

TSS, Inc.
Form SC 13D/A
February 10, 2015

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

SCHEDULE 13D/A

**Under the Securities Exchange Act of 1934
(Amendment No. 4)***

TSS, Inc.

(Name of Issuer)

Common Stock, \$0.0001 Par Value

(Title of Class of Securities)

87288V101

(CUSIP Number)

Peter H. Woodward

MHW Capital Management, LLC

150 East 52nd Street

New York, New York 10022

Tel. No.: (212) 486-7300

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

February 3, 2015

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. "

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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NAMES OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

1.

MHW Capital Management, LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(see instructions)

2. (a) ..

(b) ..

3. SEC USE ONLY

SOURCE OF FUNDS (see instructions)

4.

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ..

CITIZENSHIP OR PLACE OF ORGANIZATION

6.

Delaware

SOLE VOTING POWER

7.

0

NUMBER OF SHARES

SHARED VOTING POWER

BENEFICIALLY OWNED BY

8.

3,103,708

EACH

SOLE DISPOSITIVE POWER

REPORTING PERSON WITH

9.

0

PERSON WITH

SHARED DISPOSITIVE POWER

10.

3,103,708

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11.

3,103,708¹

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(see instructions) ..

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13.

19.0%²

TYPE OF REPORTING PERSON (see instructions)

14.

OO

¹ The shares of the common stock, par value \$0.0001 per share (the “Shares”) of TSS, Inc. (the “Issuer”) over which MHW Capital Management, LLC may be deemed to have shared voting power are comprised of the 1,987,881 outstanding Shares, plus 1,115,827 Shares issuable upon exercise of the warrant described in Item 6 below.

² Based on a total of 16,315,495 Shares issued and outstanding as of November 13, 2014, as reported on the Issuer’s Quarterly Report on Form 10-Q for the period ended September 30, 2014.

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NAMES OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

1.

Peter H. Woodward

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(see instructions)

2.

(a) ..

(b) ..

3.

SEC USE ONLY

SOURCE OF FUNDS (see instructions)

4.

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ..

CITIZENSHIP OR PLACE OF ORGANIZATION

6.

United States

SOLE VOTING POWER

7.

100,000

NUMBER OF SHARES

SHARED VOTING POWER

BENEFICIALLY OWNED BY

8.

3,103,708

EACH REPORTING PERSON WITH

SOLE DISPOSITIVE POWER

9.

100,000

SHARED DISPOSITIVE POWER

10.

3,103,708

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11.

3,203,708³

CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(see instructions) x

12.

Non-vested options to purchase 50,000 shares.

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13.

19.6%⁴

14.

TYPE OF REPORTING PERSON (see instructions)

IN

³ The Shares over which Mr. Woodward may be deemed to have shared voting power are comprised of the 1,987,881 outstanding Shares, plus 1,115,827 Shares issuable upon exercise of the warrant described in Item 6 below.

⁴ Based on a total of 16,315,495 Shares issued and outstanding as of November 13, 2014, as reported on the Issuer's Quarterly Report on Form 10-Q for the period ended September 30, 2014.

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NAMES OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

1.

MHW Partners, L.P.

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(see instructions)

2.

(a) ..

(b) ..

3. SEC USE ONLY

SOURCE OF FUNDS (see instructions)

4.

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ..

CITIZENSHIP OR PLACE OF ORGANIZATION

6.

Delaware

SOLE VOTING POWER

7.

0

NUMBER OF SHARES

SHARED VOTING POWER

BENEFICIALLY OWNED BY

8.

825,086

EACH REPORTING PERSON WITH

SOLE DISPOSITIVE POWER

9.

0

SHARED DISPOSITIVE POWER

10.

825,086

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11.

825,086

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(see instructions) ..

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13.

5.1%⁵

TYPE OF REPORTING PERSON (see instructions)

14.

OO

⁵ Based on a total of 16,315,495 Shares issued and outstanding as of November 13, 2014, as reported on the Issuer's Quarterly Report on Form 10-Q for the period ended September 30, 2014.

