legend removed as provided below:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company agrees to cause such legend to be removed immediately upon effectiveness of a Registration Statement, or when any securities are eligible for sale under Rule 144 and, if requested by Investor or the Transfer Agent, to promptly provide at the Company’s expense a legal opinion of counsel to the Company confirming that such legend may be removed. Company further acknowledges and agrees that Investor may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Preferred Shares to a financial institution that is an “accredited investor” as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and, if required under the terms of such arrangement, Investor may transfer pledged or secured Preferred Shares to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At Investor’s reasonable expense, the Company will execute and deliver such documentation as a pledgee or secured party of Preferred Shares may reasonably request in connection with a pledge or transfer of the Preferred Shares.

4.2 Furnishing of Information. As long as Investor owns Preferred Shares, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the Effective Date pursuant to the Exchange Act. Upon the request of Investor, the Company shall deliver to Investor a written certification of a duly authorized officer as to whether it has complied with the preceding sentence. As long as Investor owns Preferred Shares, if the Company is not required to file reports pursuant to such laws, it will prepare and furnish to Investor and make publicly available in accordance with Rule 144(c) such information as is required for Investor to sell the Preferred Shares under Rule 144. The Company further covenants that it will take such further action as any holder of Preferred Shares may reasonably request, all to the extent required from time to time to enable such Person to sell such Preferred Shares without registration under the Securities Act within the limitation of the exemptions provided by Rule 144.

4.3 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Preferred Shares in a manner that would require the registration under the Securities Act of the sale of the Preferred Shares to Investor or that would be integrated with the offer or sale of the Preferred Shares for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

4.4 Securities Laws Disclosure; Publicity. The Company shall timely file a Current Report on Form 8-K as required by this Agreement, and shall file a press release, in each case reasonably acceptable to Investor, disclosing the material terms of the transactions contemplated hereby. The Company and Investor shall consult with each other in issuing any press releases with respect to the transactions contemplated hereby, and neither the Company nor Investor shall issue any such press release or otherwise make any such public statement without the prior consent of the Company, with respect to any such press release of Investor, or without the prior consent of Investor, with respect to any such press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law or Trading Market regulations, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of Investor, or include the name of Investor in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of Investor, except (i) as contained in the Current Report on Form 8-K and press release described above, (ii) as required by federal securities law in connection with any registration statement under which the securities are registered, (iii) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide Investor with prior notice of such disclosure, or (iv) to the extent such disclosure is required in any SEC Report filed by the Company.

4.5 Shareholders Rights Plan. No claim will be made or enforced by the Company or, to the Knowledge of the Company, any other Person that Investor is an “Acquiring Person” under any shareholders rights plan or similar plan or arrangement in effect or hereafter adopted by the Company, or that Investor could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Preferred Shares under the Transaction Documents or under any other agreement between the Company and Investor. The Company shall conduct its business in a manner so that it will not become subject to the Investment Company Act of 1940, as amended.

4.6 Non-Public Information. The Company covenants and agrees that neither it nor any other Person acting on its behalf will provide Investor or its agents or counsel with any information that the Company believes or reasonably should believe constitutes material non-public information, unless prior thereto Investor shall have executed a written agreement regarding the confidentiality and use of such information. On and after the Effective Date, neither Investor nor any Affiliate Investor shall have any duty of trust or confidence that is owed directly, indirectly, or derivatively, to the Company or the shareholders of the Company, or to any other Person who is the source of material non-public information regarding the Company. The Company understands and confirms that Investor shall be relying on the foregoing in effecting transactions in securities of the Company.

4.7 Reimbursement. If Investor becomes involved in any capacity in any proceeding by or against any Person who is a stockholder of the Company (except as a result of sales, pledges, margin sales and similar transactions by Investor to or with any current stockholder), solely as a result of Investor’s acquisition of the Preferred Shares under this Agreement, the Company will reimburse Investor for its reasonable legal and other expenses (including the cost of any investigation preparation and travel in connection therewith) incurred in connection therewith, as such expenses are incurred, or will assume the defense of Investor in such matter. The reimbursement obligations of the Company under this Section 4.7 shall be in addition to any liability which the Company may otherwise have, shall extend upon the same terms and conditions to any Affiliates of Investor who are actually named in such action, proceeding or investigation, and partners, directors, agents, employees and controlling persons (if any), as the case may be, of Investor and any such Affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Company, Investor and any such Affiliate and any such Person. The Company also agrees that neither Investor nor any such Affiliates, partners, directors, agents, employees or Controlling Persons shall have any liability to the Company or any Person asserting claims on behalf of or in right of the Company solely as a result of acquiring the Preferred Shares under this Agreement.