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NAMES OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

1.

MHW SPV II, LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(see instructions)

2. (a) ..

(b) ..

3. SEC USE ONLY

SOURCE OF FUNDS (see instructions)

4.

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) ..

CITIZENSHIP OR PLACE OF ORGANIZATION

6.

Delaware

SOLE VOTING POWER

7.

1,115,827

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

SHARED VOTING POWER

8.

0

SOLE DISPOSITIVE POWER

9.

1,115,827

SHARED DISPOSITIVE POWER

10.

0

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11.

1,115,827⁶

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(see instructions) ..

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13.

6.8%⁷

TYPE OF REPORTING PERSON (see instructions)

14.

OO

⁶ The Shares over which MHW SPV II, LLC may be deemed to have shared voting power are comprised of 1,115,827 Shares issuable upon exercise of the warrant described in Item 6 below.

⁷ Based on a total of 16,315,495 Shares issued and outstanding as of November 13, 2014, as reported on the Issuer's Quarterly Report on Form 10-Q for the period ended September 30, 2014.

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This Amendment No. 4 (the "Amendment") amends and supplements the Schedule 13D originally filed with the Securities and Exchange Commission (the "SEC") on February 21, 2013, as amended and supplemented by Amendment No. 1 filed with the SEC on January 8, 2014, Amendment No. 2 filed with the SEC on March 5, 2014 and Amendment No. 3 filed with the SEC on November 18, 2014 (together, the "Schedule 13D"), which relates to the common stock, par value \$0.0001 per share (the "Shares") of TSS, Inc., a Delaware corporation (the "Issuer"). Capitalized terms used herein and not otherwise defined have the meaning assigned to such terms in the Schedule 13D. All items or responses not described herein remain as previously reported in the Schedule 13D.

Item 2. Identity and Background.

Item 2 of the Schedule 13D is hereby amended and restated in its entirety as follows:

- (a) – (c), (f) This Schedule 13D is being filed on behalf of MHW Partners, L.P., a Delaware limited partnership ("MHW Partners"), MHW SPV II, LLC, a Delaware limited liability company ("MHW II"), MHW Capital Management, LLC, a Delaware limited liability company and the investment manager of each of MHW Partners and MHW II (the "Investment Manager"), and Mr. Peter H. Woodward, a United States citizen and a principal of the Investment Manager and Managing Member of MHW II. MHW Partners, MHW II, the Investment Manager and Mr. Woodward shall collectively be referred to herein as the "Reporting Persons". The principal business address for each of the Reporting Persons is 150 East 52nd Street, New York, New York 10022.
- (d) None of the Reporting Persons has, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).
- (e)

None of the Reporting Persons has, during the last five years, been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source or Amount of Funds or Other Consideration.

Item 3 of the Schedule 13D is hereby amended and supplemented by adding the following immediately at the conclusion thereof:

On February 3, 2015, the Issuer granted MHW II the right to purchase up to 1,115,827 Shares as partial consideration for a multiple advance term loan on February 3, 2015 in the maximum principal amount of \$2,000,000 from MHW II to the Issuer and its subsidiaries, Innovative Power Systems, Inc., VTC, L.L.C., Vortech, L.L.C., Total Site Solutions Arizona, LLC and Alletag Buildings, Inc.

Item 5. Interest in Securities of the Issuer.

Item 5 of the Schedule 13D is hereby amended and restated in its entirety as follows:

As of the date hereof, the Investment Manager may be deemed to be the beneficial owner of 3,103,708 Shares, constituting 19.0% of the Shares (based upon 16,315,495 Shares outstanding as of November 13, 2014, as (a) -reported on the Issuer's Quarterly Report on Form 10-Q for the period ended September 30, 2014). The (e) Investment Manager has the sole power to vote or direct the vote of 0 Shares; has the shared power to vote or direct the vote of 3,103,708 Shares; has the sole power to dispose or direct the disposition of 0 Shares; and has the shared power to dispose or direct the disposition of 3,103,708 Shares.