4.8 Indemnification of Investor

(a) Company Indemnification Obligation. Subject to the provisions of this Section 4.8, the Company will indemnify and hold Investor, its Affiliates and attorneys, and each of their directors, officers, shareholders, partners, employees, agents, and any person who controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Investor Parties**” and each an “**Investor Party**”), harmless from any and all Losses that any Investor Party may suffer or incur as a result of or relating to (i) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents, or (ii) any action instituted against any Investor Party, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of an Investor Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of Investor’s representations, warranties or covenants under the Transaction Documents or any agreements or understandings Investor may have with any such stockholder or any violations by Investor of state or federal securities laws or any conduct by Investor which constitutes fraud, gross negligence, willful misconduct or malfeasance), (iii) any untrue statement or alleged untrue statement of a material fact contained in a Registration Statement (or in a Registration Statement as amended by any post-effective amendment thereof by the Company) or arising out of or based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and/or (iv) any untrue statement or alleged untrue statement of a material fact included in any Prospectus (or any amendments or supplements to any Prospectus), in any free writing prospectus, in any “issuer information” (as defined in Rule 433 under the Securities Act) of the Company, or in any Prospectus together with any combination of one or more of the free writing prospectuses, if any, or arising out of or based upon any omission or alleged omission to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) **Indemnification Procedures.** If any action shall be brought against an Investor Party in respect of which indemnity may be sought pursuant to this Agreement, such Investor Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing. The Investor Parties shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Investor Parties except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of such separate counsel, a material conflict with respect to the dispute in question on any material issue between the position of the Company and the position of the Investor Parties such that it would be inappropriate for one counsel to represent the Company and the Investor Parties. The Company will not be liable to the Investor Parties under this Agreement (i) for any settlement by an Investor Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (ii) to the extent, but only to the extent that a loss, claim, damage or liability is either attributable to Investor's breach of any of the representations, warranties, covenants or agreements made by Investor in this Agreement or in the other Transaction Documents.

4.8 Right of Participation in Future Financings. If the Company, at any time while no fewer than one hundred thousand (100,000) Preferred Shares are issued and outstanding and held by the Investor, shall issue shares of capital stock, convertible securities, rights, options, warrants or any other kind of its securities in a financing, then the Investor shall have the right to participate in any such financing under the same terms and conditions as the investors in any such financing in order to maintain its then percentage ownership interest in the Company. Such right of participation shall apply to securities issued in a financing subsequent to the Effective Date, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such rights, options or warrants.

4.9 Approval by holders of Common Stock. The Company will seek the approval of the Company's stockholders for the Conversion Shares for the sole purpose of meeting the requirements of NYSE American Rule 713(b) and thereafter seek the Required Approval. Until such Required Approval, the Investor will neither vote its Preferred Shares nor (ii) convert its Preferred Shares into Conversion Shares.

4.10 Termination. The Investor may elect to terminate this Agreement (a "**Termination**") upon the occurrence of any of the following:

(b) if, at any time, either the Company or any director or executive officer (excluding any director or executive officer who is a manager, member or affiliate of Investor) of the Company has engaged in a transaction or conduct related to the Company that has resulted in (i) an SEC enforcement action, including without limitation such director or executive officer being sanctioned by the Commission, or (ii) a civil judgment or criminal conviction for fraud or misrepresentation, or for any other offense that, if prosecuted criminally, would constitute a felony under applicable law;

(c) on any date after a Delisting Period that lasts for an aggregate of twenty (20) Trading Days during any calendar year;

(d) if at any time the Company has filed for and/or is subject to any bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors instituted by or against the Company or any Subsidiary of the Company;

(e) the Company is in breach or default of any Material Agreement, which breach or default could have a Material Adverse Effect;

- of Investor;
- (f) the Company is in breach or default of this Agreement, any Transaction Document, or any agreement with Investor or any Affiliate of Investor;
 - (g) upon the occurrence of a Fundamental Transaction;
 - (h) so long as any Preferred Shares are outstanding, the Company effects or publicly announces its intention to create a security senior to the Series C Preferred Stock, or substantially altering the capital structure of the Company in a manner that, in the Investor's opinion, materially adversely affects the rights or preferences of the Series C Preferred Stock; or
 - (i) on the Termination Date.