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As of the date hereof, Mr. Woodward may be deemed to be the beneficial owner of 3,203,708 Shares, constituting 19.6% of the Shares (based upon 16,315,495 Shares outstanding as of November 13, 2014, as reported on the Issuer's Quarterly Report on Form 10-Q for the period ended September 30, 2014). Mr. Woodward has the sole power to vote or direct the vote of 100,000 Shares; has the shared power to vote or direct the vote of 3,103,708 Shares; has the sole power to dispose or direct the disposition of 100,000 Shares; and has the shared power to dispose or direct the disposition of 3,103,708 Shares.

As of the date hereof, MHW Partners may be deemed to be the beneficial owner of 825,086 Shares, constituting 5.1% of the Shares (based upon 16,315,495 Shares outstanding as of November 13, 2014, as reported on the Issuer's Quarterly Report on Form 10-Q for the period ended September 30, 2014). MHW Partners has the sole power to vote or direct the vote of 0 Shares; has the shared power to vote or direct the vote of 825,086 Shares; has the sole power to dispose or direct the disposition of 0 Shares; and has the shared power to dispose or direct the disposition of 825,086 Shares.

As of the date hereof, MHW II may be deemed to be the beneficial owner of 1,115,827 Shares, constituting 6.8% of the Shares (based upon 16,315,495 Shares outstanding as of November 13, 2014, as reported on the Issuer's Quarterly Report on Form 10-Q for the period ended September 30, 2014). MHW II has the sole power to vote or direct the vote of 1,115,827 Shares; has the shared power to vote or direct the vote of 0 Shares; has the sole power to dispose or direct the disposition of 1,115,827 Shares; and has the shared power to dispose or direct the disposition of 0 Shares.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

Item 6 of the Schedule 13D is hereby amended and restated in its entirety as follows:

The Issuer granted to Mr. Woodward non-vested options to buy 150,000 Shares as compensation for serving as a director of the Issuer. The options vest ratably over three years on the anniversary of the issuance, with 50,000 options that vested on June 29, 2013, 50,000 options vested on June 29, 2014 and 50,000 options to vest on June 29, 2015.

MHW Partners and Mr. Thomas Rosato entered into a Stock Purchase Agreement, dated December 31, 2013, pursuant to which MHW Partners acquired 200,000 Shares in exchange for an aggregate purchase price of \$80,000 in cash, which was obtained from the working capital of MHW Partners. Pursuant to the terms of the Stock Purchase Agreement, Mr. Rosato agreed not to, directly or indirectly, sell, transfer, assign, hypothecate or similarly dispose of, or enter into any contract, option or other arrangement or understanding with respect to the voting of or sale, transfer,

assignment, hypothecation or similar disposition of the remaining Shares that he owns for a period of ninety days following the execution of the Stock Purchase Agreement. The foregoing description of the Stock Purchase Agreement is intended as a summary only and is qualified in its entirety by reference to the Stock Purchase Agreement, which is filed as Exhibit B to this Schedule 13D/A and incorporated by reference herein.

The Issuer and MHW II entered into a warrant (the "Warrant"), dated February 3, 2015, granting MHW II the right to purchase up to 1,115,827 Shares. The Warrant is exercisable for a period of five years from February 3, 2015 at an exercise price of \$0.50 for the first 472,500 Shares, \$1.00 for the next 425,250 Shares and \$1.30 for the final 218,077 Shares. The exercise price and number of Shares issuable on exercise of the Warrant will be subject to adjustment in the event of any stock split, reverse stock split, recapitalization, reorganization or similar transaction.

Item 7. Material to Be Filed as Exhibits.

Item 7 of the Schedule 13D is hereby amended and restated in its entirety as follows:

Exhibit A: Joint Filing Agreement, dated February 9, 2015

Exhibit B: Stock Purchase Agreement, dated December 31, 2013 (incorporated by reference to Exhibit B of the Schedule 13 D/A (Amendment No. 1) filed by the Reporting Persons on January 8, 2014)

Exhibit C: Warrant, dated February 3, 2015

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SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: February 9, 2015

MHW Capital Management, LLC

By: /s/ Peter H. Woodward
Peter H. Woodward, Managing Member

MHW Partners, L.P.

By: /s/ Peter H. Woodward
Peter H. Woodward, Managing Member

MHW SPV II, LLC

By: /s/ Peter H. Woodward
Peter H. Woodward, Managing Member

/s/ Peter H. Woodward
Peter H. Woodward

Exhibit A

JOINT FILING AGREEMENT

The undersigned agree that this Schedule 13D/A, dated February 9, 2015, relating to the Common Stock, \$0.0001 par value of TSS, Inc., shall be filed on behalf of the undersigned.

Dated: February 9, 2015

MHW Capital Management, LLC

By: /s/ Peter H. Woodward
Peter H. Woodward, Managing Member

MHW Partners, L.P.

By: /s/ Peter H. Woodward
Peter H. Woodward, Managing Member

MHW SPV, LLC

By: /s/ Peter H. Woodward
Peter H. Woodward, Managing Member

/s/ Peter H. Woodward
Peter H. Woodward

Exhibit C

WARRANT

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**ACT**”), OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SHARES IS EFFECTIVE UNDER THE ACT AND IS QUALIFIED UNDER APPLICABLE STATE AND FOREIGN LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE AND FOREIGN LAW AND, IF THE CORPORATION REQUESTS, AN OPINION SATISFACTORY TO THE CORPORATION TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.

Warrant Certificate No.: 001

Original Issue Date: February 3, 2015

FOR VALUE RECEIVED, TSS, Inc., a Delaware corporation (the “**Company**”), hereby certifies that MHW SPV II, LLC, a Delaware limited liability company, or its registered assigns (the “**Holder**”) is entitled to purchase from the Company the number of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock at a purchase price per share set forth in **Section 2** hereof, all subject to the terms, conditions and adjustments set forth below in this Warrant. Certain capitalized terms used herein are defined in **Section 1** hereof.

1. **Definitions.** As used in this Warrant, the following terms have the respective meanings set forth below:

“**Aggregate Exercise Price**” means an amount equal to the product of (a) the number of Warrant Shares in respect of which this Warrant is then being exercised pursuant to **Section 3**, *multiplied by* (b) the Exercise Price.

“**Board**” means the board of directors of the Company.

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

“**Common Stock**” means the common stock, par value \$0.0001 per share, of the Company, and any capital stock into which such Common Stock shall have been converted, exchanged or reclassified following the date hereof.

“**Company**” has the meaning set forth in the preamble.

“**Exercise Date**” means, for any given exercise of this Warrant, the date on which the conditions to such exercise as set forth in **Section 3** shall have been satisfied at or prior to 5:00 p.m., eastern time, on a Business Day, including, without limitation, the receipt by the Company of the Exercise Agreement, the Warrant and the Exercise Price.

“**Exercise Agreement**” has the meaning set forth in **Section 3(a)(i)**.

“**Exercise Period**” has the meaning set forth in **Section 2**.

“**Exercise Price**” has the meaning set forth in **Section 2**.