4.11 Effect of Termination. Except as otherwise provided herein, the termination of this Agreement will have no effect on any Preferred Shares or Conversion Shares previously issued, delivered or credited, or on any then-existing rights of any holder thereof.

ARTICLE 5 MISCELLANEOUS

5.1 Fees and Expenses. Each party shall pay the fees and expenses of its own advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of the Transaction Documents. The Company shall pay all stamp and other taxes and duties levied in connection with the sale of the Preferred Shares, if any.

5.2 Notices. Unless a different time of day or method of delivery is set forth in the Transaction Documents, any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile or electronic mail prior to 5:30 p.m. Eastern time on a Trading Day and an electronic confirmation of delivery is received by the sender, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered later than 5:30 p.m. Eastern time or on a day that is not a Trading Day, (c) three (3) Trading Days following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for such notices and communications are those set forth following the signature page hereof, or such other address as may be designated in writing hereafter, in the same manner, by such Person.

5.3 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by the Company and Investor or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

5.4 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Investor, which consent shall not be unreasonably withheld or delayed. Investor may assign any or all of its rights under this Agreement (a) to any Affiliate, or (b) to any Person to whom Investor assigns or transfers any Preferred Shares.

5.6 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in [Section 4.8](#).

5.7 Governing Law; Dispute Resolution. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to the principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. The parties hereby waive all rights to a trial by jury. If either party shall commence an action or proceeding to enforce any provisions of the Transaction Documents, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses reasonably incurred in connection with the investigation, preparation and prosecution of such action or proceeding.

5.8 Survival. The representations and warranties contained herein shall survive the Closing and the delivery and conversions of the Preferred Shares.

5.9 Execution. This Agreement may be executed in one or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or in a PDF by e-mail transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

5.10 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

5.11 Replacement of Preferred Shares. If any certificate or instrument evidencing any Preferred Shares is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Preferred Shares.

5.12 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of Investor and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation the defense that a remedy at law would be adequate. Neither the Company nor Investor shall be liable for special, indirect, consequential or punitive damages suffered or alleged to be suffered by the other party or any third party, whether arising from or related to the Transaction Documents or otherwise.

5.13 Payment Set Aside. To the extent that the Company makes a payment or payments to Investor pursuant to any Transaction Document or Investor enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.14 Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance.

5.15 Construction. The parties agree that each of them and/or their respective counsel has reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments hereto. 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.

5.16 Entire Agreement. This Agreement, together with the Exhibits, Appendices and Schedules hereto, contains the entire agreement and understanding of the parties, and supersedes all prior and contemporaneous agreements, term sheets, letters, discussions, communications and understandings, both oral and written, which the parties acknowledge have been merged into this Agreement. No party, representative, attorney or agent has relied upon any collateral contract, agreement, assurance, promise, understanding or representation not expressly set forth hereinabove. The parties hereby expressly waive all rights and remedies, at law and in equity, directly or indirectly arising out of or relating to, or which may arise as a result of, any Person's reliance on any such assurance.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

DPW HOLDINGS, INC.

By: */s/ William B. Horne*

Name: William B. Horne

Title: Chief Financial Officer

AULT & COMPANY, INC.

By: */s/ Milton C. Ault, III*

Name: Milton C. Ault, III

Title: Chief Executive Officer

Addresses for Notice

To Company:

DPW Holdings, Inc.
201 Shipyard Way
Newport Beach, California 92663
Attention: William Horne, Chief Financial Officer

Telephone: (949) 444-5464
Facsimile:
Email: Will@dpwholdings.com

with a copy (which shall not constitute notice) to:

To Investor:

Ault & Company, Inc.
201 Shipyard Way
Newport Beach, California 92663
Attention: Milton C. Ault, Chief Executive Officer

Telephone: (949) 444-5464
Facsimile:
Email: Todd@ault.com