“**Fair Market Value**” means, as of any particular date: (a) the volume weighted average of the closing sales prices of the Common Stock for such day on all domestic securities exchanges on which the Common Stock may at the time be listed; (b) if there have been no sales of the Common Stock on any such exchange on any such day, the average of the highest bid and lowest asked prices for the Common Stock on all such exchanges at the end of such day; (c) if on any such day the Common Stock is not listed on a domestic securities exchange, the closing sales price of the Common Stock as quoted on the Pink OTC Markets or similar quotation system or association for such day; or (d) if there have been no sales of the Common Stock on the Pink OTC Markets or similar quotation system or association on such day, the average of the highest bid and lowest asked prices for the Common Stock quoted on the the Pink OTC Markets or similar quotation system or association at the end of such day; in each case, averaged over twenty (20) consecutive Business Days ending on the Business Day immediately prior to the day as of which “Fair Market Value” is being determined; provided, that if the Common Stock is listed on any domestic securities exchange, the term “Business Day” as used in this sentence means Business Days on which such exchange is open for trading. If at any time the Common Stock is not listed on any domestic securities exchange or quoted on the Pink OTC Markets or similar quotation system or association, the “Fair Market Value” of the Common Stock shall be the fair market value per share as determined jointly by the Board and the Holder.

“**Holder**” has the meaning set forth in the preamble.

“**Original Issue Date**” means February 3, 2015.

“**Person**” means any individual, sole proprietorship, partnership, limited liability company, corporation, joint venture, trust, incorporated organization or government or department or agency thereof.

“Pink OTC Markets” means the OTC Markets Group Inc. electronic inter-dealer quotation system, including OTCQX, OTCQB and OTC Pink.

“Transaction” has the meaning set forth in **Section 4(b)**.

“Warrant” means this Warrant and all warrants issued upon division or combination of, or in substitution for, this Warrant.

“Warrant Shares” means the shares of Common Stock or other capital stock of the Company then purchasable upon exercise of this Warrant in accordance with the terms of this Warrant.

2. **Term of Warrant.** Subject to the terms and conditions hereof, at any time or from time to time after the date hereof and prior to 5:00 p.m., eastern time, on February 3, 2020, or, if such day is not a Business Day, on the next preceding Business Day (the “**Exercise Period**”), the Holder of this Warrant may exercise this Warrant for all or any part of the number of Warrant Shares (subject to adjustment as provided herein) at the purchase price per share (the “**Exercise Price**”) set forth below:

Number of Shares	Exercise Price
472,500 shares	\$0.50 per share
425,250 shares	\$1.00 per share
218,077 shares	\$1.30 per share

3. **Exercise of Warrant.**

(a) **Exercise Procedure.** This Warrant may be exercised from time to time on any Business Day during the Exercise Period, for all or any part of the unexercised Warrant Shares, upon:

(i) surrender of this Warrant to the Company at its then principal executive offices (or an indemnification undertaking with respect to this Warrant in the case of its loss, theft or destruction), together with an Exercise Agreement in the form attached hereto as **Exhibit A** (each, an “**Exercise Agreement**”), duly completed (including specifying the number of Warrant Shares to be purchased) and executed; and

(ii) payment to the Company of the Aggregate Exercise Price in accordance with **Section 3(b)**.

(b) **Payment of the Aggregate Exercise Price.** Payment of the Aggregate Exercise Price shall be made, at the option of the Holder as expressed in the Exercise Agreement, by the following methods:

(i) by delivery to the Company of a certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated in writing by the Company, in the amount of such Aggregate Exercise Price;

(ii) by instructing the Company to withhold a number of Warrant Shares then issuable upon exercise of this Warrant with an aggregate Fair Market Value as of the Exercise Date equal to such Aggregate Exercise Price;

(iii) by surrendering to the Company (x) Warrant Shares previously acquired by the Holder with an aggregate Fair Market Value as of the Exercise Date equal to such Aggregate Exercise Price and/or (y) other securities of the Company having a value as of the Exercise Date equal to the Aggregate Exercise Price (which value in the case of debt securities shall be the principal amount thereof plus accrued and unpaid interest, in the case of preferred stock shall be the liquidation value thereof plus accumulated and unpaid dividends and in the case of shares of Common Stock shall be the Fair Market Value thereof); or

(iv) any combination of the foregoing.

In the event of any withholding of Warrant Shares or surrender of other equity securities pursuant to clause (ii), (iii) or (iv) above where the number of shares whose value is equal to the Aggregate Exercise Price is not a whole number, the number of shares withheld by or surrendered to the Company shall be rounded up to the nearest whole share and the Company shall make a cash payment to the Holder (by delivery of a certified or official bank check or by wire transfer of immediately available funds) based on the incremental fraction of a share being so withheld by or surrendered to the Company in an amount equal to the product of (x) such incremental fraction of a share being so withheld or surrendered multiplied by (y) in the case of Common Stock, the Fair Market Value per Warrant Share as of the Exercise Date, and, in all other cases, the value thereof as of the Exercise Date determined in accordance with clause (iii)(y) above.

(c) **Delivery of Stock Certificates.** Upon receipt by the Company of the Exercise Agreement, surrender of this Warrant and payment of the Aggregate Exercise Price (in accordance with **Section 3(a)** hereof), the Company shall, as promptly as practicable, and in any event within twenty (20) Business Days thereafter, execute (or cause to be executed) and deliver (or cause to be delivered) to the Holder a certificate or certificates representing the Warrant Shares issuable upon such exercise, together with cash in lieu of any fraction of a share, as provided in **Section 3(d)** hereof. The stock certificate or certificates so delivered shall be, to the extent possible, in such denomination or denominations as the exercising Holder shall reasonably request in the Exercise Agreement and shall be registered in the name of the Holder or, subject to compliance with **Section 5** below, such other Person's name as shall be designated in the Exercise Agreement. This Warrant shall be deemed to have been exercised and such certificate or certificates of Warrant Shares shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become a holder of record of such Warrant Shares for all purposes, as of the Exercise Date.

(d) **Fractional Shares.** The Company shall not be required to issue a fractional Warrant Share upon exercise of any Warrant. As to any fraction of a Warrant Share that the Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay to such Holder an amount in cash (by delivery of a certified or official bank check or by wire transfer of immediately available funds) equal to the product of (i) such fraction multiplied by (ii) the Fair Market Value of one Warrant Share on the Exercise Date.

(e) **Valid Issuance of Warrant and Warrant Shares; Payment of Taxes.** With respect to the exercise of this Warrant, the Company hereby represents, covenants and agrees:

(i) This Warrant is, and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, duly authorized and validly issued.

(ii) All Warrant Shares issuable upon the exercise of this Warrant pursuant to the terms hereof shall be, upon issuance, and the Company shall take all such actions as may be necessary or appropriate in order that such Warrant Shares are, validly issued, fully paid and non-assessable, issued without violation of any preemptive or similar rights of any stockholder of the Company and free and clear of all taxes, liens and charges.

(iii) The Company shall take all such actions as may be necessary to ensure that all such Warrant Shares are issued without violation by the Company of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock or other securities constituting Warrant Shares may be listed at the time of such exercise (except for official notice of issuance which shall be immediately delivered by the Company upon each such issuance).

(iv) The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issuance or delivery of Warrant Shares upon exercise of this Warrant; provided, that the Company shall not be required to pay any tax or governmental charge that may be imposed with respect to any applicable withholding or the issuance or delivery of the Warrant Shares to any Person other than the Holder, and no such issuance or delivery shall be made unless and until the Person requesting such issuance has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

(f) **Reservation of Shares.** During the Exercise Period, the Company shall at all times reserve and keep available out of its authorized but unissued Common Stock or other securities constituting Warrant Shares, solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Warrant Shares issuable upon the exercise of this Warrant, and the par value per Warrant Share shall at all times be less than or equal to the applicable Exercise Price. The Company shall not increase the par value of any Warrant Shares receivable upon the exercise of this Warrant above the Exercise Price, and shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

4. Adjustment to Exercise Price or Number of Warrant Shares. In order to prevent dilution of the purchase rights granted under this Warrant, the Exercise Price or the number of Warrant Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as provided in this **Section 4** (in each case, after taking into consideration any prior adjustments pursuant to this **Section 4**).

(a) **Dividend, Subdivision or Combination of Common Stock.** If the Company shall, at any time or from time to time after the Original Issue Date, (i) pay a dividend or make any other distribution upon the Common Stock payable in shares of Common Stock, or (ii) subdivide (by any stock split, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to any such dividend, distribution or subdivision shall be proportionately reduced and the number of Warrant Shares issuable upon

exercise of this Warrant shall be proportionately increased. If the Company at any time combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall be proportionately increased and the number of Warrant Shares issuable upon exercise of this Warrant shall be proportionately decreased. Any adjustment under this **Section 4(a)** shall become effective at the close of business on the date the dividend, subdivision or combination becomes effective.

(b) **Transactions.** In case at any time the Company shall initiate any transaction or be a party to any transaction (including, without limitation, a merger, consolidation, stock exchange, sale, lease or other disposition of all or substantially all of the Company's assets, liquidation, recapitalization or reclassification of any of the Common Stock) in connection with which the Common Stock shall be changed into or exchanged for different securities of the Company or capital stock or other securities of another corporation or interests in a non-corporate entity or other property (including cash) or any combination of the foregoing (each such transaction being herein called a "**Transaction**"), then, as a condition of the consummation of the Transaction, lawful, enforceable and adequate provision shall be made so that the Holder shall be entitled to receive (i) a new warrant in form and substance similar to, and in exchange for, this Warrant to purchase all or a portion of such securities or other property, or (ii) the securities or other property (including cash) to which the Holder would have been entitled upon consummation of the Transaction if the Holder had exercised such applicable portion of this Warrant immediately prior thereto. This **Section 4(b)** shall similarly apply to successive Transactions.

5. Transfer of Warrant. Subject to the transfer conditions referred to in the legend endorsed hereon, this Warrant and all rights hereunder are transferable, in whole or in part, by the Holder without charge to the Holder, upon surrender of this Warrant to the Company at its then principal executive offices with a properly completed and duly executed Assignment in the form attached hereto as **Exhibit B**, together with funds sufficient to pay any transfer taxes required in connection with the making of such transfer. Upon such compliance, surrender and delivery and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant, if any, not so assigned and this Warrant shall promptly be cancelled.

6. Holder Not Deemed a Stockholder: Limitations on Liability. Except as otherwise specifically provided herein, prior to the issuance to the Holder of the Warrant Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant, the Holder shall not be entitled to vote or receive dividends or be deemed the holder of shares of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, as such, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. Replacement on Loss; Division and Combination.

(a) **Replacement of Warrant on Loss.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and upon delivery of an indemnity reasonably satisfactory to it (it being understood that a written indemnification agreement or affidavit of loss of the Holder shall be a sufficient indemnity) and, in case of mutilation, upon surrender of such Warrant for cancellation to the Company, the Company at its own expense shall execute and deliver to the Holder, in lieu hereof, a new Warrant of like tenor and exercisable for an equivalent number of Warrant Shares as the Warrant so lost, stolen, mutilated or destroyed; provided, that, in the case of mutilation, no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

(b) **Division and Combination of Warrant.** Subject to compliance with the applicable provisions of this Warrant as to any transfer or other assignment that may be involved in such division or combination, this Warrant may be divided or, following any such division of this Warrant, subsequently combined with other Warrants, upon the surrender of this Warrant or Warrants to the Company at its then principal executive offices, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the respective Holders or their agents or attorneys. Subject to compliance with the applicable provisions of this Warrant, as to any transfer or assignment that may be involved in such division or combination, the Company shall at its own expense execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants so surrendered in accordance with such notice. Such new Warrant or Warrants shall be of like tenor to the surrendered Warrant or Warrants and shall be exercisable in the aggregate for an equivalent number of Warrant Shares as the Warrant or Warrants so surrendered in accordance with such notice.

8. Compliance with the Securities Act.

(a) **Agreement to Comply with the Securities Act; Legend.** The Holder, by acceptance of this Warrant, agrees to comply in all respects with the provisions of this **Section 8** and the restrictive legend requirements set forth on the face of this Warrant and further agrees that such Holder shall not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act of 1933, as amended (the “**Securities Act**”). This Warrant and all Warrant Shares issued upon exercise of this Warrant (unless registered under the Securities Act) shall be stamped or imprinted with a legend in substantially the following form:

“THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SHARES IS EFFECTIVE UNDER THE ACT AND IS QUALIFIED UNDER APPLICABLE STATE AND FOREIGN LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE AND FOREIGN LAW AND, IF THE CORPORATION REQUESTS, AN OPINION SATISFACTORY TO THE CORPORATION TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.

(b) **Representations of the Holder.** In connection with the issuance of this Warrant, the Holder specifically represents, as of the date hereof, to the Company by acceptance of this Warrant as follows:

(i) The Holder is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The Holder is acquiring this Warrant and the Warrant Shares to be issued upon exercise hereof for investment for its own account and not with a view towards, or for resale in connection with, the public sale or distribution of this Warrant or the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act.

(ii) The Holder understands and acknowledges that this Warrant and the Warrant Shares to be issued upon exercise hereof are “restricted securities” under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that, under such laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In addition, the Holder represents that it is familiar with Rule 144 under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(iii) The Holder acknowledges that it can bear the economic and financial risk of its investment for an indefinite period, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Warrant and the Warrant Shares. The Holder has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Warrant and the business, properties, prospects and financial condition of the Company.

9. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during

normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 9**).

TSS, Inc.

110 E. Old Settler's Blvd.

Round Rock, Texas 78664

If to the Company: Facsimile: (512) 310-1828

E-mail: jpenver@totalsitesolutions.com

Attention: Chief Financial Officer

Miles & Stockbridge P.C.

100 Light Street

Baltimore, Maryland 21202

with a copy to: Facsimile: (410) 698-4505

E-mail: cjohnson@milesstockbridge.com

Attention: Christopher R. Johnson

MHW SPV II, LLC

150 East 52nd Street, 30th Floor

New York, New York 10022

If to the Holder: Facsimile: (212) 486-7580

E-mail: pwoodward@mhwcapital.com

Attention: Managing Member

10. Cumulative Remedies. The rights and remedies provided in this Warrant are cumulative and are not exclusive of, and are in addition to and not in substitution for, any other rights or remedies available at law, in equity or otherwise.

11. Equitable Relief. Each of the Company and the Holder acknowledges that a breach or threatened breach by such party of any of its obligations under this Warrant would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction.

12. Entire Agreement. This Warrant constitutes the sole and entire agreement of the parties to this Warrant with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

13. Successor and Assigns. This Warrant and the rights evidenced hereby shall be binding upon and shall inure to the benefit of the parties hereto and the successors of the Company and the successors and permitted assigns of the Holder. Such successors and/or permitted assigns of the Holder shall be deemed to be a Holder for all purposes hereunder.

14. No Third-Party Beneficiaries. This Warrant is for the sole benefit of the Company and the Holder and their respective successors and, in the case of the Holder, permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Warrant.

15. Headings. The headings in this Warrant are for reference only and shall not affect the interpretation of this Warrant.

16. Amendment and Modification; Waiver. Except as otherwise provided herein, this Warrant may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by the Company or the Holder of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Severability. If any term or provision of this Warrant is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Warrant or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Governing Law. This Warrant shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

19. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Warrant or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the city of Wilmington, Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process,

summons, notice or other document by certified or registered mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

20. Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Warrant is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Warrant or the transactions contemplated hereby.

21. Counterparts. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant.

22. No Strict Construction. This Warrant shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has duly executed this Warrant on the Original Issue Date.

TSS, Inc.

By: /s/ Anthony Angelini
Name: Anthony Angelini
Title: Chief Executive
Officer and President

Accepted and agreed,

MHW SPV II, LLC

By: /s/ Peter H. Woodward
Name: Peter H. Woodward
Title: Managing Member